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

Date of Hearing/Decision: 3.4.2017

Appeal No. E/51997/2014-DB

(Arising out of Order-in-Original No. Commissioner/RPR/CEX/89-91/2013 dated 30.8.2013 passed by the Commissioner of Central Excise & Customs, Chhattisgarh)

M/s Steel Authority of India Ltd. — Appellant

Vs.

CCE, Raipur — Respondent

Appearance

Shri Hemant Bajaj, Advocate - for the appellant

Shri Dharam Singh, 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. 52730/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Original No. 89-91/2013 dated 30.8.2013. The disputed period is April, 2011 to April, 2012.

2. The brief facts of the case are that during the period under consideration, the appellant was engaged in the manufacture of iron and steel items falling under Chapter 72 and 73 of the First Schedule to Central Excise Act, 1985 respectively. The appellant was availing

the Cenvat credit on inputs and input services but the same were not allowed. Being aggrieved the appellant has filed the present appeal.

3. With this background, we have heard Shri Hemant Bajaj and Shri M.R. Sharma, ld. Counsels for the parties.

4. We have also perused the case laws and material available on record. We decide the issues as under:

(I) <u>Railway Track Material (Issue No. 1)</u>

5. In the impugned order, para 5.3 deals with this aspect where a claim of Rs.79,59,536/- was denied pertaining to the Cenvat credit

6. After hearing both the parties and on perusal of record, it appears that the identical issue has come up in the assessee's own case for the earlier period (Steel Authority of India in Appeal No. 55418/2013 dated 8.12.2016) where it was observed that :

> "6. On the first issue regarding eligibility of the Cenvat credit on railway track materials used and installed inside the factory premises, we note that these railway lines created by using these materials were exclusively used by the appellants for movement of the raw materials, processed materials, etc. in the course of manufacture of dutiable final products. The railway track is part and parcel of material handling system integrally connected with the production on movement of dutiable goods. We note that the Hon'ble Supreme Court in ***Jayaswal Neco Ltd. Vs. CCE, Raipur*** – 2015 (319) ELT 247 (SC) examined similar sets of facts and

allowed credit under the erstwhile Central Excise Rules, 1944. The Hon'ble Supreme Court examined in detail the expression "in the manufacture of goods" and held that the expression "shall include all processes", which are directly related to the actual production. The goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The Hon'ble Supreme Court applied 'user criteria' to hold that the use of railway tracks is related to the actual production of goods and without the use of railway tracks, commercial production would be inexpedient. Railway tracks used in transporting raw materials and manufactured metals was considered as a handling system for raw materials and processed materials. Considering the principle and the final finding of the Hon'ble Supreme Court in the above case, we find that the denial of credit to the appellant is not justifiable. In fact, the Tribunal applied the above principles laid down by the Hon'ble Supreme Court in the appellant's own case in a bunch of matters reported as ***Tara Steels Ltd.*** – 2016 (335) ELT 303 (Tribunal-Kolkata) and allowed the credit. It is also noted that after the decision of the Hon'ble Supreme Court in Jayaswal Neco Ltd. (supra), the jurisdictional Commissioner vide his order dated 7.8.2015 dropped the demand against the appellant for latter periods. The Tribunal has allowed the credit on railway track materials as integral handling equipments in various other cases also. Reference can be made to Aditya Cement – 2016-TIOL-2582 (CESTAT-Delhi), Jindal Steels and Powers Ltd. – 2015-TIOL-2115 (CESTAT-Delhi) and Ultra Tech Cement Ltd. – 2016-TIOL-1967-CESTAT-Hyderabad).

By following our earlier order (supra), we set aside the impugned order and allow the claim of the assessee pertaining to this issue.

