**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI**

**COURT-IV**

Date of Hearing/Decision : **21.02.2017**

**Appeal Nos. E/1896/2012**

[Arising out of the Order in Original No. Commissioner/RPR/CEX/31/2012 dated 30.03.2012 passed by Commissioner, Central Excise, Raipur]

M/s. Nalwa Steel & Power Limited … Appellant

Vs.

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

**Appearance**:

Rep. by - Ms. Shreya Dahiya, Advocate for the appellants
Rep. by - Shri R.K. Manjhi, DR for the respondent

**Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)**
**Hon'ble Mr. V. Padmanabhan, Member (Technical)**

**Final Order No. 51916/2017-DB**

**Per Ashok Jindal**

The appellant is in appeal against the impugned Order in Original No. Commissioner/RPR/CEX/31/2012 dated 30.03.2012 passed by Commissioner, Central Excise, Raipur.

2. The facts in brief are that, the appellant are manufacturers of Sponge Iron, M.S. Billet, M.S. Wire Rods, Rib Bars/TMT Bars, etc. chargeable to central excise duty under Chapter 72 of the Central Excise Tariff Act. They avail cenvat credit of central excise duty paid on inputs and capital goods used in or in relation to their manufacturer of finished goods. The dispute in this case is

about eligibility for cenvat credit in respect of items viz. Boiler Parts, Silo System, Boiler Radiation Hopper, Turbine Air Unit, EOT Crane, Hook Conveyor, Materials Handling System, Platform for kiln, coal drier, Stack Structure, cooling tower, Girth Gear, Kiln Gear Box, etc. The appellant had availed cevnat credit amounting to Rs.91,49,180/- in respect of these items during the period from March, 2009 to June, 2009. The Department was of the view that these items are neither inputs nor are capital goods as defined under Rule 2 (a) of the Cenvat Credit Rules, and they would not be eligible for cenvat credit. After issue of show cause notice, the Commissioner vide order-in-original dated 30.03.2012 confirmed the cenvat credit demand as mentioned above along with interest and imposed penalty of equal amount on the appellant under Rule 15 of the Cenvat Credit Rules, 2004 . Against this order of the Commissioner, this appeal along with stay application has been filed.

3. Heard both the sides and perused the record.

4. The ld. Counsel for the appellant submits that they have explained the use of items that these items are essential for functioning of machines and its alignment. It was also submitted that these machines are fabricated and subsequently attached to concrete foundation with the help of nuts and bolts. To this effect, the appellant has also filed Chartered Engineer certificate dated 07.02.2012. As the use of the items has been explained by the appellant, which shows that these items were used for fabrication of machinery parts. We find that the issue is covered by the decision of the Tribunal in the case of *Singhal*

*Enterprises Pvt. Limited vs. CCE, Raipur – 2016-TIOL-2451-CESAT-DEL,* wherein the Tribunal has observed as under:-

> **"12.** We have gone through the judgment of the Hon'ble High Court of Allahabad cited by the Revenue. We find that the Hon'ble High Court has considered the claim of Welding Electrodes under the definition of 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 and have come to the conclusion that the credit will not be allowable under this Rule. However, we find that the credit of duty paid on Welding Electrodes has been held allowable by several decisions of this Tribunal and hence the issue is no more *res integra*. We also find that several High Courts have also allowed such credit considering the same as allowable within the definition of "Input" under the Cenvat Credit Rules. One such reference can be made to the decision of the Hon'ble High Court of Chhattisgarh in the case of *Ambuja Cements Eastern Ltd.* v. *Commissioner of Central Excise, Raipur,* 2010 (256) E.L.T. 690 (Chhattisgarh), = 2010-TIOL-309-HC-CHHATTISGARH-CX, wherein welding electrodes used for repair and maintenance purpose were also held to be cenvatable. Similarly, in the case of *Hindustan Zinc Limited* v. *Union of India,* 2008 (228*)* E.L.T. 517 (Raj.)= 2008-TIOL-408-HC-RAJ-CX, the Hon'ble High Court of Rajasthan allowed the Cenvat credit on the welding electrodes. By following said decision, we hold that the appellants are entitled to the credit on welding electrodes considering them as Inputs.
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> **"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.) = 2010 TIOL-51-SC-CX, 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.) = 2002-TIOL-87-SC-CX, 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.**"**

