

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1807 of 2012

(Arising out of Order-in-Original No. 18/2012 dated 29.03.2012
passed by the Commissioner of Central Excise Bangalore II
Commissionerate, Bangalore.)

M/s. Sunvik Steels Limited,

Survey No. 33, Jodidevarahalli,
Kallambella Hobli, Sira Taluk,
Tumkur – 572 125.

Appellant(s)

VERSUS

**Commissioner of Central
Excise Bangalore II
Commissionerate,**

Central Revenue Building,
Bangalore – 56 001.

Respondent(s)

With

Central Excise Appeal No. 1808 of 2012

(Arising out of Order-in-Original No. 18/2012 dated 29.03.2012
passed by the Commissioner of Central Excise Bangalore II
Commissionerate, Bangalore.)

**Mr. Vivek Kejriwal, Managing
Director,**

M/s. Sunvik Steels Pvt. Ltd.

C-1304, 13th Floor,
Platinum City, Yeshwanthpur,
Bangalore – 560 068.

Appellant(s)

VERSUS

**Commissioner of Central
Excise Bangalore II
Commissionerate,**

Central Revenue Building,
Bangalore – 56 001.

Respondent(s)

And

Central Excise Appeal No. 1809 of 2012

(Arising out of Order-in-Original No. 18/2012 dated 29.03.2012
passed by the Commissioner of Central Excise Bangalore II
Commissionerate, Bangalore.)

**Mr. George Mathew,
Central Excise In-charge,
M/s. Sunvik Steels Pvt. Ltd.,**

Survey No. 59-72, Jodidevarahalli,

Appellant(s)

Kallambella Hobli, Sira Taluk,
Tumkur District – 560 078.

VERSUS

**Commissioner of Central
Excise Bangalore II
Commissionerate,**
Central Revenue Building,
Bangalore – 56 001.

Respondent(s)

APPEARANCE:

Mr. Raghavendra. B, 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. 21047 - 21049 /2024

DATE OF HEARING: 24.04.2024

DATE OF DECISION: 21.10.2024

PER : DR. D.M. MISRA

These three appeals are filed against Order-in-Original No.18/2012 dated 29.03.2012 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellant had availed cenvat credit on angles, channels, beams, joists, rods etc. which were used in the factory by different contractors in the fabrication of Boilers, Cooling towers, water treatment plant etc. Alleging that the items on which cenvat credit availed do not fall under the scope of definition of 'capital goods' of Rule 2(a) of Cenvat Credit Rules, 2004, show-cause notice was issued to them on 23.09.2011 for recovery of the inadmissible credit of Rs. 1,81,28,042/- along with interest and proposal for penalty on the company and the other two appellants. On adjudication, the demand was confirmed with interest and penalty; also personal

penalty was imposed on the Managing Director and Central Excise In-charge of the appellant. Hence, the present appeals.

3.1. The learned advocate for the appellant has submitted that in the impugned order, cenvat credit on various iron and steel items like ACSR conductors, Aluminium sheets, wires, coils, welding electrodes, copper bars / rods, MS rods / sheets/bards, channels, flats, joists etc. used in fabrication of capital goods or structural support for capital goods have been denied and penalty imposed on the appellants. The cenvat credit was denied on iron and steel items as mentioned in the notice alleging that since the items in question falling under Chapter 72, 73, 74, 76 and 83 of the Central Excise Tariff Act, 1985 are not covered under the definition of capital goods as defined under Rule 2(a) of the CCR, 2004. The said notice was issued solely on the basis of the decision of the Larger Bench in the case of **Vandana Global Ltd. Vs. CCE&C, Raipur** [2010(253) ELT 453 (Tri. LB)] and no dispute was raised with regard to denial of credit at any time prior to decision of Larger Bench. He has submitted that the Larger Bench decision has been reversed by the Hon'ble Chhattisgarh High Court reported as **Vandana Global Ltd. Vs. CCE&C, Raipur** [2018(16) GSTL 462 (Chhattisgarh)]. Further he has submitted that the appellant had reversed cenvat credit of Rs.89,135/- on roofing of iron sheets used for roofing of factory. Further, he has submitted that capital goods after fabrication becoming immovable property is irrelevant as the eligibility of credit has to be decided at the stage before becoming part of the immovable property. In support, they placed reliance on the following judgments:-

