CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II
(BY VIDEO CONFERENCING)

Excise Appeal No.52201 of 2019 (SM)

[Arising out of Order-in-Appeal No.580(CRM)/CE/JDR/2019 dated 18.06.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur].

M/s.Aquatech Steelcon Pvt. Ltd. **Appellant**
Plot No.9/10/11 (A), Swaroopganj, RIICO
Industrial Area,
Bhilwara, Rajasthan-311 025.

Versus

Commissioner of Central Goods and Service Tax, Excise & Customs, **Respondent**
142-B, Sector-II, Hiran Magri,
Udaipur (Rajasthan)-313 002.

APPEARANCE:

Shri Shashwat Arya, Advocate for the appellant.
Ms. Tamnna Alam, Authorized Representative for the respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50760/2020

DATE OF HEARING/DECISION:02.09.2020

ANIL CHOUDHARY:

The appellant is in appeal against the impugned order-in-appeal dated 18.06.2019 passed by the Commissioner (Appeals) disallowing the cenvat credit of Rs.6,45,158/- (Cenvat Rs.6,32,508 + education cess Rs.12,650/-) on M.S. Plates and ordering to recover the same along with interest under Rule 14 of CCR, 2004 read with Section 11A/11AB of the Central Excise Act, 1944 and imposing penalty of Rs.6,45,158/- under Rule 15 (2) of the CCR, 2004 read with Section 11 AC of the Central Excise Act, 1944.

2. The brief facts are that the appellant is engaged in the manufacture of steel structures, machineries for various plants such as cement, sugar,

chemical, power, metallurgical, etc. and equipments, falling under Chapter 73,& 84 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA).

3. For fabrication of the aforementioned final products, which are steel machineries, MS Plates were used as input materials by the appellant. Accordingly, Cenvat credit was availed by the appellant for such MS Plates as inputs.

4. Further, the machineries made by the appellant (final products), require precision and accuracy as per the drawing measurements. Thus, prior to being used as inputs, Appellant had used the some MS Plates as a 'levelled steel platform' for the workers to stand/sit on and fabricate the final products, i.e. the machineries. Without such platform made of MS Plates, fabrication of final products would have to be conducted on existing uneven civil floors, which would result into dimensional mismatch as well as major accidents with large voluminous equipment assemblies.

5. For such fabrication of final products, the appellant used lathe machines, welding machines, etc. which fall under Chapter 84 of CETA and are covered under the definition of capital goods. The platforms made of MS Plates was essential to use and operate such capital goods, as without the same, fabrication of precision final products, would not be possible. Thus, the MS Pates are also covered under the definition of capital goods as its 'components, spares & accessories'.

6. Accordingly, the appellant had availed cenvat credit of such MS Plates as inputs, which were used in fabrication of final products as well as for platforms used as accessory to capital goods.

7. In the light of above, show cause notice dated 25.06.2008 was issued to the appellant, proposing demand of cenvat credit availed on such MS Plates along with interest under Rule 14 of Cenvat Credit Rules, 2004 (Credit

Rules) read with Section 11 A and Section 11 AB of the Central Excise Act, 1944 (Excise Act), and proposing imposition of penalty under Rule 15 (2) of Credit Rules read with Section 11 AC of Excise Act. The demand was proposed on the ground that the MS Steel sheets being used for fabrication of platforms, was neither covered under the definition of inputs nor as capital goods.

8. The appellant filed a reply dated 30.08.2008 and additional submissions dated 16.02.2009 at the time of personal hearing. The Asstt. Commissioner, Bhilwara vide order-in-original dated 2.1.2019, being satisfied with the reply and submissions of the appellant, dropped the demand. It was observed that while the SCN had alleged that the MS Plates were only used as platform, however, in reality they were temporarily used as platform and the same were later used as inputs in fabrication work. It was further concluded that for both such usage, the MS Plates were eligible for Cenvat Credit.

9. Being aggrieved, Department filed appeal against the order-in-original dated 02.01.2019 before the ld. Commissioner (Appeals), Udaipur, pursuant to the Order-in-Review dated 01.04.2019.

10. The ld. Commissioner (Appeals), Jodhpur vide Order-in-Appeal dated 18.06.2019 allowed the Department's appeal and disallowed the Cenvat credit in question along with interest and also imposed equivalent penalty.

11. Being aggrieved, the appellant is before this Tribunal, amongst others, the following grounds.

12. Ld. Counsel for the appellant urges that issue is no more *res integra,* that for such fabrication works, machines such as lathe machine, welding machine, etc. were used by the appellant, which are covered under the definition of capital goods could be efficiently used only on a plain leveled

surface. Thus, MS Plates being used as platform, was an áccessory' to the capital goods of the appellant, and thus is admissible to Cenvat credit in terms of Rule 2 (a) of Cenvat Credit Rules. The issue has been settled by the Hon'ble Supreme Court in the case of **CCE Vs. Rajasthan Spinning & Weaving Mills Ltd. – 2010 (255) ELT 481 (SC),** where by applying the user test, it was held that credit availed on steel items for fabrication of Chimney was admissible. Following the same, cenvat credit on the steel items used for fabrication of capital goods and support structures has been allowed in the following rulings:-

(1) DCM Sriram Ltd. Vs. CCE, Udaipur – 2018 (12) TMI 239-CESTAT, New Delhi [para 5-6]

(2) Singhal Enterprise Pvt. Ltd. Vs. CCE – 2016 (341) ELT 372 (Tribunal-Delhi)[Para14-15] affirmed by the Hon'ble Chhattisgarh High Court in CCE & ST, Bilaspur Vs. Singhal Enterprises Pvt. Ltd. – 2018 (359) ELT 313 (Chhattisgarh)[para 3-4].

