CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

EXCISE APPEAL NO. 41721 of 2016

(Arising out of Order-in-Appeal No.224/2016 (CXA-II) dated 23.06.2016 passed by Commissioner of Central Excise (Appeals-II), Chennai)

Sundaram Fastners Ltd., **...Appellant**
Kurkadu Village, Puducherry.

Versus

Commissioner of Central Excise, **.... Respondent**
No.1, Goubert Avenue,
Pudhucherry – 605 001.

APPEARANCE :

Shri. S. Nishan, Advocate for the Appellant
Shri. N. Satyanarayanan, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.40358/2025

DATE OF HEARING: 13.03.2025
DATE OF DECISION:18.03.2025

Per AJAYAN T.V.

The appeal has been preferred by the Appellant assailing the impugned order in appeal dated 23.06.2016 where by the appellate authority has upheld the demand of Rs.38,676/- wrongly availed CENVAT credit on ineligible capital goods taken during the period May 2013 to March 2014, along with applicable interest, as ordered by the adjudicating authority, and has reduced the penalty imposed to Rs.5,000/-.

2. The facts stated briefly are that the appellant are manufacturers of 'steel forgings' falling under tariff item number 73261910 of the first schedule of the Central Excise Tariff Act, 1985. They availed CENVAT credit on inputs, capital goods and input services on payment of duties on the final products cleared. During the course of verification of records for the period May 2013 to March 2014, the departmental officers noticed that the appellant had taken CENVAT credit on certain goods, namely MS Angles, MS Plates, MS Channels, MS Sheets and HR Bars falling under the chapter 72 and 'Wire mesh cage' falling under chapter 73 of the schedule of the Central Excise Tariff Act, 1985, under capital goods credit, to the tune of Rs. 38,676/-. The department being of the view that these goods will not fall under the category of capital goods as they are not used in or in relation to manufacture of the final products of the appellant, issued a show cause notice proposing to deny the wrongly availed CENVAT credit and demanding the same along with applicable interest and proposing to impose penalty under Rule 15 (1). The appellant in its reply pointed out that the impugned goods had been used as components and spares for machinery falling under chapter 84, 85 and 90 of Central Excise Tariff Act, 1985 which are installed in the factory for manufacture of excisable goods. Drawing attention to Rule 2 (a) (A) (iii) of CENVAT credit Rules 2004, it was pointed out that the said Rule stated unequivocally that components, spares and accessories of goods falling under chapter 82, 84 and 85 will be treated as capital goods, and that the credit availed is in order.

3. After due process of law, the adjudicating authority held that the goods on which the appellant had taken credit are not 'capital goods' as per chapter 82,84,85 and 90 of the Central Excise Tariff Act, 1985. The adjudicating authority also rendered a finding that the appellant had first claimed these items as capital goods and then have now stated that the components, spares and accessories and that thus the appellant has made contrary contentions. Therefore, the adjudicating authority disallowed the cenvat credit and ordered for reversal /recovery of the same, ordered recovery of interest and imposed a penalty of Rs. 20,000/. Aggrieved by the said order, the appellant preferred an appeal before Commissioner of Central Excise (Appeals-II), Chennai and the said appellate authority modified the impugned order in appeal as aforementioned. Aggrieved by the impugned order in appeal, the appellant is before this Tribunal.

4. The learned counsel Shri. S. Nishan appeared and argued for the appellant. The learned counsel draws attention to the definition of capital goods as prevailing for the relevant period as stated in the SCN, viz., that as Rule 2 (a) (A) (iii)

2(a) "capital goods" means -

(A) the following goods, namely -

(i) all goods falling under Chapter 82. Chapter 84, Chapter 85, Chapter 90, Heading No. 6805 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Central Excise Tariff Act:

(ii) pollution control equipment,

(iii) components, spares and accessories of the goods specified at (i) and (ii).

(iv)xxxx

and submits that the impugned goods get covered under Rule 2(a)(A)(iii) and thus the availment of cenvat credit as capital goods is correct as contended by the appellant in their reply to the show cause notice. The Ld. Counsel also stated that the issue is no more res integra as it stands decided in the appellants' favour by various High Court and Tribunal decisions and submits and places reliance on the following decisions :- Mangalam cement limited versus CC, Jaipur (1), 2018 (360) ELT 737 (Tri LB), CCE &ST Vs. India Cements Ltd., 2014 (310) ELT 636 (Mad.) and India Cements Vs CESTAT, Chennai 2015 (321) ELT 209 (Mad.).

