CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

<u>COURT-I</u>

Date of hearing/decision: 11.01.2017
Date of Pronouncement: 25.01.2017

Appeal No. E/55304, 56314/2013-EX[DB]

[Arising out of the Order-in-Appeal No. COMMISSIONER /RPR/CEX/87/2012 dated 31.10.2012 passed by the Commissioner of Central Excise, Raipur]

M/s. Monnet Ispat Ltd.
M/s. Cether Vessels Pvt. Ltd. … Appellant

Vs.

C.C.E. Raipur ... Respondent

Appearance:

Present Ms. Shreya Dahiya, Advocate for the appellant
Present Shri H.C. Saini, A.R. for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

<u>FINAL ORDER NO. 50492-50493/2017</u>

<u>Per V. Padmanabhan:</u>

These two appeals have been filed challenging the order in original dated 01.11.2012 passed by the Commissioner Central Excise Raipur.

2. M/s. Cethar Vessels Pvt. Ltd. is a manufacturer of boiler, its components, parts and accessories falling under Chapter heading 8402 of the first schedule to the Central Excise Tariff Act.

3. M/s. Monnet Ispat Ltd. placed the order for manufacture and supply of boilers and container, plant and machinery for its captive power plant. The contract was for supply of entire boiler and for commissioning of these boilers at the factory site of the appellant.

4. M/s. Cethar Vessels Pvt. Ltd. cleared the boiler in dis-assembled form and subsequently assembled the same at the factory of M/s. Monnet Ispat Ltd. Controversy arose when the officers of DGCEI visited both the factories. It was noticed by the DGCEI officers that M/s. Cethar Vessels Pvt. Ltd. was clearing to M/s. Monnet Ispat Ltd. parts, components and accessories of boilers and classifying the same under 84029020. They were of the view that many of these parts and components are in the nature of supporting structures made up of iron and steel and made up of columns, tie beams, tie channels, angles etc. Since such fabricated structures would be classifiable under 7308.90 the same will not be eligible for availing Cenvat Credit in the hands of the M/s. Monnet Ispat Ltd. Revenue proceeded to disallow the Cenvat Credit for reason that these will not be covered within the definition of inputs under Rule 2(k) of the Cenvat Credit Rules 2004. After issue of show cause notice the Commissioner vide the impugned order proceeded to disallow the Cenvat Credit amounting to Rs.3,89,41,518/- and ordered for its recovery along with interest. He also imposed penalty of an equal amount on M/s. Monnet Ispat Ltd. and a penalty of Rs.2 crores on M/s. Cethar Vessels Pvt. Ltd. under rule 26 of the Central Excise Rules 20002. Aggrieved by the above order the present appeals have been filed.

5. With the above background we have heard Ms. Shreya Dahiya, Advocate for the appellant and Shri H.C. Saini, A.R. for the respondent. The Ld. Advocate submitted that the issue of eligibility of Cenvat Credit of supporting structure for capital goods has been settled in favour of the appellant by the Tribunal in various decisions. She cited some of them as follows:

i) M/s. Singhal Enterprises Pvt. Ltd. Vs. CCE Raipur 2016-TIOL-2451-CESTAT-DEL.

ii) CCE Raipur Vs. Monnet Ispat & Energy vide Final order no. 52244/2016 dated 29.06.2016.

iii) Monnet Ispat & Energy Ltd. Vs. CCE Raipur vide Final order no. A/52567/2015 dated 03.08.2015.

6. Ld. Counsel also submitted that identical issue of classification of steel structures for boilers has been upheld by the Hon'ble Supreme Court in the case of ***Swetha Engineering Ltd. Vs. CCE Chennai 2016 (335) ELT 193 (SC).***

7. In the above case, the Hon'ble Apex Court has decided that clearance of boilers in unassembled form are to be classified under 840290. Accordingly, she submitted that the Cenvat Credit availed by M/s. Monnet Ispat Ltd. is in order.

