CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 17.04.2017
Date of Pronouncement: 16.05.2017

Appeal No. E/55600/2014-EX[DB]
[Arising out of the Order-in-Appeal No. 167-168/RPR-I/2014 dated 30.07.2014, passed by the Commissioner of Central Excise, Chhattisgarh]

C.C.E. Raipur … Appellant

Vs.

M/s. Ind Synergy Ltd. ... Respondent

Appearance:

Present Shri H.C. Saini, DR for the appellant
Present Shri Ranjeet Ranjan, Proxy Counsel for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 53328/2017

Per V. Padmanabhan:

The present appeal is filed against the Order-in-Appeal No. 167-168/2014 dated 30.07.2014, passed by the Commissioner (A) Chhatisgarh.

2. The respondent is engaged in the manufacture of Sponge Iron. The respondent engaged M/s. Cethar located in the factory premises of the respondent, for manufacture of supporting structure of iron and steel for use with boilers. M/s. Cethar fabricated iron and steel structures, classified the same under 840209020 as boiler components and assessed and paid central excise duty thereon. The Respondent availed Cenvat Credit on

such goods received from M/s. Cethar amounting to Rs.12,96,436/-. Revenue took the view that the goods fabricated and supplied by M/s. Cethar were in the form of Splice Plate, Tie Beam, Platform support column, Buckstay Beam, Pope, Base plate, Channel, etc. which were identifiable as goods falling under Chapter heading 7308.9010. Further, they took the view that such goods cannot be considered as capital goods and proceeded to disallow such cenvat credit. The order passed by the Original Authority disallowing such credit was challenged before the Commissioner (A) who vide the impugned order allowed the Cenvat Credit. Aggrieved by the impugned order Revenue has filed the present appeal.

3. With the above background, we have heard Shri H.C. Saini, DR for the appellant. None appeared on behalf of the respondent.

4. From the records, we find that the fabricated structures supplied by M/s. Cethar on payment of duty has been utilized as supporting structures for capital goods such as boilers. The Ld. Commissioner (A) in the impugned order has allowed the benefit to the respondent. His findings in this regard are as follows:

> *"In the instant case, I find that M/s. ISL had furnished sufficient documentary evidences such as purchase order, invoices, etc. evidencing the description and quantity of items viz. Air Ducting, Electrostatic Boiler integral, Gas ducting, bunker, supporting structure etc. received by them from M/s. Cethar and used for manufacture of parts of boiler. These are essential components of the boiler and the structure parts are used as component parts of boiler and without these the boiler cannot be installed and function for use in the manufacture of final product. These items are to be treated as essential component of the boiler and would be covered by the definition of capital goods under Rule 2(a) of Cenvat Credit Rules, 2004. Further, components and*

accessories of the capital goods can be of any tariff heading and need not be the tariff heading specified in Rule 2(a)(A). Denial of Cenvat Credit on the ground that these items are not covered under chapter 84 as per the definition of capital goods as given under rule 2(a)(A) of the Cenvat Credit Rules 2004 is not sustainable. In the instant case, the disputed structural items falling under chapter 72 & 73 of Central Excise Tariff Act 1985 have been used as component parts of the boiler. When there is no dispute that boiler is classified as capital goods under the definition of capital goods, then all its accessories, parts and components will also fall under chapter 82,84,85 and 90 etc. of the Central Excise Tariff Act 1985. It is a settled law that components and accessories of the capital goods can be of any heading not necessarily of the tariff heading specified in the definition of capital goods. Therefore, even if the items falling under chapter 72 & 73 ibid, are used as part of machinery falling under chapter 84, the same would have to be treated as capital goods, since the steel structural items, are used as part of the boiler. Though the adjudicating authority has said that the disputed structural steel items / supporting structures were used for laying of foundation or making of structures for support of capital goods, but has not revealed and adduced any material evidence in support of his decision, in his impugned order. The finding, must have been based on some material evidence and should not be simply assumed, as it appears from the order of the adjudicating authority and hence the same is not convincing."

5. We also note that an identical issue pertaining to the same respondent for earlier period came up before the Tribunal in Appeal No. E/52130/2014 dated 03.04.2017. In the said appeal the Tribunal vide final order no. 52729/2017 dated 03.04.2017 allowed the benefit to the respondent by relying upon the Tribunal's decision in the case of ***M/s. Lafarge India Pvt. Ltd. Vs. CCE vide appeal no. E/1754/2009 dated 26.08.2016*** which is as follows:

"3. 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."*

6. By following the earlier order (supra), we find no reason to interfere with the impugned order which is upheld. Consequently, appeal filed by the Revenue is rejected.

[Order Pronounced in the open court on 16.05.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu