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

Date of Hearing/Decision: 7.4.2017

Appeal No. E/3008/2011-DB

(Arising out of Order-in-Appeal No. 155/RPR-I/2011 dated 28.9.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur)

M/s Nandan Steels & Power Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance

Shri Kumar Vikram, Advocate - for the appellant

Shri M.R. Sharma, 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. 52903/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 155/2011 dated 28.9.2011.

2. The brief facts of the case are that the appellant is engaged in the manufacture of re-rolling of iron and steel falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant during the period June, 2009 to August 2009 has manufactured 44.440 MTs of structural items namely, MS angles, MS channels, joist which were used captive consumption in their factory for production of final

product but without payment of excise duty claiming exemption under Notification No. 67/95-CE dated 16.3.95. The Department was of the view that the appellant was not eligible for benefit under the Notification because MS channels, MS angles, joist etc. were not covered under the definition of 'capital goods' as defined under Cenvat Credit Rules, 2004. So, the Department had issued show cause notice raising duty demand of Rs.1,14,412/- with interest in respect of aforesaid goods used for captive consumption. Notice also proposed to impose penalty. The appellant contested the show cause notice claiming exemption under Notification No. 67/95-CE. The jurisdictional Assistant Commissioner however, did not accept the plea of the appellant and confirmed the duty demand raised vide the show cause notice with interest and also imposed equal amount of penalty. Appeal preferred by the appellant against the order in original was dismissed by the Commissioner (Appeals) vide impugned order dated 18.1.2012. Hence, the matter is before the Tribunal.

3. During the course of argument, Shri Kumar Vikram, ld. Advocate for the appellant has drawn our attention to the Notification No. 67/95-CE and submitted that the benefit of this Notification is also available to the manufacturer of goods falling under first schedule to the Central Excise Tariff Act, 1985 other than light diesel oil and high speed diesel oil commonly known as petrol

provided those goods are used captively as inputs within the factory of production in or in relation to the manufacture of final product specified in the first schedule to the Central Excise Tariff Act, 1985. Ld. Counsel also submitted that MS angles, channels, joist were admittedly produced within the factory and used captively for support structure for main production plant. As such, the Notification is squarely applicable and the appellant was right in clearing those products for captive consumption without payment of duty.

4. On the other hand, Shri M.R. Sharma, ld. DR for the respondent has contended that the benefit of exemption Notification No. 67/95-CE has been rightly denied to the appellant for the reason that the subject goods M.S. angles, Channels, joist etc. were not capital goods as defined under Rule 2(a) of Cenvat Credit Rules, 2004 and those goods have not been used as inputs for manufacture in or in relation to the manufacture of final product of the appellant. Ld. DR has relied upon the judgement of the Supreme Court in the matter of ***Saraswati Sugar Mills Ltd. Vs. CCE, Delhi-III*** – 2011 (270) ELT 465 (SC).

5. We have considered the rival contentions and perused the record. The point of controversy in this appeal is whether or not the appellant is entitled to exemption from excise duty in respect of MS

angles, MS channels, joist etc. manufactured by him and captively consumed in the factory of production.

6. Notification No. 67/95-CE dated 16.3.1995 provided for exemption of excise duty on certain categories of captively consumed goods used within the factory of production which reads thus:

> "Exemption to all capital goods and specified inputs captively consumed within the factory of production – In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises Act, 1944 (1 of 1944) read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (hereinafter referred to as the Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts-
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> (i) capital goods as defined in the CENVAT Credit Rules, 2002 manufactured in a factory and used within the factory of production;
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> (ii) goods specified in column (1) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (2) of the said Table;
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> from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) or additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act:
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> Explanation*************************

Description of inputs	Description of final products
All goods falling under the First schedule to the Central Excise Tariff Act, 1958 (5 of 1986), other Light diesel High speed diesel oil and motor spirit, commonly	All goods falling under the First Schedule to the Central Excise Tariff Act 1985 (5 of 1986) other than matches

known as petrol

On bare reading of the above, it is evident that all capital goods and specified inputs, detailed in the Table referred to above, manufactured and captively used within the factory of production are eligible to exemption from excise duty. In the instant case, the benefit of notification has been denied to the appellant on the ground that MS angles, MS channels, joist etc. do not fall within definition of capital goods or components of capital goods or inputs; that aforesaid goods have been used for manufacture of coal, elevator, chamber separator, technological structure of gasifier which is a part of pre-heating furnace and since the goods in question have been used for manufacture of support structure those cannot even be termed as inputs eligible for the benefit under Notification. Aforesaid conclusion of the adjudicating authority as also the Commissioner (Appeals) in our view is **prima facie** flawed for the reason that he has failed to appreciate that the coal elevator, chamber separator and coal gasifier are essential component of the production unit of the appellant. Undisputedly, the goods in question have been used for above purpose as such prima facie, it appears that the goods have been used in relation to the manufacture of final product of the assessee.

7. Judgment cited by the respondent is of no avail to him for the reason that Hon'ble Supreme Court while deciding the appeal did not

consider the argument of the assessee in that case that iron and steel structures were fabricated at site work for use of construction of various machinery and therefore, could be classified under sub-heading 7308.50 under Chapter 73 of the Schedule to the Central Excise Tariff Act which attracts nil rate of duty on the ground that this issue was neither raised nor canvassed by the assessee before the Tribunal

8. Further, it appears that identical issue has come up before the Tribunal in the case of ***SKS Ispat and Power Ltd. Vs. CCE*** **–** 2016-TIOL-2769-CESTAT-DEL dated 16.9.2016, where it was observed that :

> "9.2 From the language of the Notification, prima facie, it appears that the appellant is entitled to the benefit of Notification No. 67/95-CE as the iron and steel items like angles, channels, beams etc. have been claimed to be captively consumed in the fabrication of structure of capital goods. When the details submitted by the appellant was not examined by the Commissioner then we are of the view that matter needs fresh adjudication. Hence, this matter is remanded to the original adjudicating authority who will decide the issue de novo after examining all the records of evidence of use and consumption of subject items, if not already produced, the same are to be produced by the appellant before the original adjudicating authority within one month from the date of receipt of this order and thereafter within next two months, the original adjudicating authority shall pass appropriate orders."

9. By following our earlier decision (supra), we set aside the impugned order and remand the matter to the original authority with the same direction (supra).

10. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in open Court)

(Ashok K. Arya) (Justice Dr. Satish Chandra)
Member (Technical) President

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