CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 3089 of 2012

(Arising out of Order-in-Appeal No. 258/2012 dated 11.09.2012 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Archidply Industries Ltd.
KSSIDC Industrial Area,
Bangalore Road, Katamachanahally Gate,
Chintamani – 563 125 (Kolar District). — Appellant(s)

VERSUS

The Commissioner of Central Excise (Appeals-I),
No. 16/1, 5th Floor,
SP Complex, Lalbagh Road,
Bangalore – 560 027. — Respondent(s)

APPEARANCE:

Mr. B. V. Kumar, Advocate, for the Appellant

Mr. Rajesh Shastry, Superintendent (AR), for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20705 / 2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 30.08.2024

PER : DR. D.M. MISRA

This appeal is filed against Order-in-Original No.258/2012 dated 11.09.2012 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of plywood, prelaminated Board, etc, classifiable under Chapter Heading 44 of Central Excise Tariff Act (CETA), 1985. On the basis of intelligence, the

factory of the appellant was visited on 6.10.2009 and documents / records have been withdrawn and statements of the Managing Director and others were recorded. On completion of investigations, a show-cause notice was issued to the appellant alleging that they have availed irregular CENVAT credit of Rs.43,03,004/- on various items such as HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates during the period 13.09.2008 to October 2009. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by this order, appellants preferred an appeal before the Commissioner (A), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the issue involved in the present case is admissibility of CENVAT credit on the inputs utilised in the manufacture of capital goods meant for construction of new plywood manufacturing unit during the period 13.9.2008 to 20.02.2009. He has submitted that from the RG-23C Part – I records maintained by the appellant, it would show that inputs such as H.R. Steel Coils, Steel Tubes and pipes were used for hydraulic press; M.S. Channels and ISMB for the recent plant. Also, the purpose as mentioned in the worksheet submitted clearly indicates that inputs viz., M.S. Angles, M.S. Plates, ISMB, ISMC, H.R. Coils, H.R. Plates, etc., were used for fabricating expansion tanks, boiler structures, ducting, boiler chimney, cooling tower tanks, gantry for hoists, etc. In support of use of the said materials, necessary Chartered Engineer certificate has been placed by the appellant before the authorities below. The learned Commissioner (A) has failed to take note of the said Chartered Engineer’s certificate dated 07.11.2009 which was submitted much before the issuance of show-cause notice. He has further submitted that **Vandana Global Ltd. vs. Commissioner of Central Excise & Customs, Raipur: 2018 (16) GSTL 462 (Chhattisgarh)**.

3.1 Elaborating his argument, he has submitted that the appellant had set up manufacturing unit at Chintamani for the manufacture of plywood, pre-laminated boards, etc., and some of the capital goods required for manufacture of plywood, pre-laminated boards were fabricated within the factory from the inputs such as M.S. Angles, M.S. Steel Plates, M.S. Flats, C. R. Plates, M.S. Pipes, ISMB, ISMC, etc. The components/parts so fabricated were assembled and installed to become part of the equipment required for manufacture of plywood, pre-laminated boards. A part of the total inputs were utilised in other civil works in which structural steel, TOR steel, etc., were utilised and CENVAT credit availed on such inputs amounting to Rs.30,45,832/- has been reversed by the appellant. Further, he referred to the following Circulars of the Board issued from time-to-time.

- Circular No.964/07/2012-CX. Dated 2.4.2012; F. No.84/1/2011-CX.1
- Circular No.966/09/2012-CX dated 18.5.2012; F. No.84/1/2011-CX.1

3.2 Further, he has referred to the following decisions and submitted that the credit on the inputs viz., M.S. Angles, M.S. Steel Plates, M.S. Flats, C. R. Plates, M.S. Pipes, ISMB, ISMC, etc. are admissible.

- CCE, Jaipur vs. Rajasthan Spg. & Wvg. Mills Ltd.: 2010 (255) ELT 481 (SC)
- UOI vs. Associated Cement Co. Ltd.: 2011 (267) ELT 55 (Chhattisgarh)
- CCE, Coimbatore vs. Jawahar Mills Ltd.: 2001 (132) ELT 3 (SC)
- Ballarpur Industries Ltd. vs. CCE, Belgaum: 2000 (116) ELT 312 Tri.-LB)
- CCE vs. Solaris Chemtech Ltd.: 2007 (214) ELT 481 (SC)
- CCE, Chhattisgarh vs. H.E.G. Ltd.: 2010 (260) ELT 386 (Chhattisgarh)

- CCE & Cus., Visakhapatnam-I vs. Rashtriya Ispat Nigam Ltd.: 2011 (267) ELT 311 (AP)

4. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities.

