CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 13.01.2017
Date of Pronouncement: 08.02.2017

Appeal No. E/56960/2013-EX[DB]

[Arising out of the Order-in-Appeal No. 89/2012(CE)-Commissioner dated 31.12.2012, passed by the Commissioner of Central Excise, Jaipur]

M/s. Ultratech Cement Ltd. … Appellant

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Shri Hemant Bajaj, Advocate for the appellant
Present Shri R.K. Manjhi, A.R. for the respondent

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

FINAL ORDER NO.50737/2017

Per V. Padmanabhan:

The appellant is a manufacturer of cement falling under chapter 25 of the Central Excise Tariff Act.

2. The dispute pertains to Cenvat Credit amounting to Rs.87,91,289/- availed by the appellant on certain drawings and designs which were imported by them from Germany. The appellant have undertaken substantial expansion of their cement plant for which several machineries were imported on payment of applicable duties. The drawings and designs were imported for use in the erection, commissioning, operation and maintenance of the cement plant. At the

time of import of the designs and drawings Bill of Entry dated 18.12.2006 was filed for clearance of the same. In the Bill of Entry, the CVD payable was mentioned as nil, however, the Assistant Commissioner (C) clarified that basic customs duty as well as CVD and SAD were paid by the appellant. Cenvat Credit was availed considering these designs and drawings as inputs. Revenue took a view that the Cenvat Credit availed was improper and after issue of show cause notice dated 12.12.2011 the impugned order was passed by the Commissioner Jaipur in which Cenvat Credit was disallowed and the same was ordered to be paid with interest and penalty of an equal amount. Aggrieved by this order the present appeal has been filed.

3. With the above background we have heard Shri Hemant Bajaj, Advocate for the Applicants and Shri R.K. Manjhi, DR for the Respondent.

4. The Ld. Counsel submitted that the Cenvat credit has been correctly availed on drawings and designs in the category of inputs. Such designs and drawings have been made use of for the purpose of erection and commissioning of the cement plant and hence these are to be considered as inputs used in or in relation to manufacture of cement. The demand was also contested on the ground of limitation. He also relied upon several decisions to support their argument:

i) J.K. Cotton SPG & WVG Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur 1997 (91) ELT 34 (SC).

ii) CCE Vs. Rajasthan State Chemical Works, 1991 (55) ELT 444 (SC).

iii) CC & CCE Ghaziabad Vs. Samtel Color Ltd. 2013 (293) ELT 501 (All.)

5. Ld. Dr supported the impugned order.

6. The definition of "input" in Rule 2(K) of the Cenvat Credit Rules as follows:

> *" All goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production."*

7. In addition, components, spares and accessories of capital goods also are permissible under Rule 2(a). What has been imported by the appellant are design and drawings which have been classified under customs Tariff Heading 4906 under the relevant Bill of Entry. In these designs and drawings the general arrangement and location of the various equipments of the cement plant as well as static and dynamic loads of the equipments were indicated. These drawings are meant to be used in designing civil foundation, erection and installation of various machines such as Blending silo, pre heater, calciner, kiln and cooler. Chapter 49 of the Tariff Act deals with printed matter. The drawings and designs have been imported as printed matter but it is on record that for these an amount of EURO 63 lakhs has been paid to the German supplier. From the price paid for these drawings it is clear that the price is not for the printed matter which has been received but for the intangible property in the form of

technical know-how which is to be used for the purpose of setting up of the cement plant. In this view of the matter, the drawings cannot be considered as 'goods' fallings under Chapter 49 since these are intangible property.

8. These drawings do not fall within the definition of inputs in as much as they are not 'goods' used in or in relation to the manufacture of final products directly or indirectly. They can also not be considered as components, spares and accessories of capital goods. These drawings have been used in setting up of the cement plant which in turn consist of various capital goods such as calciner, cooler blender etc. The drawings cannot be considered as part of any of these capital goods. In fact, the complete cement plant which has been erected making use of these designs and drawings did not remain as excisable goods any more in as much as all these capital goods have been embedded to earth on foundation making up the entire cement plant. The property of designs and drawings are intangible and do not fall within the description of either inputs or capital goods. The ld. Commissioner in the impugned order has given detailed reasons for disallowance of such credit, he has held as follows:

> *"The show cause notice mainly proposes to deny the Cenvat Credit on the ground that the cement plant which got erected and commissioned with the help of the drawings and designs became an immovable property, thus outside the scope of capital goods. It's a fact the subject inputs i.e. drawings and designs were not like physical parts used in storage tank or chimney or any other capital goods but it was used as guidance for erecting and commissioning the entire plant which as a whole cannot be considered to be a capital goods. The different parts of the cement plant can qualify to be capital goods and eligible for Cenvat Credit. As per the explanation 2 under the definition of input under rule 2(k) it only means the goods used in the manufacture of capital goods in*

the factory but it cannot be argued that in the factory of the notice the cement plant has been manufactured. The plant was rather erected in the factory out of capital goods already manufactured and brought by them in the factory. Therefore, the arguments put forth by the notice are not tenable on this ground also. Moreover, the case laws cited by them are not directly applicable as in none of the cases the drawings and designs were claimed as inputs. In fact regardless of whether the cement plant erected and commissioned in the noticee's factory qualifies to be called movable or immovable property, the drawings and designs with the help of which the plant was erected and commissioned cannot be said to have been used in the sense of inputs are used. The credit on only those inputs is allowed which are used in manufacture of capital goods and as discussed supra the capital goods were not manufactured by the notice. Therefore, on this ground also the credit availed by the notice on drawings and designs is liable to be disallowed."

9. We are in agreement with the Ld. Commissioner findings and find no reason to take a different view. None of the case laws relied upon by the Counsel are squarely on the issue in the present case. For example, in the case of ***J.K. Cotton SPG & WVG Mills Co. Ltd. (Supra)*** the Hon'ble Supreme Court has considered sales tax matter whose ratio cannot be applied to the present facts of the case. Likewise, the other case laws relied upon by the ld. Counsel are also not on the same issue. In view of the above impugned order is upheld and the appeal is dismissed.

[Order Pronounced in the open court on 08.02.2017]

(**V. Padmanabhan)**
Technical Member

(**Justice Dr. Satish Chandra**)
President

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