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

Appeal Nos. E/220 & 221/2010

(Arising out of Order-in-Original No. LTUC/32-33/2010(C) dated 27.1.2010 passed by the Commissioner of Central Excise, LTU, Chennai)

M/s. Chemplast Sanmar Ltd. Appellant

Vs.

Commissioner, LTU, Chennai Respondent

Appearance

Shri V.S. Manoj, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **15.11.2017**

Final Order Nos. 42922 - 42923/2017

Per B. Ravichandran,

The appellant is aggrieved by the order dated 27.1.2010 of Commissioner of Central Excise, LTU, Chennai.

2. The appellants are engaged in the manufacture of caustic soda lye liable to Central Excise duty. The dispute of the present case relates to eligibility of the appellant to avail CENVAT credit of Central Excise duty paid on MS angles, channels, plates, non-metallic pipes etc. The appellants claim that they are eligible for such credit as these are used in

Excise & Service Tax Appellate Tribunal Customs relation to fabrication of capital goods inside the factory. The original authority examined their claim and held that credit on MS angles, pipes etc. cannot be allowed in respect of support structures for pipelines which cannot be considered as capital goods.

3. The ld. counsel for the appellant submitted that the fabrication work using the MS angles, sheets etc. are with reference to the composite structure of pipeline and its support. It is not the case that the credit of duty on capital goods alone will be given without the support structure. The pipeline cannot be made functional without duly securing and integrating with the processing machinery. He relied on the judgment of the Hon'ble Madras High Court in the case of Thiru Arooran Sugars Ltd. – 2017-TIOL-1357-HC-MAD, while disposing of a batch of cases involving almost similar set of facts, held that MS structurals which support the plant and machinery, which in turn are used in the manufacture of sugar and molasses, are an integral part of such plant and machinery. Applying the "User Test" evolved by the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. – 2010 (255) ELT 481 (SC) and Commissioner of Central Excise Vs. Jawahar Mills Ltd. – 2001 (132) ELT 3 (SC), the High Court upheld the eligibility of the appellant for credit.

4. The ld. AR reiterated the findings of the original authority and submitted that the original authority allowed credit on various steel items used in the fabrication of capital goods.

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Only in respect of clearly identified support structures, which cannot be considered as capital goods, credit was denied.

5. We have heard both sides and perused the appeal records.

6. The facts of the case and nature of usage of MS items are not in dispute. We note that the original authority disallowed the credit on MS plates, channels, angles used for supporting pipelines in caustic soda plant. Similar facts were examined by the Hon'ble High Court of Madras in the case of Thiru Arooran Sugars Ltd. (supra). We note that the use of duty paid items will determine the nature of such item. This "User Test" was evolved by the Hon'ble Supreme Court to determine the eligibility of credit on MS items.

7. Following the ratio of the Hon'ble High Court and applying the "User Test" as evolved by the Hon'ble Supreme Court, we hold that the appellant's eligibility to credit cannot be denied. Accordingly, we set aside the impugned order and allow the appeals with consequential relief, if any.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN) 15.11.17.
Member (Technical)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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