5. Heard both sides and perused the records.

6. The short issue to be decided in this appeal is whether the appellants are eligible to avail CENVAT credit on various items such as HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates which are in turn utilised in the manufacture of capital goods meant for construction of new plywood manufacturing unit during the period 13.09.2008 to October 2009.

7. We find that that the issue is no longer *res integra,* as far as the period prior to 07.07.2009 is concerned. It is covered by the judgment of this Tribunal rendered in the case of **M/s. BMM Ispat Ltd. vs. CCE, Belgaum vide Final Order No.20270 – 20271 /2024** wherein this Tribunal had elaborately discussed the ratios rendered in the case of **Vandana Global Ltd.** (supra) and **Thiru Arooran Sugars vs. CESTAT, Chennai: 2017 (355) ELT 373 (Mad.)** and also decision of Larger Bench of this Tribunal in the case of **Mangalam Cement Ltd. vs. CCE, Jaipur-I: 2018 (360) ELT 737 (Tri.-LB)**, wherein it is held that CENVAT credit on various inputs such as MS Angles, MS Channels, MS beams, MS joists, MS plates, etc., used in the fabrication of various machineries, support structure, platforms for machineries and equipment, etc., used in the factory, is admissible. It is observed that:

> "8.1. We find that the issue is no more *res integra* and covered by the judgement of Hon'ble Chhattisgarh High Court in Vandana Global's case, whereunder it is observed as follows:-
>
> > ***"4.*** *In the light of the contents of the impugned order of the Tribunal and submissions of the assessee and the Revenue following substantial questions of law are formulated for consideration :*

(A) Whether the terms 'capital goods' excludes the structures embedded to earth?

(B) Whether the goods like angles, joists, beams, bars, plates, which go into fabrication of such structures are not to be treated as 'input' used in relation to their final products as inputs for capital goods, or none of the above?

(C) Is the amendment brought in CENVAT Credit Rules, 2004 as per Rule 2 of the CENVAT (Amendment) Rules, 2009 retrospective in nature considering is it clarificatory to be applied to all matters which arise before 7-7-2009, the date of commencement of the CENVAT (Amendment) Rules, 2009 : hereinafter referred to as 'Amendment Rules'.

5. *The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in Mundra Ports & Special Economic Zone Ltd. - 2015 (39) S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows :*

"We do not find that amendment made in the Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification on particular thing or goods and/or input and as such, the amendment could operate only prospectively."

6. *That view has been quoted with approval by the Madras High Court in M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal (CMA 3814/2014 and connections) decided on 10-7-2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. M/s. Thiruarooran Sugars also considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech.*

7. *Section 37 of the Central Excise Act, 1944; for short, 'the Act', is a rule making power. Section 37(2)(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods. Section 37(2A) of the Act - The power* *to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs. Though the power to make rules include the power to give retrospective effect, while doing so the provision under consideration is neither made retrospective nor could it be treated as one.*

8. *We are in complete agreement with the ratio of Mundra Ports (supra) and M/s. Thiruarooran Sugars (supra) on all fours.*

9. *Resultantly, we answer the questions formulated in these appeals in favour of the assessees and against the Revenue."*

8.2. It followed the judgment of Hon'ble Madras High Court in the case of ***Thiru Arooran Sugars*** (supra) whereunder it is observed as follows:-

43. *As would be evident from the aforesaid extract, in Rajasthan Spinning & Weaving Mills Limited case, the Court relied upon the user test, enunciated, in its earlier judgment rendered in : Jawahar Mills Limited case. Clearly, the Court held that steel plates and MS Plates, i.e., structurals used in the fabrication of the chimney, which were an integral part of the diesel generating set would fall within the ambit and scope of definition of capital goods. The Court, went on to further hold that such equipment had to be treated as an accessory. As a matter of fact, in Saraswathi Sugar Mills case, the Court, while noticing the view taken in Rajasthan Spinning and Weaving Mills Limited said that as long as it could be shown that the item in issue was an integral part of the machinery, i.e., capital goods, it would fall in the definition of 'component' and thus, by logical extension, come within the ambit of 'capital goods'.*

43.1 *To be noted, Hon'ble Mr. Justice D.K. Jain, (as he then was), was party to both the judgments rendered by the Supreme Court i.e., Rajasthan Spinning and Weaving Mills Limited as well as Saraswathi Sugar Mills Limited case.*

43.2 *Therefore, quite clearly, the two judgments referred to above cannot be read in the manner, as the Revenue is seeking to read them, that is, at cross purposes. In our opinion, the ratio of the two judgments, is that, as long as it is shown that the "component" and/or "accessory" is an integral part of the capital goods, (which, in turn, fall within the scope* *and ambit of the expression 'capital goods', referred to in Rule 2(a)(A)(i) of the 2004 Rules,) they would also qualify as capital goods.*

