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

COURT NO. III

DATE OF HEARING : 24/10/2016.
DATE OF DECISION : 21/02/2017.

Excise Appeal No. 1850 of 2010 with C.O. No. 212 of 2010

[Arising out of the Order-in-Original No. Commissioner/RPR/28/ 2010 dated 31/03/2010 passed by The Commissioner of Central Excise, Raipur.]

M/s API Ispat & Powertech Pvt. Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri Alok Barthwal, Advocate – for the appellant.

Shri Yogesh Agarwal, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 51899/2017 Dated : 21/02/2017

Per. S.K. Mohanty :-

This appeal is directed against impugned order dated 06/03/2010 passed by the Commissioner, Central Excise & Customs, Raipur, whereby Cenvat credit taken by the appellant on the steel items namely angle, channel, beam, plate, flat, joists, HR steel etc. has been denied on the ground that the said disputed goods are not confirming to the definition of either inputs or capital goods for the purpose taking Cenvat credit.

2. The learned Advocate appearing for the appellant submitted that the disputed goods were used for the manufacture of different machinery, equipment and other accessories for the appellant's induction furnace, continuing casting machine and in the power plant upto 04/10/2008. He also produced the Chartered Engineer certificate, showing the details of disputed steel items consumed for erection/manufacture of different machines installed within the factory premise. The learned Advocate has also placed reliance on the following judicial pronouncements to state that the appellant is eligible for Cenvat benefit on the disputed goods :-

(i) **CCE, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd.** reported in **2010 (255) E.L.T. 481 (S.C.)** ;

(ii) **Ramala Sahkari Chini Mills Ltd., UP vs. CCE, Meerut – I** reported in **2016 – TIOL – 20 – SC – CX – LB** ;

(iii) **Mundra Ports and Special Economic Zone Ltd. vs. CCE & CUS** reported in **2015 – TIOL – 1288 – HC – AHM – ST** ;

(iv) **The India Cements Ltd. vs. CCE, Salem** reported in **2015 – TIOL – 2715 – CESTAT – MAD** ;

(v) **CCE, Bangalore vs. SLR Steels Ltd.** reported in **2011 – TIOL – 892 – HC – KAR – CX** ;

(vi) **Singhal Enterprises Pvt. Ltd. vs. CCE, Raipur** reported in **2016 – TIOL – 2451 – CESTAT – DEL.** ;

(vii) **CCE, Raipur vs. Monnet Ispat and Energy Ltd.** reported in **2016 – TIOL – 1934 – CESTAT – DEL.** ;

(viii) **Monnet Ispat & Energy Ltd. vs. CCE, Raipur** reported in **2015 (330) E.L.T. 711 (Tri. – Del.)** ; and

(ix) **CCE, Raipur vs. Jindal Steels & Power Ltd.** reported in **2015 (330) E.L.T. 708 (Tri. – Del.)**

3. On the other hand, the learned DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. We have heard the learned Counsel for both sides and examined the case records.

5. We find that the Adjudicating Authority has denied the Cenvat credit on the steel items mainly on the ground that the goods have been used for erection of plant fixed to earth, which cannot be considered as 'goods' and therefore, Cenvat credit is not admissible. Further, the Adjudicating Authority has not taken cognizance of the Chartered Engineer certificate produced by the appellant, specifying the reason that the same was issued to meet the requirement of the appellant.

6. The definition of input contained in Rule 2 (k) of the Cenvat Credit Rules, 2004 is broad enough to take within its ambit, the goods excepting the few namely, diesel oil, high speed diesel oil and motor spirit, used in or in relation to manufacture of the final product. Explanation 2 appended to the said definition provides

that input include goods used in the manufacture of capital goods, which are further used in the factory of the manufacturer. On perusal of the Chartered Engineer certificate dated 22/10/2008, we find that the details of steel consumed in fabrication/erection of machinery/equipment and other accessories have been mentioned therein. Since the Chartered Engineer has issued a certificate based on the records maintained by the appellant, the same cannot be discarded without reference to any tangible evidence. Since, the disputed goods were used for manufacture/erection of the capital goods within the factory, the same in our view, should be considered as input for the purpose of taking Cenvat credit and immovability of the goods should not be a criteria for denial of Cenvat credit as held by the Hon'ble Karnataka High Court in the case of **SLR Steels Ltd.** (supra) and the decision of this Tribunal in the case of **The India Cements Ltd.** (supra). We also find that the issue involved is no more res-integra in view of the recent decision of this Tribunal in the case of **Singhal Enterprises Pvt. Ltd.** (supra). The relevant paragraph in the said order is extracted herein below :-

> "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* v. *Rajasthan Spinning & Weaving Mills Ltd.,* 2010 (255) E.L.T. 481 (S.C.), 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* v. *Jawahar Mills Ltd.,* 2001 (132) E.L.T. 3 (S.C.), 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. In view of above, we do not find any merits in the impugned order and allow the appeal in favour of the appellant. The Cross Objection stands disposed of.

(Order pronounced in open court on 21/02/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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