CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51367 of 2019 - SM

(Arising out of order in appeal No. 708 (CRM)/CE/JDR/2018 dated 04.07.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

M/s J. K. Cement Works **Appellant**
(Unit: J.K. Cement Limited)
Nimbahera
Distt – Chittorgarh (Rajasthan)

VERSUS

Commissioner, Central Goods & Service Tax **Respondent**
142-B, Hiran Magri, Sector No. 11
Udaipur (Rajasthan)

AND

Excise Appeal No. 52086 of 2019 - SM

(Arising out of order in appeal No. 708 (CRM)/CE/JDR/2018 dated 04.07.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

M/s J. K. Cement Works **Appellant**
(Unit: J.K. Cement Limited)
Mangrol
Distt – Chittorgarh (Rajasthan)

VERSUS

Commissioner, Central Goods & Service Tax **Respondent**
142-B, Hiran Magri, Sector No. 11
Udaipur (Rajasthan)

APPEARANCE:

Sh. Bipin Garg & Ms. J. Kainat, Advocate for the appellant
Sh. Ishwar Charan, Authorised Representative for the respondent

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

FINAL ORDER Nos. 50590 – 50591/2022

DATE OF HEARING/DECISION: 06.07.2022

ANIL CHOUDHARY:

This is the second round of litigation before the Tribunal. In the earlier round, this Tribunal vide Final Order No. 521 – 540/2011-EX(DB) dated 04.07.2011, decided the issues as follows:-

(i) Whether the M.S. plates, beams, angles, channels, sheets etc. used for repair and replacement of damaged parts of cement plant and machinery – clin, pre-heater, cement mill, raw mill, coal mill etc. are eligible for Cenvat Credit either as capital goods or as inputs;

(ii) Whether iron and steel structures and tower material falling under chapter heading 73.08 are eligible for cenvat credit.

(iii) Whether unmachined steel castings and rough HRCS castings used for replacement of damaged parts of the cement plant and machinery are eligible for cenvat credit;

(iv) Whether rope, asbestos sheet for jointing and similar items used for plugging the leakages are eligible for cenvat credit;

(v) Whether nitrogen gas falling under Chapter 28 and PVC sheets plastic sheets of chapter 39 are eligible for cenvat credit;

(vi) Whether aluminium conductors falling under sub-heading 7614.10 are eligible for cenvat credit.

and accordingly held that:-

(i) M.S. Angles, Channels, Plates etc. used for repair and maintenance of plant and machinery would be eligible for cenvat credit.

(ii) Asbestos jointing sheets is used for plugging the leakages in the pipes, it has to be treated as an item used for repair and maintenance and hence the same would be eligible for cenvat credit.

(iii) Rough castings, unmachined steel castings, HRCS castings etc. are used as replacement for parts of the machinery and hence the same have to be treated as components and accessories of the cement, plants and machinery. Thus cenvat credit admissible.

(iv) M.S. Angles, Channels, Joists, Iron and Steel structures, supporting frame etc. which are used for erecting supporting structures, are not eligible for cenvat credit.

(v) Aluminium conductors, the same are classifiable under sub-heading 7614.90 of the tariff which is not the heading specified in the definition of capital goods. The cenvat credit has been rightly denied in respect of this item.

(vi) Nitrogen gas used in connection with repair and maintenance jobs, the same has been held to be eligible for cenvat credit.

(vii) PVC sheets and synthetic rolls of plastic sheets of Chapter 39, the appellant have not specified as to how the same are used in or in relation to the manufacture of the finished goods in view of this, upheld the finding denying the cenvat credit in respect of these items.

The matter was, therefore, remanded for re-quantification of the cenvat credit demand and to re-determine of the quantum of penalty to be imposed on the appellant, which would be in proportion to the quantum of cenvat credit demand upheld.

2. In view of the aforementioned direction of this Tribunal in the earlier round, the Commissioner (Appeals) in respect of Nimbahera unit of the appellant allowed cenvat credit totalling Rs.20,23,779/- and disallowed the credit totalling Rs. 2,50,195/-, which was mainly on account of iron and steel structure, tower material, steel casting.

3. So far Mangrol unit of the appellant is concerned, he was pleased to allow the cenvat credit of Rs. 9,80,449/- and disallowed credit for Rs. 3,39,873/- being amount towards iron and steel structure, tower material, aluminium conductors.