Further, in the case of *Lafarge India Pvt. Limited vs. CCE, Raipur – 2016-TIOL-2875-CESTAT-DEL*, again the Tribunal has examined the issue and held as under :-

> **"6.** We find that apart from the various other case laws relied upon by the appellant as above, the decisions of Hon'ble Madras High Court in India Cements Limited – 2012 (285) ELT 341 (Mad) = 2012-TIOL-558-HC-MAD-CX, 2014 (310) ELT 636 (Mad.) = 2014-TIOL-1185-HC-MAD-CX = AND 2014 (305) ELT 558 (Mad.) = 2012-TIOL-1118-HC-MAD-CX all on the same set of facts, though with reference to erstwhile Rule 57Q are also relevant. The Hon'ble Supreme Court in *Jayaswal Neco Limited – 2015 (319) ELT 247 (SC)* allowed Cenvat credit of railway tract materials used for handling raw material processed goods. The Tribunal in *Bellary Steel and Alloys Limited vs. CCE, Belgaum – 2005 (180) ELT 92 (Tri. Bang.) = 2015-TIOL-290-CESTAT-BANG* held that Cenvat credit is available on HR sheet, angles, channels etc. used in fabrication and erection of technological structure and blast furnace and material handling system. Such supporting structure are also capital goods and the fact that they are embedded to earth is no reason for denying credit/ credit on input used. The Hon'ble P&H High Court in *CCE, Jullandhar vs. Pioneer Agro Extracts Limited – 2008 (230) ELT 597 (P&H)* held that channels and angles, joint of iron steel used for installation of batch vessel or essential plant and machinery and are eligible for credit as capital goods. The Hon'ble Madras High court in *Thiru Arooran Sugar – 2015-TIOL-1734-HC-MAD.CX* held that credit on MS Plates, angles, channels utilized in construction/ erection of plant were eligible for credit. The High Court observed that the principle laid-down by the Hon'ble Supreme Court in Rajasthan Spinning and Weaving Mills Limited (supra) is applicable to such situation.
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> **7.** We note that the Tribunal has been consistently following the ratio that the steel items when they are used in fabrication of capital goods and their accessories inside the manufacturer premises are eligible for credit by applying 'user test' as evolved by the Hon'ble Supreme Court in Rajasthan Spinning and Weaving Mills Limited (supra). A reference can be made to latest decision of the Tribunal in *Singhal Enterprises Pvt. Limited vs. CC & CE, Raipur vide final order No. 53013/2016 dated 12.08.2016 = 2016-TIOL-2451-CESTAT-DEL.* The findings of the Tribunal are as under:-
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> > **"13.** Now we turn to the question, whether credit is admissible on various structural steel items, such as, MS Angles, Sections, Channels, TMT Bar, etc., which have been used by the appellants in the fabrication of support structures on which various capital goods are placed? The same stands denied by the lower authority. The learned DR has sought disallowance of the same by citing the decision of the Larger Bench in the case of *Vandana Global Ltd.* (supra) and other judgments. Further, he has brought to our notice and emphasized the amendment carried out in Explanation-II to Rule 2(a) which defines the term "Input" with effect from 7-7-2009. It has further been pleaded that the Cenvat credit claimed for the period prior to this will be covered within the decision of the Larger Bench in the case of *Vandana Global Ltd.* (supra).
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> > **14.** The Larger Bench decision in *Vandana Global Ltd.'s* case (supra) laid down that even if the iron and articles were used as supporting structures, they

would not be eligible for the credit. Considering the amendment made w.e.f. 7-7-2009 as a clarification amendment and hence to be considered retrospectively. However, we find that the said decision of the Larger Bench was considered by the Hon'ble Gujarat High Court in the case of *Mundra Ports & Special Economic Zone Ltd.,* 2015 (04) LCX0197 = 2015 (39) S.T.R. 726 (Guj.), wherein it was observed that the amendment made on 7-7-2009 cannot be held to be clarificatory and as such would be applicable only prospectively.

**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.**"**

5. Therefore, we hold that the appellant has correctly taken the Cenvat credit on the items in question. In view of the above, we set-aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any.

[Order dictated & pronounced in open court]

(**V. Padmanabhan**)
Member (Technical)

(**Ashok Jindal**)
Member (Judicial)

**KL.**