

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

Appeal(s) Involved:

E/21192/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-
MSC-374-2017-18 dated 27/03/2018 passed by
Commissioner of Central Tax, BELGAUM (APPEALS)]

M/s. Popuri Steels Ltd.

Plot No. 234/247 Siddapura Mines Road
Halkundi Village, Bangalore Road
BELLARY - 00
KARNATAKA

Appellant(s)

Versus

**Commissioner Of Central Tax And
Central Excise, Belgaum**

No.71, Club Road,
Belgaum - 590001
Karnataka

Respondent(s)

Appearance:

**Mr. Raghavendra, Advocate
G. BASAVARAJ**

STALL NO.9, SAPTAGIRI
COMPLEX, K.C. ROAD,
BELLARY -
KARNATAKA

For the Appellant

Mr. Gopa Kumar, AR

For the Respondent

Date of Hearing: 20/12/2018

Date of Decision: 20/12/2018

CORAM:

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

Final Order No. 21928 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 27.3.2018 passed by the Commissioner (A) 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 sponge iron falling under Chapter Heading 72 of Central Excise Tariff Act, 1985. During the course of audit on the records of the appellant, it was noticed that the appellant has availed CENVAT credit of Rs.16,58,274/- during the period from December 2007 to November 2008 on goods such as M.S. Angles, Joists, Channels, M.S. Plates/sheets, etc., falling under Chapter 72 of CETA, 1985 as inputs and capital goods, used for fabrication of supporting structures for the equipments. As the resultant structures were not covered under the definition of capital goods in terms of Rule 2(a) of CCR, 2004, it was held by the department that such credit availed is ineligible. Therefore, a show-cause notice Sl. No.22/2011-ADC dated 6.4.2011 was issued proposing to demand ineligible CENVAT credit of Rs.16,58,274/- along with applicable interest and penalty. After following the due process, the Asst. Commissioner vide Order-in-Original dated 9.12.2016 allowed the CENVAT credit of Rs.15,29,035/- and disallowed ineligible CENVAT credit of Rs.1,29,239/- under Rule 14 of CENVAT Credit Rules, 2004 along with interest and also imposed equal penalty under Rule 15(2) of CENVAT Credit Rules, 2004.

Aggrieved by the said order, appellant filed appeal before the Commissioner (A) who rejected the appeal of the appellant.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is passed without properly appreciating the facts and law. He further submitted that the subject inputs were used for fabrication of supporting components of capital goods i.e., conveyor belt system, kiln, pollution control equipment and storage tanks which are very much essential for fabrication of capital goods and hence, becomes part of the capital goods as defined under Rule 2(a) of CENVAT Credit Rules (CCR). He further submitted that the issue of availment of credit on various iron and steel items used as component for capital goods or structural support of capital goods is settled in favour of the assessee in the various decisions cited below:

- *Suguna Metals Pvt. Ltd. VS. CCE, Hyderabad: 2016 (339) ELT 119 (Tri.-Hyd.)*
- *Metrochem Industries Ltd. vs. CCE, Hyderabad: 2013 (292) ELT 578 (Tri.-Ahmd.)*
- *Monnet Ispat & Energy Ltd. vs. CCE: 2015 (330) ELT 711 (Tri.-Del.)*
- *India Cements Ltd. vs. CESTAT: 2015 (321) ELT 209 (Mad.)*
- *CCE vs. India Cements Ltd.: 2014 (305) ELT 558 (Mad.)*

4.1 He further submitted that the entire demand is barred by limitation as the issue is relating to interpretation of definition of capital goods and also in view of the subsequent decisions settling the issue in favour of the assessee. For this submission, he relied upon the decision of the Tribunal in the case of **CCE vs. Hi-Tech Power & Steel Ltd.: 2015 (315) ELT 428 (Tri.-Del.)** wherein it has been held that when there are conflicting decision of the Tribunal, then in view of the judgment of the apex court in the case of *Continental Foundation Jt. Venture vs. Commissioner reported in 2007 (216) ELT 177 (SC)* no *mala fide* can be attributed to the assessee and accordingly, no longer period under proviso to Section 11A(1) would be available to the department.

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

6. After considering the submissions of both the parties and perusal of material on records, I find that the appellants have proved that they have used these impugned items for support of capital goods which is essential for use of capital goods. Further, I find that in the Order-in-Original, the Asst. Commissioner has observed that all these impugned items were used as supporting

structure to machinery. Since the impugned items have been used for supporting structure of the machinery, therefore, in view of the ratio of the various decisions cited supra, the appellants are entitled to CENVAT credit on the same. Moreover, the entire demand is also barred by limitation because the period in dispute is June 2006 to November 2008 whereas the show-cause notice has been issued on 6.4.2011 and during the relevant period, there were conflicting decisions on the impugned items and in view of the decision in the case of ***Hi-Tech Power and Steel Ltd.*** cited supra, no *mala fide* can be attributed to the assessee and longer period of limitation would not be available to the department. In view of the above discussions, on merits as well as on limitation, the appellant succeeds and therefore, I allow the appeal of the appellant by setting aside the impugned order and allow the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **20/12/2018**)

S.S GARG
JUDICIAL MEMBER

rv...