IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/455/2012

(Arising out of Order-in-Appeal. No. 164/2012 dated 31.07.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Trichy).

M/s. Ultratech Cements Ltd. : Appellant

Vs.

CCE & ST, Trichy : Respondent

Appearance

Ms. Krithika Jaganathan, Advocate,
for the appellant

Shri B. Balamurugan, AC (AR)
for the Respondent.

CORAM:

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **11.05.2018**

FINAL ORDER No**.** **41506/2018**

Per Bench

Brief facts are that the appellants are manufacturers of cement and were availing the facility of Cenvat credit of duty paid on inputs, capital goods and service tax paid on input services. It was noticed that the appellants had availed credit of duty paid on welding electrodes and according to the department was not eligible. SCN was issued proposing to disallow the credit and for recovery of the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand interest and penalties and in appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. The Ld. Counsel, Ms. Krithika on behalf of the appellants submitted that the welding electrodes were used for repair and maintenance of machinery and therefore are eligible for credit. The definition of input would cover use of inputs for all activities which are integrally connected with the process of manufacture. Without doing periodical repair and maintenance of the machinery, the process of manufacture cannot be carried out in a commercially expectant manner. Thus, welding electrodes would satisfy the criteria of inputs used in or in relation to manufacture of final products. She relied upon the decision in the case of *National Co-operative Sugar Mills Ltd. Vs. CCE, Madurai* - 2016 (344) ELT 832 (Mad.) and *Tamilnadu News Prints and Paper Ltd. Vs. CCE Trichy* - 2017 (357) ELT 60 (Mad.).

3. The Ld. AR, Shri B. Balamurugan, AC, reiterated the findings in the impugned order.

4. Heard both sides.

5. The issue for consideration is whether welding electrodes used for repair and maintenance of machinery are eligible for credit. The Hon'ble High Court of Madras in the case of TN News

Prints and Paper Ltd. had considered the very same issue and held that the appellants are eligible for credit. The very same issue was considered by the Hon'ble Apex Court in the case of *Ramala Sahkari Chini Mills Ltd. Vs. CCE, Meerut* - 2010 (260) ELT 321 (S.C.) and the issue as to interpretation of the word "includes" was referred to the Larger Bench of the Hon'ble Apex Court and later vide judgment of the Larger Bench in the very same case the Apex Court held that the word "includes" would envisaged the manner and is not used in a illustrative manner.

6. Following the said decision, we are of he view that the denial of credit is incorrect and requires to be set aside, which we hereby do. In the result the impugned order is set aside and the appeal is allowed with consequential reliefs, if any.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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