(II) Lighting equipment, fittings and fixtures. (Issue No. 2)

7. In the impugned order, para 5.4 is dealing with this aspect where Cenvat credit of Rs.15,26,202/- has been denied.

8. After hearing both the sides and on perusal of record, it appears that the identical issue has come up in assessee's own case (supra), where it was observed that :

> ´7. Regarding admissibility of credit on lighting equipments, fittings and fixtures, we note that these items are classifiable under the eligible category of Chapters 84, 85 and 9405 of the Tariff and their usage has not been disputed in an industrial operations involving steel production. Admittedly, 24 hours illumination of shop floors is essential requirement and as such, the role of these High Mast Lighting Equipment has to be recognised in the process of manufacturing activity. Reasoning followed by the Original Authority that these light fittings become part of civil structures and hence cannot be allowed credit will not stand close scrutiny. The various duty paid light fittings and fixtures were brought into the factory for installation, which is ultimately for proper illumination of the manufacturing of shop floors for 24 hours operation. To consider that these items have become immovable property is without any substance. As noted in the appellant's own case, such credit was allowed for the subsequent period by the Tribunal vide Final Order dated 28.6.2016."

9. By following our earlier order (supra), we set aside the impugned order in this regard and allow the claim of the appellant.

(III) Refractory cement blocks, plates; (Issue No. 3)

10. This issue has dealt with in the impugned order in para 5.5. where Cenvat credit of Rs.5,91,850/- has been denied. During the course of argument, the ld. Counsel for the appellant relied on the order of the Tribunal in the assessee's case (Steel Authority of India Vs. CCE - 2008 (227) ELT 265 (Tri.-Del.), where it was observed that:

> "Credit in respect of Mafrolite, High Alumina Refractory Cement and Aluminium Ferrules was denied on the ground that High Alumina Refractory and Mafrolite is used in the lining of the furnace as refractory material. We find that this issue is settled by the various decisions of the Tribunal in favour of the assessee. Refractory material is entitled for credit as held by the Tribunal in the case of *Hindalco Industries Ltd.* v. *CCE, Allahabad* reported in 1996 (88) E.L.T. 519 (Tribunal). In view of the above decision, the denial of credit is not sustainable, hence set aside.

11. On the other hand, Shri Dharam Singh, ld. DR for the department submits that facts of the earlier order (supra) are quite different. Hence, ratio laid down (supra) is not applicable in the instant case.

12. By considering the rival submissions, we modify the impugned order in this regard and remand the issue to the adjudicating authority to decide the same de novo but by providing an

opportunity of hearing. Additional evidence, if need be, may be admitted as per law.

(IV) <u>Welding Electrodes under Chapter 8311 (Issue No. 4)</u>

13. This issue has been dealt with in the impugned order in its para 5.1. where the Cenvat credit of Rs.32,77,255/- has been denied to the appellant.

14. After hearing both the parties, it is evident that the issue is covered by the ratio laid down by the jurisdictional High Court in the case of ***Ambuja Cements Eastern Ltd. Vs. CCE, Jaipur*** – 2010 (256) ELT 690 (Chhattisgarh) which was followed by the Tribunal in the appellant's case (***Steel Authority of India Vs. CCE*** – 2016 (343) ELT 805 (Tri.-Del.).

15. By following our decision (supra), we set aside the impugned order and allow the claim of the appellant.

(V) <u>Steel Items beam falling under Chapter 72 and Misc. other items. (Issue No. 5 & 6)</u>

16. Both issues have been dealt with in the impugned order in para 5.6. and 5.7 where the Cenvat Credit of Rs.4,79,296/- and Rs. 21,86,338/- respectively have been denied.

17. After hearing both the sides and on perusal of record, it appears that no detailed reasons given in the impugned order pertaining to the denial of Cenvat credit in question. Hence, we set aside the impugned order pertaining to these items and remand the matter to the adjudicating authority to decide the same de novo but by providing reasonable opportunity to the appellant. Fresh evidence, if need be, may be admitted as per law.

18. In the result, appeal filed by the appellant is partly allowed as stated above.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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