

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: E/00427/2012

[Arising out of Order-in-Original No. 13/2102 (C) dated
30.04.2012 passed by the Commissioner of Central Excise,
Puducherry]

M/s. Rajshree Sugars and Chemicals Ltd., : **Appellant**
Unit-III, Semmedu Post,
Gingee Taluk,
Villupuram Dist.

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Puducherry Commissionerate

Appearance:-

Shri. H. Y. Raju, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

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

Date of Hearing: 07.12.2018

Final Order No. **43177 / 2018**

Per P. Dinesha :

The appellant is engaged in the manufacture of Sugar falling under Chapter Sub-heading 1701 11 90 and Molasses falling under Chapter sub-heading 1703 10 00 respectively of the first Schedule to

the Central Excise Tariff Act, 1985 and is a holder of Central Excise Registration.

2.1 During the course of verification of records, it was noticed by the Department that the appellant had availed CENVAT Credit of duty paid in respect of MS Angles, Channels and Plates falling under Chapter Headings 72 and 73 of the Central Excise Tariff Act which were used in the construction of plant and supporting structures of machinery during the period from August 2007 to January 2011 and also in respect of Welding Electrodes used for repairs and maintenance during the period from June 2008 to January 2011 in view of setting up a new factory at Semmedu.

2.2 A Show Cause Notice dated 26.04.2011 was issued to the appellant proposing to recover the Credit availed to the tune of Rs. 14,62,533/- on MS Angles, Plates, etc. on the ground that the same do not come within the ambit of the definition of "capital goods" vide Rule 2(a) of the CENVAT Credit Rules (CCR), 2004 and also proposing to recover the Credit of Rs. 17,295/- on Welding Electrodes used for repairs and maintenance under Rule 14 of the CCR read with proviso to Sub-section 11A(1), along with applicable interest and penalty. After due process of law, the adjudicating authority vide impugned Order-in-Original No. 13/2012 (C) dated

30.04.2012 confirmed the proposals made in the Show Cause Notice, against which the present appeal has been filed by the assessee-appellant before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Shri. H.Y.Raju appeared on behalf of the assessee while Ld. DC (AR) Ms. T. Usha Devi appeared on behalf of the Department.

4.1 During the course of hearing, Ld. Advocate submitted with respect to the denial of CENVAT Credit of duty paid on MS Angles, Plates, etc., that prior to insertion of Explanation -2 to Rule 2(k) of CCR, 2004 i.e., 07.07.2009 structural items used in supporting “plant and machinery” were an integral part of capital goods (plant and machinery) manufacturing of final goods and they fell within the scope of both Rule 2(a)(A) and Rule 2(k) of CCR, 2004. He therefore stated that the denial of Credit in respect of such structural items used in construction of plant and supporting structures was unjustified. He placed reliance on the following decisions to buttress his contentions :

- *M/s. Thiru Arooran Sugars Vs. CESTAT, Chennai – 2017 (355) E.L.T. 373 (Mad.);*
- *Vandana Global Ltd. vs. C.C.E. & Cus., Raipur – 2018 (16) G.S.T.L. 462 (Chattisgarh);*
- *M/s. KOG-KTV Food Products India P. Ltd. vs. C.G.S.T. & C.E., Tirunelveli – 2018 (9) T.M.I. 1655 – CESTAT Chennai;*
- *Mangalam Cement Ltd. Vs. C.C.E., Jaipur-I – 2018 (360) E.L.T. 737 (Tri. – LB).*

4.2 With regard to the denial of Credit on Welding Electrodes, Ld. Advocate submitted that the same had been used by the appellant for repair and maintenance of capital goods which was in turn used in the factory for manufacture of final goods; that the same would fall under the scope of inputs in terms of Rule 2(k) of CCR, 2004. He relied on the following decisions in support of his contention :

- *M/s. UltraTech Cements Ltd. Vs. C.C.E. & S.T., Trichy – 2018 (7) T.M.I. 677 – CESTAT Chennai;*
- *M/s. The Andhra Sugars Ltd. Vs. C.C.T., Guntur –GST – 2018 (9) T.M.I. 736 – CESTAT Hyderabad.*

5. *Per contra*, Ld. AR supported the findings of the adjudicating authority.

6. We have heard the rival contentions, perused the materials placed on record and have also gone through the various judgements referred to during the course of arguments.

7. On a careful consideration of the judgement in the case of *M/s. Thiru Arooran Sugars (supra)*, we find that the Hon'ble Madras High Court has held that MS Angles, Channels, etc., being an integral part of capital goods and manufacturing of final goods, are eligible for credit. Therefore, judicial propriety demands that the above binding decision of the Hon'ble jurisdictional High Court be followed. Going therefore by the above ratio, we are of the view that the

denial of Credit on MS Angles, Plates, etc., is not sustainable for which reason we set aside the same.

8. Coming to the issue relating to Welding Electrodes used for repair and maintenance purposes, we find that the an identical issue has already been considered and laid to rest by this Bench of the Tribunal in the case of *M/s. UltraTech Cements Ltd. (supra)* as well as the Hyderabad Bench of the Tribunal in the case of *M/s. The Andhra Sugars Ltd. (supra)* and therefore, the same is no longer *res integra*. Following the same, we set aside the denial of Credit on this count as well.

9. The appeal is allowed with consequential benefits, if any, as per law.

(Operative part of the order was pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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