4. Learned Counsel for the appellant inter alia urges that admittedly these items have been used by the appellant in the factory of production. These items have been used in repair and maintenance of the existing plant and machinery and also in fabrication of structural to support the manufacturing machinery, without which no manufacture can take place of the excisable goods.

5. Having considered the rival contentions, I am satisfied that cenvat credit is allowable also as input, as the items have been used admittedly (indirectly) as inputs in the factory of production, for manufacture of dutiable finished goods. I further take notice that these disallowance have been made by the Court below in view of the Larger Bench ruling of this Tribunal in the case of **Vandana Global** reported in **2010 (253) ELT 440 (Tri.LB)**. This ruling has

been overruled by the Hon'ble High Court of Chhatisgarh in Vandana Global vs. Commissioner of **Central Excise & Cus. Raipur** reported in **2018 (16) GSTL 462 (Chhatisgarh**). The appellant further submitted that the issue in the present case is now squarely covered by Larger Bench ruling of this Tribunal **in Mangalam Cement Limited vs. CCE, Jaipur-I** reported in **2018 (360) ELT 737 (Tri.LB).** On the other hand Ld. DR supported the impugned order and contended that the Commissioner (Appeals) right disallowed credit of (Rs. 2,50,195/- + Rs.3,39,873/-) or Rs.5,90,068/-.

6. The larger Bench of this Tribunal in **Mangalam Cement Ltd.,** (supra) where the issue before the larger Bench was whether on Cement and Steel items used for foundation, for installation of machinery, which is embedded to earth, the assessee is entitled to avail Cenvat Credit on steel items in terms of Rule 2(k)/2(a) of the Cenvat Credit Rules, 2004, or not, the question has been decided in favour of the assessee. The larger Bench held as follows:-

> "9. On perusal of definition of 'input' extracted above, it would reveal that all the goods (excepting light diesel oil/high speed diesel oil and motor spirit) are considered to fall under such definition, when 'used in or in relation to manufacture of final products', whether directly or indirectly, and whether contained in the final product or not. The only condition required to be fulfilled is that the goods must be used within the factory of production. Further, Explanation 2 appended to such definition clause provides that 'input' includes goods, which are used in the manufacture of capital goods for further use in the factory of the manufacturer. On a conjoined reading of the definition of input and Explanation 2 appended thereto, it makes the position clear that inputs are not only goods, which are used in the manufacture of final products, but also those which are 'used in or in relation to' the manufacture of the final product. The relationship between those goods and the final product could be either direct or indirect and may include or may not include their presence in the final products. Goods used in the manufacture of capital goods, which are installed for manufacture of the capital goods should also be considered for availment of Cenvat credit. In the case in hand, the cement and steel bars used to erect foundations for installing different machines in the power plant should also merit consideration as 'input' for the purpose of cenvat benefit. Analyzing and interpreting scope of the definitions of 'input' and 'capital goods', the Hon'ble Madras High Court in the case of *M/s. Thiru Arooran Sugars & Ors.* (Civil Misc. Appeal Nos. 3814/2011 and 2695 and 2696/2012) has held that steel

and cement used for laying of foundation for erection of capital goods should be eligible for the cenvat benefit under the present set of rules. The relevant paragraph in the said order is extracted herein below:-

> "44. the facts of this case, we have to conclude that MS structural, 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 Rules 2(a)(A) and 2(k) of the 2004 Rules."
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> 10**.** In view of above analysis, we are of the considered opinion that the eligibility to duty credit of the disputed goods cannot be denied. Such eligibility either as 'capital goods' (accessories) or as 'inputs' has been examined and upheld by various decisions of the Hon'ble Apex Court and the Hon'ble High Courts as above. Accordingly, we answer the reference in favour of the appellant. The appeal file is returned to the referral Bench for a decision on merit.

7. Accordingly, following the ruling of Hon'ble Chattisgarh High Court in **Vandana Global Ltd.,** (supra) and larger Bench in **Mangalam Cement Ltd.**, (supra), I hold that the appellants are entitled to cenvat credit on the items of iron and steel etc. hereinabove as mentioned. Accordingly, both the appeals are allowed, the impugned order is set aside. The appellants are entitled to consequential benefits in accordance with law. Appeals allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant