

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.41323 of 2014

(Arising out of Order-in-Appeal No. 24/2014 (M-IV) dated 17.3.2014 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Steel Strips Wheels Ltd.

No. A-10, SIPCOT Industrial Growth Center
Vallam Village, Oragadam
Sriperumbudur – 602 105.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, 12th Main Road,
Anna Nagar, Chennai – 600 040.

Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Ms. K. Komathi, ADC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40320 / 2022**

Date of Hearing : 15.09.2022

Date of Decision: 16.09.2022

Brief facts are that the appellants are engaged in manufacture of automotive wheel rims and are registered with the Central Excise Department. They availed the facility of CENVAT credit of duty paid on inputs, capital goods and service tax for paying central excise duty on clearance of the final products. It was noticed that the appellant has availed CENVAT credit on MS sheets, SS sheets and zinc sheets which were used for fabrication of a new paint plant in their premises. The department was of the opinion that the credit availed on such items under the category of capital goods is not eligible. Show

Cause Notice was issued for the period 28.1.2008 to 30.7.2008 proposing to disallow the credit availed on these items as capital goods and also to recover the same along with interest and to impose penalty. After due process of law, the original authority confirmed the demand along with interest and impose penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned counsel Shri M.N. Bharathi submitted that as per Annexure to the Show Cause Notice, it can be seen that the period involved is from 28.1.2008 to 30.7.2008. The period is prior to 7.7.2009 on which date the restriction to avail credit on MS items used in fabrication of structures was introduced. In the present case, it is proved from facts that the appellant has used the MS items for putting up the paint plant in the premises. Appellant is engaged in the manufacture of automobile wheel rims and these final products cannot be marketed without the scientific and sophisticated painting.

3. The department had also contended in the Show Cause Notice that the impugned goods having been purchased by M/s. Wurster India Surface System (P) Ltd. the appellant cannot avail credit on such goods. He submitted that these items were purchased for the fabrication of the paint plant machinery which was installed in the premises of the appellant. The said paint plant is used for manufacturing activity of the final product. The appellant has paid the amount to the contractor including the

excise duty on the inputs. For these reasons, the appellant is eligible to avail credit though goods were purchased originally by contractor. It is settled law that ownership of goods is not the criteria to avail the credit. If the goods are used as inputs, the credit has to be allowed. With respect to the allegation that credit is not eligible on these items as capital goods, for the reason that these are used for fabricating structures, the learned counsel submitted that the paint plant is an important and integral part in the process of manufacture of finished products. The wheel rims which are used in automobile industry has to withstand all weather conditions. For this purpose, they have to use advanced technologies of painting and the finished product is ready for clearance only after subjecting to the process of painting.

4. He adverted to the discussions made by the Commissioner (Appeals) in para 5 of the impugned order. The Commissioner (Appeals) has erred in relying upon the decision of the Hon'ble High Court of Allahabad in the case of Upper Ganges and Sugar Industries Ltd. Vs. CCE, Meerut – II reported in 2013 (293) ELT 186 (All.). In the said case, the decision was rendered under Rule 57Q of the erstwhile Central Excise Rules, 1944 whereas in the present case the law applied is CENVAT Credit Rules, 2004. The definition of capital goods in the erstwhile MODVAT credit rules is slightly different and therefore the said decision is not applicable to the present case. The lower authority had relied upon the decision in the case of Vandana Global Ltd. Vs. CCE, Raipur reported in 2010 (253) ELT 440 (Tri. LB) which held that the

amendment brought forth in the definition of capital goods with effect from 7.7.2009 has retrospective effect. The said decision has been held to be wrong in law and also has been set aside by the relevant jurisdictional High Court as reported in 2018 (16) GSTL 462 (Chatt.).

5. He argued that the above paint plant being an integral part of the manufacturing activity to produce final products, the credit availed on MS items used for fabrication, erection and installing such paint plant is eligible. The Hon'ble jurisdictional High Court in the case of India Cements Ltd. Vs. CESTAT reported in 2015 (321) ELT 209 (Mad.) had considered a similar issue and relied upon the decision rendered by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills Ltd. reported in 2010 (255) ELT 481 (SC). He prayed that the appeal may be allowed.

6. The learned AR Ms. K. Komathi supported the findings in the impugned order.

7. Heard both sides.

8. The issue is whether the credit availed on structural items in the nature of MS sheets, angles etc. are eligible for credit. The authorities below have mainly relied upon the decision of the Tribunal in Vandana Global Ltd. (supra) wherein the Larger Bench held that the amendment brought forth in the definition of capital goods with effect from 7.7.2009 is retrospectively applicable. The said decision has been set aside by the Hon'ble High Court of Chhattisgarh as stated above. The Commissioner (Appeals) has relied upon the decision of the Hon'ble High Court of Allahabad

which actually analysis the definition of capital goods under the erstwhile MODVAT credit rules. The said definition is not applicable after 2004 and so the reliance placed on the said decision is misplaced.

9. The Hon'ble High Court of Madras in the case of India Cements Ltd. (supra) had observed as under:-

“6. Learned counsel appearing for the assessee placed before this Court the decision in the case of Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., reported in 2010 (255) E.L.T. 481 to contend that the impugned goods are used in the erection of the capital goods and hence, the assessee is eligible for availing Cenvat credit.

7. Learned Standing Counsel appearing for the Revenue heavily relied upon the decision reported in 2011-TIOL-73-SC-CX (Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi-III) in Civil Appeal No. 5295 of 2003, dated 2-8-2011 to contend that since the impugned goods are not capital goods, the assessee is not eligible to avail credit as they did not fall under any of the chapters or headings of the tariff mentioned in the definition of capital goods in Rule 2(a)(A) of the Cenvat Credit Rules, 2004. He further submitted that the goods were used for construction of plant and the term “plant” is not defined as capital goods in the Cenvat Credit Rules, 2004.

8. Heard learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

9. It is not in dispute that the impugned goods were used for fabrication of structurals to support various machines like crusher, kiln, hoopers, etc., and that without these structurals, the machinery could not be erected and would not function.

10. In the case of Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., reported in 2010 (255) E.L.T. 481, relied on by the learned counsel appearing for the assessee, the Apex Court, while dealing with the issue in question, in Paragraph Nos. 7 and 8, held as follows :

“7. In the present case, it is seen that the items in question were used in the erection of various machineries such as, - new additional Electrostatic Precipitator for raw mill project, additional fly ash handling system, MMD crusher etc. for the Dry Process Cement Manufacturing Plant. It is evident that MS Angles, MS Beams, MS Channels etc. were used in the erection of machineries it become component of the same, which are integral part of Dry Process Cement Manufacturing Plant. It is noted that Fly Ash handlish system is a pollution control equipment and particularly mentioned in Rule 2(a)(A)(ii) of Rules, 2004. The allegation in the above show cause notice that the Chapter Heading of these items were not covered

under Rule 2(a) of the Rules, 2004, is not sustainable, in respect of pollution control equipments because the rule does not specify the tariff headings under which pollution control equipment should be falling. The appellant established that these items were used for erection of capital goods namely Dry Process Cement Manufacturing Plant, which falls under Chapter 84, as mentioned in Serial No. (i) of Rules 2(a)(A). Thus, the items in question are covered in serial No. (iii) of Rules 2(a)(A) of the Rules, C.B.E. & C. has clarified that all parts, components, accessories which are to be used with capital goods in serial (i) and (ii) of Rules 2(a)(A) and classifiable under any chapter heading are eligible for availment of Cenvat credit. A plain reading of serial (iii) cannot lead to a different conclusion either.

8. After considering the use of the goods in question, in our considered view, the present case is covered by the decision of the Hon'ble Madras High Court in appellant's own case as referred above. We have also noticed that the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. (supra) as relied upon the Hon'ble High Court in the appellant's own case, allowed Modvat credit on MS channels, steel plants etc. as capital goods used for erection of chimney for diesel generating set. The findings of the Commissioner that these are structures fixed to earth with concrete foundations and are immovable appears to be beyond the scope of the show cause notice. So, the case of M/s. Triveni Engineering & Industries Ltd. (supra) as relied upon by the learned AR is not applicable in the present case."

10. There is no dispute that the MS items were used for fabricating and installing paint plant within the premises of the appellant. The said paint plant is also integral to the manufacturing activity. After appreciating the facts and applying the decision in the case of India Cements Ltd. (supra), I hold that the credit availed on MS items has to be allowed to the appellant. The impugned order disallowing the credit is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in open court on 16.9.2022)

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