CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No.50609 of 2017 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-298-16-17 dated 21.12.2016 passed by the Commissioner (Appeals), Central Excise and Customs, Raipur (C.G.)]

M/s.Rameshwaram Steel & Power Ltd. **Appellant**
Village-Gadergumda,
Tehsil-Gharghoda, Raigarh,
Chhattisgarh.

VERSUS

Commissioner of Central Excise and Customs **Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara, Raipur,
Chhattisgarh-492 001.

APPEARANCE:

Shri Sunil Upadhyay, Advocate for the appellant.
Shri P. Juneja, Authorised Representative for the respondent.

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO.51826/2019

DATE OF HEARING:15.05.2019
DATE OF DECISION:15.05.2019

ANIL CHOUDHARY:

The issue in this appeal is regarding the availability of cenvat credit on steel structural items like M.S. Angles, M.S. Channels, M.S. Beams, Plates, tubes, etc. falling under Chapter 72 which have been used in the manufacture of plant and machinery including structural for export, for the credit taken during August, 2008.

2. The brief facts are that the appellant are having a Sponge Iron plant at Village: Badegumda, Tehsil: Gharghora, Distt. Raigarh. The factory has also a Captive Power Plant of 12 MW for use of the power captively, in the manufacture of excisable goods namely, Sponge Iron.

3. They had initiated construction of their factory for the manufacture of sponge iron in the year 2004. For the purpose of the Power Plant, they had fabricated inhouse two numbers of kilns i.e. Kiln-I and Kiln-II and one number of Captive Power Plant of 12 MW capacity. Kiln-I was fabricated in Feb., 2007 and in the fabrication of the said Kiln falling under Chapter 84 of the Central Excise Tariff Act, a total quantity of 2862.680 MT of Iron and Steel goods were used. The said fact was duly informed by appellant to the Central Excise Authorities i.e. Superintendent of Central Excise, vide their letter dated 18.04.2007 supported with Chartered Accountant's Certificate. The said fact of fabrication of Kiln-I and use of Iron and Steel goods of 2862.680 MT, was also reflected in ER-I Return of February, 2007, filed by their company.

4. Kiln-II was also fabricated by them consuming 1188.315 MT of Iron and Steel goods, and the same was reflected in ER-I Return for the month of January, 2008.

5. The Power Plant of 12 MW was fabricated by using 2069.350 MT of Iron and Steel goods, and the same was reflected in ER-I Return for the month of April, 2011.

6. The appellant company had also obtained Chartered Engineer's Certificate for the consumption of Iron and Steel goods in the fabrication of Kiln-II and Power Plant.

7. The total consumption of Iron and Steel goods thus totals to 6120.345 MT [Kiln-I=2862.680 MT + Kiln-II =1188.315 MT and Power Plant = 2069.350 MT, totaling 6120.345 MT].

8. Out of the aforesaid consumption of 6120,345 MT of Iron and Steel goods, in the fabrication of Kiln-I, Kiln-II and Power Plant, a show cause notice No.,V(Ch.72) 15-382/Commr./BIL/2010/Adj./22558 dated 01.12.2010 had already been issued by Commissioner of Central Excise, Raipur, seeking to disallow Cenvat Credit on a quantity of 5170.915 MT of Iron and Steel goods. The said Show Cause Notice had been duly replied vide letter dated 17.02.2012. It was duly submitted that the total consumption is 6120.345 MT, for the fabrication of aforesaid plant and machinery, and the show cause notice was only for 5170.915 MT.

9. The said show cause notice was adjudicated by the learned Commissioner vide Order-in-Original No. COMMISSIONER/RPR/CEX/80/2012 Dated 17.10.2012. Appellant had filed an appeal before this Tribunal against the said order being Appeal No. E/55305/2013, in which unconditional stay had been granted vide Stay Order No. SO/56040/2013/EX(DB) dated 7.2.2013. The present show cause notice relates to Cenvat Credit amounting to Rs.31,74,163/-on quantity of 918.95 MTs of Iron and Steel goods, relating to 77 numbers of invoices, which were not readily available with them because of change of Management, and provided to the Department subsequently on 05.03.2011. The said quantity was used in the Power Plant along with quantity of 5170.915 MTs covered in the earlier show cause notice, and is a part of total consumption of 6120. 345 Mts of Iron and Steel goods in the fabrication of Kiln-I and Kiln-II and Power Plant.

10. The ld. Counsel for the appellant points out that admittedly, Iron and Steel Structural Items have been utilised in the fabrication of new Plant and Machinery for setting up manufacturing facility for sponge iron along with captive power plant. Against the earlier order-in-original, wherein on the

part of the goods/inputs, credit was taken and the same was disallowed vide order-in-original dated 11.05.2015, the matter was considered by this Tribunal in Appeal No.55305 of 2013, and vide Final Order No.55598 of 2016 dated 29.11.2016, their appeal was allowed for the credit taken on similar items during the period 2007-08, and it was held as follows:-

> *"4. After careful consideration of the facts and circumstances of the case and the submissions of both the sides, it appears that subject matter is covered by Hon'ble Supreme Court decision in the case of CCE, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd.-2010 (255) ELT 481 (SC) wherein the Hon'ble Apex Court refers to the "user test" evolved by Hon'ble Supreme Court in the case of CCE, Coimbatore vs. Jawahar Mills – 2002-TIOL-87SC CX. The Hon'ble Supreme Court in the case of Rajasthan spinning & Weaving Mills (supra) in this regard observes as under:*
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> > *"12. Inter alia observing that capital goods cab be machines, machinery, plant, equipment, apparatus, tools or appliances if any of these goods is used for producing or processing of any goods or for bringing about any change in the substance for the manufacture of final product, although this view was expressed in the light of the aforesaid noted definition of "capital goods" in the said Rule, which is not there in Rule 57Q, as applicable in the instant case, yet the "user test" evolved in the judgment, which is required to be satisfied to find out whether or not particular goods could be said to be capital goods, would apply on all fours to the facts of the present case, in fact, in para 6 of the said judgment, the court noted the stand of the learned Additional Solicitor General, appearing for the Revenue to the effect that the question whether an item falls within the purview of "capital goods" would depend upon the user it is put to.*
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> > *13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q, it is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of Serial No. 5 of the goods described in column (2) of the Table below Rule 57Q".*
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> > *5. Considering the above observation of the Hon'ble Supreme Court and applying the "user test" evolved by Hon'ble Supreme Court in the case of Jawahar Mills (supra) to the facts in hand, there cannot be any doubt that the subject items are eligible for cenvat credit as they are covered under the definition of either "capital goods" under Section (2) (a)(A) or "input" under Section 2(k) of the Cenvat Credit Rules, 2004.*

5.1 In respect of admissibility of cenvat credit for the item namely welding electrodes the Hon'ble Chhattisgarh High Court in the case of Ambuja Cement Eastern Ltd. Vs. CCE, Raipur -2010 (256) ELT 690 (CG) and Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd., vs. Union of India -2008 (228) ELT 517 allowed the cenvat credit on the welding electrodes. We follow these decisions and hold that the appellant is entitled to cenvat credit on welding electrodes treating the same as "input".

6. In the result, the impugned order is hereby set aside and the appeal is allowed with consequential relief to the appellant".

11. Accordingly, Ld. Counsel prays for allowing their appeal, being part of the goods used in setting up new plant and machinery.

12. Ld. Authorised Representative for Revenue relies upon the impugned order.

13. Having considered the rival contentions and facts on record, the appeal is allowed, following the precedent order of this Tribunal in the appellant's own case being Final Order No.55598 of 2016 (supra), which have attained finality.

14. In the result, the appeal is allowed. The impugned order is set aside. The appellant is entitled to consequential benefit, as per law.

(Dictated and pronounced in open court)

(Anil Choudhary)
Member (Judicial)

ckp