(3) India Cements Ltd. Vs. CESTAT, Chennai - 2015 (321) ELT 209 (Madras) [Para 10-11].

(4) UOI Vs. Hindustan Zinc Ltd. – 2007 (214) ELT 510 (Raj.) Affirmed by Hon'ble Supreme Court in 2007 (214) ELT A 115 (SC) [para3].

(5) UOI Vs. Hindustan Zinc Ltd. – 2013 (6) TMI 144 – Rajasthan High Court [para4]

Thus, he submits that in view of the above, cenvat credit has been correctly availed by the appellant on MS Steel Sheets and the same is duly admissible to it.

13. He further urges that reliance placed by the ld. Commissioner (Appeals) in the case of **Vandana Global Ltd. – 2010 (253) ELT 440 (Tribunal-LB)** to hold that the amendment dated 7.7.2009 in Explanation 2 to Rule 2(k) was clarificatory in nature and hence will have a retrospective

effect, is not tenable. The ld. Commissioner (Appeals) has held that vide such amendment, Cenvat credit was denied on angles, channels, etc. used in support structure of capital goods, and therefore, cenvat credit is not admissible on MS Plates that were used for fabrication of platforms. The decision in the case of Vandana Global Ltd. (supra) was overruled by the Hon'ble Chhattisgarh High Court in the case of **Vandana Global Ltd. Vs. CCE Order dated 13.09.2017 [Para 5-7].** Further, in the previous decisions of **Mundra Ports & Special Economic Zone Ltd. Vs. CCE – 2015 (39) STR 726 (Gujarat)** and **Thiru Arooran Sugars Vs. CESTAT, Chennai – 2017 (355) ELT 373 (Madras),** Courts have also overruled the Larger Bench decision of **Vandana Global** (supra) and unequivocally held that the amendment to Rule 2(k) introduced w.e.f. 7.7.2009 would only have a prospective effect:

14. Further, it was urged by the ld. Counsel for the appellant that Hon'ble High Court's order dated 13.09.2017 was passed in a batch of matters of various parties including in the matter of **Shri Nakoda Ispat,** against which the Department had filed an appeal, which was dismissed vide Order dated 12.07.2018 by the Hon'ble Supreme Court.

15. It was also urged that this Tribunal relying upon the above Court's decisions held that the amendment to Rule 2(k) is only prospective:-

(a) Shree Prithvi Iron Mills Pvt. Ltd. – 2019 (5) TMI 969 – CESTAT, New Delhi[Para 6-7].

(b) India Cements Ltd. – 2019 (1) TMI 367 - CESTAT, New Delhi [Para 7].

(c) Nav Durga Fuel Pvt. Ltd. – 2019 (1) TMI 240 – CESTAT, New Delhi [Para 7]

(d) Bajaj Hindustan Ltd. – 2018 (2) TMI 1097 – CESTAT, Allahabad [Para 5 & 7].

Thus, the restriction introduced in Explanation to Rule 2(k) would not be applicable for the relevant period of June, 2007, and Cenvat Credit in question is duly admissible.

16. It is further urged that MS plates are primary inputs for the appellant for the fabrication work of its final products. However, prior to such usage as inputs, some of the MS plates were also used as platform on which the fabrication work was conducted. The impugned order has only addressed usage of MS plates as platform to deny the credit, without going into the question that they were later on used as inputs for fabrication work as well.

17. As per definition of 'inputs' under Rule 2(k) of Credit Rules for the relevant period, Cenvat Credit is admissible on all goods, used in or in relation to manufacture of final products or for any other purpose, within the factory of production. Further, Explanation 2 to Rule 2(k), inputs includes 'goods used in the manufacture of 'capital goods' which are further used in the factory of the manufacturer'. Thus, when impugned order does not dispute the fact of usage of such items as inputs in the fabrication work of various plants and machinery, the criteria of Rule 2 (k) stands fulfilled, and cenvat credit is admissible. Thus, in absence of any allegation, finding or evidence of fraud, suppression, etc., penalty is not imposable.

18. Accordingly, ld. Counsel prays for allowing their appeal with consequential benefits.

19. Ld. Authorised Representative for the respondent/Department relies upon the impugned order passed by the Commissioner (Appeals) and prays for dismissal of the appeal.

20. Having considered the rival contentions, I find that the appellants have used the MS Plates both as inputs for fabrication of machinery, which is their final product liable to duty and have also used the MS Plates as Steel Platform for fabrication of their finished product being machinery. Thus, the MS Plates used in steel platform are also admittedly used in the factory of production.

21. Rule 2(k) of CCR defines, "inputs as all goods used in the factory by the manufacturer of the final product". Accordingly, I hold that the appellant is entitled to cenvat credit on MS Plates. Accordingly, the impugned order-in-appeal is set aside and the order-in-original is restored. Thus, the appeal is allowed with consequential benefits.

[Operative portion of the order pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.