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

Appeal Nos. E/186-190/2012

(Arising out of Orders-in-Original No. 383-387/2011-(C) dated 30.11.2011 passed by the Commissioner of Central Excise & Service Tax, Chennai)

M/s. EID Parry India Ltd. : Appellant

Vs.

C.C.E & S.T. – L.T.U. Chennai : Respondent

Appearance:-

Ms. Cynduja Crishnan, Advocate
for the Appellant

Shri A. Cletus, ADC (AR)
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision: **19.06.2018**

Final Order No. **41850-41854 / 2018**

Per Shri Madhu Mohan Damodhar,

Having heard both sides, we find that the common issue involved in all these appeals relates to admissibility of Cenvat Credit on MS angles, MS plates, channels, aluminium coils, asbestos, etc., used for making structures for support of capital goods.

2. The periods of dispute in all these appeals is prior to 07.07.2009. In Show Cause Notice LT-UC/224/2010 (ADC) dated 01.02.2010, in respect of proceedings related to Appeal No. E/190/2012, although the period of dispute is shown as December, 2007 to November, 2009, the demand is actually only up to June, 2009.

3. We find that the issue is no longer res integra and has been laid to rest by the jurisdictional Hon'ble High Court of Madras in the case of *Thiru Arooran Sugars Ltd. Vs. CESTAT, Chennai - 2017 (355) E.L.T. 373 (Mad.)*, inter alia, holding as under:

> *"**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."*

4. Following this ratio, this very Bench has held that the credit availed on such MS channels, plates, etc., used as structural items, is very much

eligible, for example, in the case of *Thiru Arooran Sugars Ltd.* (Final Order No. 40905-40906/2018 dated 21.03.2018) and *Commissioner of GST & Central Excise Vs. Shree Ambika Sugars Ltd.* (Final Order No. 41410-41411/2018 dated 01.05.2018).

5. The Ld. AR has argued that while these decisions have covered only MS angles, plates, channels, etc., however, in the present appeals, there is also a dispute concerning admissibility of Cenvat Credit on asbestos. However, going by the ratio laid down by the jurisdictional High Court in the *Thiru Arooran Sugars* judgment (supra), asbestos would also be required as a structural, along with the MS angles, plates, etc., and hence, in our view, the credit availed on that would also be admissible.

6. In the event, we hold in favour of the appellant in all these cases. The impugned orders are set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open Court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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