8. Ld. DR supported the order passed by the Ld. Commissioner.

9. M/s. Cethar Vessels Pvt. Ltd. manufactured and supplied boilers to M/s. Monnet Ispat Ltd. Since, the goods by nature cannot be transported because of the sheer size, the entire boiler was fabricated, disassembled and cleared to the factory of M/s. Monnet Ispat Ltd. in various consignments. All such consignments were accompanied with invoices describing the classification of the goods as 84029020. It is fairly obvious that among the various components and accessories, there would be supporting structures for the boilers also since such bulky plant and machinery cannot exist in thin air. Revenue took the view that the parts of boilers ought to be classified as fabricated structures under 7308 90 10 instead of 8402. They proceeded to deny Cenvat Credit as capital goods since chapter 73 is not specified for

capital goods in Rule 2(a) of Cenvat Credit Rules 2004. The reason outlined by the Commissioner in the impugned order for denying the Cenvat Credit are that M/s. Cethar Vessels Pvt. Ltd. has supplied to M/s. Monnet Ispat Ltd. goods in the form of angles, channels, per links, etc. which are classifiable under chapter 73 which were used by way of fabrication at the site for manufacture of supporting structures for the boilers. Ld. Commissioner has further held that these supporting structures are identifiable as goods falling under chapter 7308 90. He has further held that no Cenvat Credit can be allowed on such supporting structures by placing reliance on the decisions of the Larger Bench in the case of ***Vandana Global Vs. CCE 2010 (253) ELT 440 (Tri-LB).***

10. Boilers have been manufactured by M/s. Cethar Vessels Pvt. Ltd. and supplied to M/s. Monnet Ispat Ltd. in dis-assembled form. The entire boiler has been put together at the site of M/s. Monnet Ispat Ltd. by way of erection. Various parts which constituted the full boiler were classified and cleared by M/s. Cethar Vessels Pvt. Ltd. under chapter 8402. This obviously included the parts which were fabricated and used as supporting structures. Hon'ble Supreme Court in the case of ***Swetha Engineering Ltd. (Supra)*** have examined the classification of supporting structures for boiler. The Hon'ble Apex Court has held as follows:

"4. Issue arose as to whether the steel fabricated structures manufactured by the assessee in its factory and subsequently cleared in unassembled condition to the customer's site and erected there would merit classification as parts of boilers under chapter sub-heading 8402.90 of the Central Excise Tariff Act, 1985.

5. The Commissioner vide his order dated 31.07.1988 confirmed the demand in the show cause notice and the order has been upheld by the CESTAT as well, which is under appeal before this Court.

6. It is not necessary to go into the merits of the controversy in view of the clarification issued by the Department itself vide its order dated 2nd April, 2012. It is inter alia stated as under:

> *"Accordingly it is clarified that those structural components which are to be used essentially as part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers."*

7. The Department itself has come out with the clarification that those structural components which are to be used as parts of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. This clarification, thus, vindicates the stand which was taken by the assessee throughout by rightly classifying the parts of the boilers under Chapter sub-heading 8402.90 of the Central Excise Tariff Act, 1985.

8. In view of the foregoing, this appeal is allowed by setting aside the impugned order passed by the CESTAT as also the order of the Commissioner (Appeals). There shall, however, be no order as to costs."

11. In the Tribunal's decision in the case of ***M/s. Singhal Enterprises Pvt. Ltd. (Supra)*** it has been held that the Cenvat Credit is allowable in respect of various structural items which are used for making supporting structures for capital goods.

12. After going through both the above decisions we are of the view that the Cenvat Credit will be available to M/s. Monnet Ispat Ltd. for the entire boiler which is undoubtedly capital goods. The various parts and components cleared in dis-assembled form should be classifiable

under 8402 and would be entitled to Cenvat Credit. Even goods such as angles, channels, sections, etc. which are classifiable under chapter 73 and are used for fabrication in the factory for manufacture of supporting structures which ultimately become part of the boiler would also be eligible for Cenvat Credit.

12. In view of the above discussions we set aside the impugned order and allow the appeals.

[Order Pronounced in the open court on 25.01.2017]

(Justice Dr. Satish Chandra) President	(V. Padmanabhan) Technical Member

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