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

COURT HALL No.III

EXCISE APPEAL No.41772 OF 2014

(Arising out of Order-in-Original No.39/2014 (C) dated 30.04.2014 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

M/s.Dharani Sugar and Chemicals Ltd., Unit III .... Appellant
Kalayannallur Sangarapuram taluk,
Villupuram District.

Versus

The Commissioner of GST & Central Excise, ...Respondent
Puducherry Commissionerate
No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Mr. M.N. Bharathi, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 01.01.2024
DATE OF DECISION : 01.01.2024

FINAL ORDER No.40004/2024

ORDER : Per Ms. SULEKHA BEEVI. C.S.

Brief facts are that the appellant is engaged in manufacture of sugar and molasses and holding Central Excise Registration. During the course of verification of records by the Audit, and further investigations, it was noticed that the appellant has availed cenvat credit on MS angles, channels, beams which have been used for structures supporting the capital goods. The department was of the view that the credit availed on these goods received by the appellant for the period September 2008 to February 2010 is not eligible to the appellant and the same has to be reversed. Show cause notice was issued proposing to deny the said credit and to recover the same along with interest and for imposing penalties. After due process of law, the original authority vide order impugned herein allowed the credit of Rs.35,86,474/- and denied credit to the tune of Rs.51,71,213/-. The adjudicating authority imposed equal penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 (2) of Cenvat Credit Rules, 2004. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Learned Counsel Sri M.N. Bharathi appeared and argued for the appellant. It is submitted by the Ld. Counsel that the appellant had availed major part of the credit prior to 07.07.2009. The original authority has denied credit to the tune of Rs.51,71,213/-

on the ground that the Explanation introduced to Rule 2(k) of CCR 2004 would be applicable retrospectively as per the decision of the Larger Bench of the Tribunal in the case of *Vandana Global Ltd. Vs CCE Raipur* - 2010 (253) ELT 440 (Tri.-LB). It is submitted by the learned counsel that the said decision of the Larger Bench has been overruled by the Hon'ble High Court of Chhattisgarh in the decision reported in 2018 (16) G.S.T.L. 462 (Chhattisgarh). Similarly, the Hon'ble Jurisdictional High Court in the case of *Thiru Arooran Sugars Vs CESTAT, Chennai* - 2017 (355) ELT 373 (Mad.) has also held that the credit availed on MS angles, channels, beams etc. used for supporting structures of capital goods is eligible for credit prior to 07.07.2009 and that Explanation does not have retrospective application. It is also argued by the learned counsel that by applying user test these goods have been used for support structure of capital goods which are integral part of the manufacturing process. The Hon'ble Jurisdictional High Court in the case of *Thiru Arooran Sugars* (supra) had considered this issue as to the user test and held that the when MS structurals put into use to support the capital goods, the credit availed on such MS angles / beams cannot be denied. The decision in the case of *Chemplast Sanmar Ltd. Vs Commissioner, LTU, Chennai* – 2018 (2) TMI 4 – CESTAT CHENNAI was also relied to put forward the very same argument.

3. The Ld. Counsel asserted that as per the Annexture to the show cause notice itself, it can be seen that the entire credit is availed on invoices which are prior to 07.07.2009 except three invoices dated 17.09.2009, 02.02.2010 & 02.02.2010 for an amount

of Rs.10,560/- Rs.395.20 and Rs.28,133.84 respectively. It is submitted by the counsel that all other invoices on which credit availed is prior to 07.07.2009 and the authority ought not to have denied the credit. It is prayed that the appeal may be allowed.

4. Ld. A.R Sri M. Ambe supported the findings in the impugned order.

5. Heard both sides.

6. On perusal of the show cause notice in para-6, it is seen that credit availed on the goods such as MS angles, channels, beams etc. are held to be not eligible for the reason that the these goods are used in the manufacture of supporting structures of capital goods. The adjudicating authority has denied the credit on such items on the ground that the Explanation introduced in Rule 2(k) of the definition of inputs has retrospective application as per the decision rendered by the Larger Bench of the Tribunal in the case of *Vandana Global Ltd.* (supra). However, the Hon'ble High Court of Chhattisgarh before which the decision of Larger Bench was appealed has set aside the said order passed by the Tribunal and held that the Explanation does not have retrospective application.

7. On perusal of the show cause notice, it is seen that the appellant had furnished details of the cenvat credit to the tune of Rs.53,22,084/- which is considered as Annexure B to the show cause notice. Out of the total impugned credit, the original authority has allowed the credit to the tune of Rs.35,86,474/-. The credit to the tune of Rs.51,71,213/- has been denied observing that these goods

have been used for manufacture of supporting structures of capital goods and that as per Explanation to Rule 2(k) is ineligible. The said Explanation was introduced by Notification No.16/2009-CE (NT) dated 07.07.2009 only. The decision rendered by the Larger Bench of the Tribunal in *Vandana Global Ltd*. has been set aside by the Hon'ble High Court of Chhattisgarh as reported in 2018 (16) G.S.T.L 462 (Chatt.). Further, the Hon'ble Jurisdictional High Court in the case of *Thiru Arooran Sugars* (supra) has held that the Explanation does not have a retrospective application and also that user test has to be applied. Relevant part of the said decision reads as under :

> "**1.1** C.M.A. No. 3814 of 2011 is directed against the judgment and order dated 30-9-2011, passed by the Tribunal, while C.M.A. Nos. 2695 and 2696 of 2012 are directed against the common order, dated 14-6-2012.
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> **2.** The Tribunal, by a cryptic order, has allowed the appeals of the Revenue and restored the Order-in-Original dated 18-8-2009, by following its own judgment, delivered by a Larger Bench, in the matter of *Vandana Global Limited* v. *Commissioner of Central Excise* - 2010 (253) E.L.T. 440. The judgment, rendered in : *Vandana Global Limited* v. *Commissioner of Central Excise* favours the Revenue.
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> **3.** We were informed by the counsels for the parties that a challenge has been laid to the decision of the Tribunal rendered in: *Vandana Clothing Limited* v. *Commissioner of Central Excise*, and that it is pending consideration before the concerned Court, i.e., the Chhattisgarh High Court.
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> … …. …….
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> **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."

8. We find that as per the Annexure to the show cause notice, three invoices No.274/17.09.2009, 3009/02.02.2010 and 3100/02.02.2010, fall beyond the period of 07.07.2009. We therefore disallow the credit on these invoices. Appellant is eligible for the credit in respect of all invoices which are issued prior to 07.07.2009.

9. After appreciating the facts and following the decisions cited supra, we are of the opinion that the appellant is eligible for credit in respect of all invoices except the three invoices mentioned above which are after 07.07.2009.

10. In the result, the impugned order is modified as above by allowing credit on all invoices except invoices which are after 07.07.2009. The appeal is partly allowed with consequential reliefs, if any.

(Dictated and pronounced in court)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(SULEKHA BEEVI. C.S.)
Member (Judicial)

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