- i. **CCE Vs. ICL Sugar Limited** [2011(271) ELT 360 (Kar.)]
- ii. **CCE, Bangalore-II Vs. SLR Steel Limited** [2012(280) ELT 176 (Kar.)]
- iii. **Mahindra & Mahindra Ltd. Vs. CCE** [2005(190) ELT 301 (LB)]

3.2. He has further submitted that the appellant claimed cenvat credit on the disputed items treating the same as capital goods as is clear from the fact that 50% of the credit was availed in the first financial year and remaining 50% in the next financial year. The items in dispute are used for fabrication of capital goods or structural support for capital goods and become part of the capital goods for fabrication and installation and therefore rightly fall under the definition of 'capital goods' either as capital goods or parts and accessories/components of the capital goods. The supporting structures were erected for the purpose of commissioning plant and machinery without which the capital goods cannot come into existence and it would be impossible to undertake the manufacture of the final product; hence the impugned items would qualify as parts and accessories/components of the capital goods. In support, he referred to the following judgments:-

- i. **CCE Vs. ICL Sugar Limited** [2011(271) ELT 360 (Kar.)]
- ii. **CCE, Bangalore-II Vs. SLR Steel Limited** [2012(280) ELT 176 (Kar.)]
- iii. **Mahindra & Mahindra Ltd. Vs. CCE** [2005(190) ELT 301 (LB)]

3.3. Further, it is submitted that the items viz. ACSR conductors, Aluminium sheets, wires, coils, welding electrodes, copper bars / rods, MS rods /sheets/bars, channels, flats, joists etc. used in the fabrication of capital goods or structural support for capital goods such as kiln, boilers, cooling towers, water treatment plant, Electro Static Precipitator (ESP) plant, power transmission line inside the factory, electrical connection and cable trays for holding cables, electrical earthing inside the factory, electrical work for the power plant, welding during the fabrication, erection and maintenance of various structures and machineries within the factory of production; hence rightly admissible to credit. In support, he has referred to the following decisions:-

- **India Cements Ltd. v. CESTAT., Chennai** – 2015 (321) ELT 209 (Mad.)
- **CCE vs. India Cements Ltd.** - 2014 (305) ELT 558 (Mad.)
- **CCE & ST vs. India Cements Ltd.** 2014 (310) ELT 636 (Mad.)
- **Manglam Cement Ltd. vs. CCE., Jaipur** 2018 (360) E.L.T. 737 (Tri. - LB)
- **Suguna Metals Pvt. Ltd. vs. CC., CE & ST., Hyderabad-I** 2016 (339) E.L.T. 119 (Tri. - Hyd.)
- **CCE., Raipur vs. Jindal Steels 7 power Ltd.** 2015 (330) ELT 708 (Tri.-Del.)
- **Thiru Arooran Sugars vs. CESTAT, Chennai** 2017 (355) ELT 373 (Mad.)
- **Metrochem Industries Ltd. vs. CCE., Vadodara-I** 2013 (292) E.L.T. 578 (Tri. - Ahmd.)
- **Monnet Ispat & Energy Ltd. vs. CCE., Jaipur** 2015 (330) ELT 711 (Tri.-Del.)
- **Saraswati Sugar Mills vs. CCE., Delhi-III** - 2011 (270) ELT 465 (SC)
- **CCE., Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd.** - 2010 (255) ELT 481 (SC)
- **CCE., Coimbatore vs. Jawahar Mills Ltd.** 2001 (132) ELT 3 (SC)
- **CC & CE vs. Kesar Enterprises Ltd.** - 2016 (344) ELT 809 (All.)
- **Manikgarh Cement vs. CCE & Cus., Nagpur** - 2001 (136) E.L.T. 1085 (Tri. Mumbai)
- **Nagpur Alloy Castings Ltd. Vs. CCE., Nagpur** - 2000 (115) E.L.T. 140 (Tribunal)

