CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20957/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-APP-MSC-372-2017-18 dated 27/03/2018 passed by Commissioner of Central Tax , BELGAUM]

M/s. Cement Division Unit Of Kesoram Industries Limited
Lakshminarayan Nagar, Sedam, Gulbarga
GULBARGA - 585222
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Belagavi Commissionerate
No. 71, Club Road
Belgavi - 590001
Karnataka

Respondent(s)

Appearance:

M.V. SRIDHAR, CONSULTANT
729/C 2ND MAIN A BLOCK
VINAYAKA NAGAR, Konenaagrahara,
Banglaore - 560017
Karnataka

For the Appellant

Mr. K.B. Nanaiah, AR

For the Respondent

Date of Hearing: 31/10/2018
Date of Decision: 31/10/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21693 / 2018

Per : S.S GARG

The present appeal is directed against the impugned Order dated 27.03.2018 passed by the Commissioner (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of Cement and Clinker falling under Chapter 25. They had availed CENVAT credit amounting to Rs.96,112/- on M.S. Bars, Angles, Plates, HR Sheets, Beams, Coils and Channels falling under Chapter 72 of CETA, 1985 used for repairs and maintenance of machinery in the factory as inputs during the period from December 2009 to April 2010. A SCN dated 04.01.2011 was issued for disallowing the CENVAT credit of Rs.96,112/-. After following the due process, the Superintendent (Technical) confirmed the demand and imposed a penalty of Rs.2000/-. Aggrieved by the said order, the appellant filed an appeal before the Commissioner who rejected the appeal.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellants have correctly availed the CENVAT credit since these goods were used in the factory for maintenance/repair of plant and machinery, which are essential

for manufacture of final product. To prove the usage of said material, they have produced the CE certificate and also relied upon the following decisions:

(i) Commr. of C.Ex., Cus. & S.T., Visakhapatnam-I Vs. Jindal Stainless Ltd., 2016 (343) ELT 527 (Tri. Bang.).

(ii) J.K. Cement Works Vs. Commr. of C. Ex., Jaipur-I, 2017 (345) ELT 301 (Tri. Del.).

(iii) Commr. of Cus. & C.Ex., Visakhapatnam Vs. Hindustan Petroleum Corpn. Ltd., 2016 (338) ELT 308 (Tri. Hyd.).

(iv) Commr. of C.Ex., Salem Vs. Madras Aluminium Co. Ltd., 2017 (349) ELT 133 (Mad.).

5. On the other hand, learned AR reiterated the impugned order.

6. After considering the submission of both the parties and perusal of the material on record, I find that the impugned goods were used in the factory for maintenance and repair of the plant and machinery which is essential for manufacture of the final product. Further, I find that the appellant has also produced on record the certificate of Chartered Engineer who has certified that the impugned goods have been used for maintenance of plant and equipment. Further, I find that the ratio of the decisions relied upon by the appellant cited supra are squarely applicable in the present case. Therefore, by following the ratio

of the above said decisions, I am of the view that the impugned order denying the CENVAT credit for Rs.96,112/- is not sustainable in law therefore I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **31/10/2018**)

S.S GARG
JUDICIAL MEMBER

Parveen...