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/52130/2014-DB

(Arising out of Order-in-Original No. Commissioner/RPR/CEX/128/2013 dated 31.12.2013 passed by the Commissioner, Central Excise & Customs, Raipur)

M/s Ind Synergy Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance

Shri Manish Saharan, Advocate - for the appellant

Shri H.C. Saini, 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. 52729/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the impugned order No. 128/2013 dated 31.12.2013. The period of dispute is 2005-2006 to September, 2010.

2. The brief facts of the case are that during the period under consideration, the appellants were engaged in the manufacture of sponge iron. They took Cenvat credit in respect of structural steel items like MS angles, channels, beams and plates etc. The same was denied by the department. The department has demanded the duty

along with penalty. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Manish Saharan and Shri H.C. Saini, ld. Counsels for the parties.

4. After hearing both the parties, it appears that the identical issue has come up before the Tribunal in the cases of ***M/s Lafarge India Pvt. Ltd. Vs. CCE*** – Appeal No. E/1754/2009 dated 26.8.2016 and ***M/s Singhal Enterprises Pvt. Ltd. Vs. CCE*** - 2016 (341) ELT 372 (Tri.-Del.), 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* 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. By following our earlier order (supra), we find no merit in the impugned order. The same is hereby set aside.

6. 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

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