44. *In the facts of this case, we have to conclude that MS structurals, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rule 2(a)(A) and 2(k) of the 2004 Rules.*

45. *For the foregoing reasons, we answer the questions, in all the three (3) appeals, which are set forth above, in favour of the assessees and against the Revenue.*

8.3. Also the Larger Bench of the Tribunal taking note of the various High Courts' judgment in the case of ***Mangalam Cement Ltd. Vs. CCE, Jaipur-I*** [2018(360) ELT 737 (Tri. LB)] held as follows:-

8. *Applying the user test of 'capital goods' as enunciated by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills (supra), the Hon'ble Madras High Court in the case of India Cements Ltd., reported in 2012 (285) E.L.T. 341 (Mad.), 2014 (305) E.L.T. 558 (Mad.), 2014 (310) E.L.T. 636 (Mad.) and 2015 (321) E.L.T. 209 (Mad.) has extended the Modvat benefit on Cement and steel items, considering the same as 'capital goods' under Rule 57Q of the erstwhile Central Excise Rules, 1944. Since, said rule is pari materia with the present Rule 2(a) of the CCR, 2004, the disputed goods, in the present case, should be considered as 'capital goods' for the purpose of the Cenvat benefit.*

9. *On perusal of definition of 'input' extracted above, it would reveal that all the goods (excepting light diesel oil/high speed diesel oil and motor spirit) are considered to fall under such definition, when 'used in or in relation to manufacture of final products', whether directly or indirectly, and whether contained in* *the final product or not. The only condition required to be fulfilled is that the goods must be used within the factory of production. Further, Explanation 2 appended to such definition clause provides that 'input' includes goods, which are used in the manufacture of capital goods for further use in the factory of the manufacturer. On a conjoined reading of the definition of input and Explanation 2 appended thereto, it makes the position clear that inputs are not only goods, which are used in the manufacture of final products, but also those which are 'used in or in relation to' the manufacture of the final product. The relationship between those goods and the final product could be either direct or indirect and may include or may not include their presence in the final products. Goods used in the manufacture of capital goods, which are installed for manufacture of the capital goods should also be considered for availment of Cenvat credit. In the case in hand, the cement and steel bars used to erect foundations for installing different machines in the power plant should also merit consideration as 'input' for the purpose of cenvat benefit. Analyzing and interpreting scope of the definitions of 'input' and 'capital goods', the Hon'ble Madras High Court in the case of M/s. Thiru Arooran Sugars & Ors. (Civil Misc. Appeal Nos. 3814/2011 and 2695 and 2696/2012) has held that steel and cement used for laying of foundation for erection of capital goods should be eligible for the cenvat benefit under the present set of rules. The relevant paragraph in the said order is extracted herein below :-*

"44. In the facts of this case, we have to conclude that MS structural, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rules 2(a)(A) and 2(k) of the 2004 Rules."

> ***10.*** *In view of above analysis, we are of the considered opinion that the eligibility to duty credit of the disputed goods cannot be denied. Such eligibility either as 'capital goods' (accessories) or as 'inputs' has been examined and upheld by various decisions of the Hon'ble Apex Court and the Hon'ble High Courts as above. Accordingly, we answer the reference in favour of the appellant. The appeal file is returned to the referral Bench for a decision on merit."*

8. For the period from 07.07.2009 to October 2009 the definition of 'input' under Rule 2(k). The Explanation 2 has been inserted to the said definition vide Notification No.16/2009-CE(NT) dated 07.07.2009. Consequently, the items viz., HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates, etc., has been specifically excluded from the scope of the definition of 'inputs'. The said Explanation reads as follows:

> "Explanation 2 – Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, centrally wasted Deform bar (CTD) or Thermo Mechanically Treated Bar (TMT) and other items used for construction of factory, shed building or laying of foundation or making of structure for support of capital goods.

9. In view of the above discussions, for the period prior to 07.07.2009, the appellants are eligible to avail CENVAT credit on the inputs viz., HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates, etc., and accordingly, demand confirmed is not sustainable; for the period 07.07.2009 to October 2009, in principle CENVAT credit on the inputs viz., HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates, etc., are not admissible. Consequently, the impugned order is modified and the appeal is remanded to the original adjudicating authority to recalculate the demand for the period after 7.7.2009, if any, payable. However, no penalty is imposable on the appellants.

Needless to mention that the appellant may be given a reasonable opportunity of hearing.

10. Appeal is disposed of on above terms.

(Order pronounced in Open Court on 30.08.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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