IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 31.1.2017

Appeal No. E/1042/2011-EX.(DB)

(Arising out of Order-in-Original No. Commissioner/RPR/11/2011 dated 31.1.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur)

C.G. Ispat Pvt. Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance

Shri Abhas Mishra, Advocate - for the appellant

Shri Yogesh Agarwal, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50704/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed by the appellant against the Order-in-Original No. 11/2011 dated 31.1.2011.

2. The brief facts of the case are that during the period under consideration, (December 2004 to July 2009), the appellant was engaged in the manufacture of rolled products of iron and steel falling under Chapter 72 of the Central Excise Tariff and availing Cenvat credit of duty paid on inputs and capital goods used in the manufacture of final products in terms of Cenvat Credit Rules, 2004.

During the period under consideration, the appellant availed credit of duty paid on inputs used in the manufacture of capital goods and components thereof in its factory. But the same was disallowed by the lower authority. Being aggrieved, the appellant is before the Tribunal.

3. With this background, we have heard Shri Abhas Mishra, ld. Advocate for the appellant and Shri Yogesh Agarwal, ld. DR and perused their written submission too.

4. After hearing both the sides, it appears that the issue is squarely covered in favour of the appellant-assessee by the ratio laid down in the case of M/s Lafarge India Pvt. Ltd. in Excise Appeal No. 1754 of 2009 dated 27.9.2016, where it was observed that:

> "15. *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 judgement, 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."

5. The claim of the assessee is also allowed for the reason that it falls prior to 7.7.2009 (before amendment) in Rule 2(k) of Cenvat Credit Rules, 2004. Similar views were taken in the case of ***Petropole India Ltd. Vs. CCE*** – Final Order No. A/51917/2016-EX(DB) dated 18.5.2016.

6. By following our earlier orders (supra), we set aside the impugned order and allow the appeal.

7. In the result, the appeal filed by the appellant is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RM