5. Ld. AR. Shri. N. Satyanarayan appeared on behalf of the respondent and apart from reiterating the findings of the appellate authority, also points out that the said goods will not, in the alternate, fall under the definition of inputs as provided in Rule 2(k) of the Cenvat Credit Rules.

6. Heard both sides and perused the records. The sole issue to be decided is whether the cenvat credit taken on the impugned goods used by the appellant in their factory would fall under the definition of capital goods as contented by the appellant.

7. The SCN at para 3, provides the definition of capital goods for the relevant period as under: -

" 3. In terms of Rule 2 of Cenvat Credit Rules, 2004,

(a) "capital goods" means:-

(A) the following goods, namely

(1) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures,

(v) refractories and refractory materials,

(vi) tubes and pipes and fittings thereof, and

(vii) storage tank,

[viii] motor vehicles other than those falling under tariff headings 8702,8703,8704, 8711 and their chassis,

used

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office, or

[IA] Outside the factory of the manufacture of the final products for generation of electricity for captive use within the factory, or

(2) for providing output service;"

8. On a plain reading of the definition reproduced supra, Rule 2 (a) (A) (iii) merely stipulates that capital goods means components, spares and accessories of the goods specified at (i) and (ii). It does not contain any stipulation as to the chapter headings to which such components, spares and accessories should pertain. Thus, the definition of capital goods squarely covers components, spares and accessories of the goods falling under chapter 82, 84, 85, 90, heading number 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First schedule to the Excise Tariff Act and pollution control equipment. It is evident that in the absence of any prescribed headings to which such components, spares and accessories should pertain, the claim of the appellant that the impugned goods are covered under the definition of capital goods merits acceptance.

9. This tribunal finds that the adjudicating authority has erred in rendering a finding that the appellants had raised contradictory claims. The adjudicating authority has failed to appreciate that the appellants had only claimed that the components, spares and accessories of the goods specified at (i) & (ii) of the definition of capital goods as given at Rule 2 (a) (A), are chapter agnostic and are thus covered under the definition. It was never a contradictory claim as found by the adjudicating authority and such a finding as upheld by the appellate authority, is wholly untenable. The Appellate authority has also merely stated that the goods are prima facie not covered under the definition of capital goods without giving any reasons. The appellate authority has

further stated that the appellant has not put forth any conclusive evidence that the goods have been used as components in the machinery installed at their factory. When the appellant has stated the manner in which the impugned goods are used as spares, and components of the eligible capital goods in their reply, it was incumbent upon the Appellate Authority to have them verified as it is not a matter of dispute that the capital goods and the spares and components thereto are available at the factory. Instead of having them verified and controverting the aforesaid submissions of the appellant, a summary dismissal of the appellant's contentions stating that the appellant has not produced evidence cannot be countenanced. In fact, if that be the case, it was for the authorities to have spelt out what exactly is the proof that they were expecting the appellant to adduce. This Tribunal also finds that it is settled law that the scope of entry "components, spares and accessories" in the definition of capital goods is not restricted to the components, spares and accessories falling under Chapter 82, 84, 85 or 90 of CETA, 1985 alone but covers all spares, components and accessories of specified goods irrespective of their classification under any chapter and is thus not chapter specific. The reliance placed by the Appellant on the decision in CCE &ST Vs. India Cements Ltd., 2014 (310) ELT 636 (Mad.) and India Cements Vs CESTAT, Chennai 2015 (321) ELT 209 (Mad.) and Mangalam cement limited versus CC, Jaipur (1), 2018 (360) ELT 737 (Tri LB), is apposite. The Larger Bench of this Tribunal has in the aforementioned decision in Mangalam Cement, after considering the definition of capital goods held as under:

" 5. From the perusal of the above definition of capital goods it makes the position clear that such goods, which fall under Chapters 82, 84, 85 and 90, answer to the definition of capital goods. Further, components, spares and accessories of the goods of above Chapters also qualify for the purpose of definition of capital goods. On reading of the above definition, it reveals that no Chapter of the Central Excise Tariff Act, 1985 (CETA) has been prescribed for the components, spares and accessories for consideration as capital goods. Thus, it is evident that irrespective of the classification of components, spares and accessories, when those are fitted to the machines/machineries of the above eligible Chapters, the same should also be considered as capital goods for availment of Cenvat credit of Central Excise duty paid thereon."

10. In view of the discussions above and the judgements aforecited, the impugned order in appeal upholding the demand of the adjudicating authority and imposing penalty cannot sustain and is liable to be set aside. Ordered accordingly. The appeal is allowed with consequential benefits in law, if any.

(Order pronounced in the open court on 18.03.2025)

(AJAYAN T.V.)
Member (Judicial)

psd