CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. E/762-763/2012

[Arising out of OIO- 91-92/CE/CHD-II/2011 dated 28.12.2011 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Shreyans Industries Ltd. : **Appellant (s)**
Village Banah, District Nawanshahar
Vs

CCE-Chandigarh : **Respondent (s)**
GST, Building No. 19, Sector 17-C

APPEARANCE:
Shri Sudhir Malhotra,Advocate for the Appellant
Shri M. S Dhindsa, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JINDAL)
HON'BLE Mr. C L MAHAR, MEMBER (TECHNICAL)

FINAL ORDER No. 60433-60434 / 2019

Date of Hearing/Decision: 03.04.2019

Per : Mr. Ashok Jindal

The appellant are in appeals against the impugned orders wherein cenvat credit on various steel items have been denied.

2. The facts of the case are that the appellant are manufacture of writing and printing paper and soda ash. The appellant availed cenvat credit of duty paid on M.S. Plate, M.S. Angle, M.S. Bars, etc., which were used for fabrication of capital goods for use in the factory of the appellant. During the period April, 2006 to December 2010, revenue is of the view that the appellant has not produced any evidence with regard to use of these items for fabrication of capital goods in as much as the
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appellant has neither given any specific intimation in this regard to the jurisdictional Central Excise authorities nor the manufacture of capital goods, but declared in ER-1 returns. Therefore, show cause notices were issued to the appellant to deny cenvat credit and recovery thereof alongwith interest and to impose penalty. The show Cause Notices were adjudicated and demand of duty was confirmed alongwith interest and penalty was also imposed. Against the said orders, the appellant is before us.

3. The Ld. Counsel for the appellant submits that the sole case of the revenue is based on the decision of the Larger Bench of this Tribunal in the case of ***M/s Vandana Global Ltd. vs. Commissioner of Central Excise, Raipur-2010 (253)ELT 440 (Tri.-LB)*** wherein it has been held that steel items used in the manufacture of supporting structures embedded to earth are not covered as 'inputs' and are not eligible for taking cenvat credit. The said decision has been set-aside by the Hon'ble Chhattisgarh High Court in the case of ***M/s Vandana Global Ltd. vs. Commissioner of Central Excise, Raipur – 2018 (16) GSTL 462 (Chhattisgarh)*** therefore, the impugned orders are to be set-aside. Moreover, the appellant has used these steel items for fabrication of capital goods which were ultimately used for manufacturing of the final product, therefore, they are

entitled to take cenvat credit on these items in terms of Rule 2(k)/2(a) of CCR, 2004.

4. On the other hand, the Ld. AR reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. We find that the sole reason to deny cenvat credit to the appellant is based on the decision of Larger Bench of this Tribunal in the case of ***M/s Vandana Global Ltd.(supra)*** to say that as these steel items have been used for supporting structures which are embedded to earth.

7. In fact, from the show cause notice, we find the sole reason to deny cenvat credit is that the steel items on which cenvat credit has been taken by the appellant are neither capital goods or not inputs in terms of Rule 2(k)/2(a) of CCR, 2004 as these items are not used for manufacture of paper and soda ash (the final product), there is no other reason has been stated why these are not capital goods or inputs for fabrication of capital goods. We also take a note of the fact that it has not been alleged in the show cause notice that these items have not been used for fabrication of capital goods, in that circumstances, relying on the decision of the Hon'ble Chhattisgarh High court in

the case of ***M/s Vandana Global Ltd. (supra)*** is not relevnant***,*** we hold that the appellant are entitled to avail cenvat credit on the steel items used in question in terms of Rule 2(k)/2(a) of CCR, 2004. Therefore, we do not find any merit in the impugned orders, the same are set-aside.

7. In result, the appeals are allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

G.Y.