IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH, COURT NO. I

Appeal No. E/1169/2010-EX [DB]

[Arising out of Orders in Appeal No. OIA- COMMISSIONER/RPR/09/2010 dated 16.02.2010, passed by Commissioner (Appeals), Central Excise & Service Tax, Raipur]

Real Ispat & Power Limited ….Appellant

vs.

Commissioner of Central Excise & S.T., Raipur ….Respondent

Appearance:

Shri Manish Saharan, Advocate for the Appellant
Shri H.C. Saini,DR for the Respondent

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

Date of Hearing: 23.01.2017

FINAL ORDER NO. 50511/ 2017 -EX [DB]

Mr. Justice (Dr.) Satish Chandra

The present appeal is filed against the impugned order No. COMMISSIONER/RPR/09/2010 dated 16.02.2010.

2. The brief facts of the case are that the appellant was engaged in the manufacture of sponge iron and other products classifiable under

Chapter 72 of the Central Excise Tariff Act 1985. They are also availing credit of Cenvat duty paid on inputs and capital goods in terms of the Cenvat Credit Rules 2004.

3. The department has not allowed the credit for structural items such as Angle, MS Channel, Beam, Flat, Joist, Round, Sheet etc., which are considered as input. The penalty was also imposed. Being aggrieved the appellant has filed the present appeal.

4. With this background, we have heard Shri Manish Saharan, Advocate for the appellant and Shri H.C. Saini, DR for the respondent.

5. After hearing both the parties, it appears that an identical issue has appeared before the Tribunal in the following cases:

(i) Mundra Ports & Special Economic Zone Ltd. vs. CCE 2015 (39) STR 726 (Guj.)

(ii) Lafarge India Pvt. Ltd. Vs. CCE Raipur vide Final order No. 53775/2016 dated 27.09.2016.

6. In the case of Lafarge India Pvt. Limited, the Tribunal has observed as:

"We find that the controversy can be laid to rest by making a reference to the decision of the Apex Court in the case of CCE, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. -2010 (255) ELT 481(SC), wherein the Hon'ble Supreme Court has considered an identical issue of steel plates and MS channels used in the fabrication of chimney for diesel generating set. The credit stands allowed in the light of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the said judgment, the Apex Court has referred to the "user test" evolved by the Apex Court in the case of CCE, Coimbatore vs. Jawahar Mills Ltd. -2001 (132) ELT 3 (SC), which is required to be satisfied to find out whether or not particular goods could be said to be capital goods. When we apply the "user test" to the case in hand, we find that the structural steel items have been

used for the fabrication of support structures for capital goods. The appellants have argued that the various capital goods, such as, kiln, material handling conveyor system, furnace etc. cannot be suspended in mid air. They will need to be suitably supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitably worked upon for this purpose. Accordingly, the goods fabricated, using such structurals, will have to be considered as parts of the relevant machines. The definition of 'Capital Goods' includes, components, spares and accessories of such capital goods. Accordingly, applying the "User Test" to the facts in hand, we have no hesitation in holding that the structural items used in the fabrication of support structures would fall within the ambit of 'Capital Goods' as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat Credit".

7. By following our earlier order, we find no reason to differ. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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