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

Appeal No. E/55467/2013-EX[DB]

[Arising out of Order-in-Appeal No. 236/BPL/2012 dated 11/12/2012 passed by the Commissioner of Central Excise, Bhopal]

M/s S.D. Bansal Iron & Steel Pvt. Ltd. ....Appellant

Vs.

C.C.E.,Bhopal ....Respondent

Appearance:

Shri Sumit Kumar Khabya, CA for the Appellant
Sh. G.R. Singh, DR for the Respondent

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

Date of Hearing: 12.01.2017
Date of Pronouncement:30.01.2017

FINAL ORDER NO. 50526 /2017-EX[DB]

Per V. Padmanabhan

The present appeal has been filed against the Order-in-Appeal dated 11.12.2012.The appellant is engaged in the manufacture of "MS TMT Bar" covered under chapter sub heading No. 7206 10 90 for which the main raw materials are MS Ingots & Billets. The present dispute is regarding the Cenvat credit availed by the appellant in respect of dumpers/tippers. These have been used in their factory for movement of ingots, coals etc. Revenue took the view that the appellant was not eligible for credit of dumpers/tippers which are classifiable under Tariff Heading No.

8704 23 19of the Central Excise Tariff Act. Accordingly, demand with reference to credit amounting to Rs 5,19,960/- was disallowed by the Original authority along with payment of interest and penalty of an equal amount. When the issue was challenged before Commissioner (Appeals), he upheld the order of the Original authority. Hence, the present appeal.

2. With the above background, we heard Shri Sumit Kumar Khabya, ld. Counsel for the appellant as well as Shri G.R. Singh, ld. DR appearing for the Revenue.

3. Ld. Counsel submitted that the benefit of Cenvat credit on dumpers/tippers have been allowed by the Tribunal. He cited the following case laws in his support:-

i. **Jindal Stainless Steel Ltd. Vs. Commissioner of Central Excise & Custom (A), Visakhapatnam 2009(245) E.L.T. 244 (Tri. Bang.).**
ii. **Commissioner of C. Ex., Hyderabad Vs. India Cements Ltd. 2009(238) E.L.T. 193 (Tri.- Chennai).**
iii. **Commissioner of Central Excise, Hyderabad Vs. India Cements Ltd. 2005(182)E.L.T.398(Tri.-Bang).**

4. Ld. DR opposed the above view. He argued that the credit of duty paid on dumpers/ tippers have been allowed only when they are used as capital goods. Accordingly, he submitted that the impugned order should be upheld.

5. The appellant has used dumpers/tippers for movement of raw materials such as ingots and Billets within the factory. The movement of coal as well as other finished products from one part of the factory to other have also been handled by making use of dumpers and trucks.

6. There is no dispute on the fact that such equipment has been used for processing and handling of raw materials and finished products within the factory of the appellant. When we look at the definition of capital goods in Rule 2 of the Cenvat Credit Rule, 2002, the view taken by Revenue is that the impugned goods are not classifiable under Chapter 82,84,85,90 or under chapter 68 which are specified as the chapters under which capital goods should fall. However, we note that the definition of capital goods also includes components, spares and accessories of goods specified as capital goods falling under various chapters. The Hon'ble Supreme court in the case of **CCE Vs. Rajasthan State Chemical Works reported in 1991(55) ELT 444(SC)** observed that the processing and handling of raw materials is also in or in relation to manufacture, if integrally connected with further operation leading to manufacture of goods. Accordingly, dumpers/dippers which are used within the factory will be entitled to Cenvat credit as capital goods. Such view also finds support in the Tribunal decisions in **Commissioner of Central Excise Vs. India Cement Ltd. reported in 2005(182) ELT 398 (Tri. Bangalore).**

7. In view of the above discussion, we set aside the Impugned order and allow the appeal.

[Pronounced in the Open Court on 30.01.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
(Member Technical)

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