3.4. He has further submitted that even if the appellant is not entitled for the cenvat credit, they are still eligible for exemption from payment of excise duty on the items used either for fabrication of capital goods or structural support for capital goods in terms of Notification No.67/1995-CE(NT) dated 16.03.1995. Further, he has submitted that in the impugned notice, the credit has been denied on the ground that the items in question are neither capital goods nor part of the capital goods; hence denying the credit by invoking exclusion clause of Explanation-2 to the definition of input under Rule 2(k) of the CCR does not arise as it would be beyond the scope of the show-cause notice and the impugned order. The credit has been denied in the impugned order as the same do not qualify as 'capital goods' by becoming immovable property after their

fabrication and installation; hence, the question of considering the definition of input does not arise. In support, they have referred to the following decisions:-

- ***Jeevan Diesels & Electricals Ltd. vs. CCE, Cus. & ST., Bengaluru-III*** [2017 (353) E.L.T. 78 (Kar.)]
- ***State of Gujarat vs. Shanti Exports Ltd.*** [2017 (345) E.E.T. 65 (Guj.)]
- ***Servo Packaging Ltd. vs. CESTAT, Chennai*** [2016 (340) E.L.T. 6 (Mad.)]
- ***CCE & Cus., Surat vs. Sun Pharmaceuticals Industries Ltd.*** – [2015 (326) E.L.T. 3 (S.C.)]

3.5. Further, he has submitted that the demand for the period prior to September 2010 is barred by limitation as the issue relates to interpretation of capital goods which has undergone change from time to time and interpreted differently by various High Courts and Tribunal. In support, he has referred to the following judgments:-

- ***CCE, Salem vs. Madras Aluminium Co. Ltd.*** [2017 (349) ELT 133 (Mad.)]
- ***KM Sugar Mills Ltd. vs. CCE & ST., Allahabad*** [2017 (350) ELT 273 (Tri.-Del.)]
- ***Musaddilal Projects Ltd. vs. CCE, Cus. & ST., Hyderabad*** [2017 (4) GSTL 401 (Tri.-Hyd.)]

3.6. Learned advocate has further submitted that the total demand for the normal period of limitation from 09/2010 to 04/2011 on angles, channels, bars, beams, sheets etc. is around Rs.1,16,670/- and the appellant has already paid Rs.89,135/- on 05.04.2011, which has been appropriated in the impugned order. Further he has submitted that the appellants were under the *bona fide* impression that the impugned items were eligible for credit as capital goods; hence there is no suppression of facts with intent to evade payment of duty; accordingly, no penalty is imposable on any of the appellants.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner. Referring to the list of items and its utility, he has submitted that credit attributable to bars, rods,

angles, channels etc. post-amendment to definition of input under Rule 2(k) of CCR w.e.f. 07/07/2009 are not admissible as the same fall under the exclusion category in allowing cenvat credit even though the same were taken as capital goods credit but essentially form as inputs used in setting up of factory plant located inside the factory. Therefore, the said items used in the manufacture of capital goods are supporting structure, not eligible to credit.

5. Heard both sides and perused the records.

6. The short question involved in the present appeal is whether the appellant is entitled to avail cenvat credit on copper bars / rods, MS rods /sheets/bars, channels, flats, joists etc. used in the factory for fabrication and erection of plant and machinery.

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 **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 assesseees 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 April 2011, the definition of 'input' under Rule 2(k). The Explanation 2 has been inserted to the said definition vide Notification No.16/2009CE(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 April 2011, 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. Further, since there was confusion about admissibility of credit on the items mentioned above during the relevant period pursuant to issuance of various judgments on the subject including **Vandana Global Ltd.**'s case. Therefore, invocation of extended period of limitation cannot be upheld. Thus, the demand is to be ascertained for the normal period of limitation. No penalty is imposable on the appellants. Needless to mention that the appellant company be given a reasonable opportunity of hearing. In the result, the impugned order is set aside and the matter of the appellant company is remanded to the adjudicating authority on the above terms. Appeals bearing No. E/1808/2012 & E/1809/2012 filed by individuals challenging imposition of penalty are allowed. Appeals are disposed accordingly.

(Order pronounced on 21.10.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...