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

COURT NO. IV

DATE OF HEARING : 26/05/2017.
DATE OF DECISION : 26/05/2017.

Excise Appeal No. 50095 of 2014

[Arising out of the Order-in-Appeal No. 117 (VC) CE/JPR-I/2013 dated 09/10/2013 passed by The Commissioner (Appeals), Central Excise Commissionerate, Jaipur – I.]

M/s Mangalam Cement Ltd. Appellant

Versus

CCE, Jaipur – I Respondent

Appearance

Ms. Rinky Arora, Advocate – for the appellant.

Shri Dharam Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53550/2017 Dated : 26/05/2017

Per. Anil Choudhary :-

The issue in this appeal filed by the appellant manufacture of cement is whether they are entitled to Cenvat credit on dumpers and locomotive.

2. The appellant by the letter dated 16/12/2007 addressed to the Assistant Commissioner claimed availment of Cenvat credit in

respect of duty paid on dumpers classifiable under chapter heading 87 as inputs which were used for transportation of limestone from the captive mines to crushers/hoppers which are installed inside the factory. The appellant also stated that credit in respect of dumpers may be allowed to them as input under Rule 2 (k) of Cenvat Credit Rules, 2004.

3. Vide and another letter dated 12/03/2008, the appellant also claimed Cenvat credit in respect of duty paid on locomotive engines falling under Chapter Heading No. 86 used for hauling the inputs/raw material from the exchange yard to the place of manufacture of clinker/cement in their factory and also claimed that credit in respect of locomotive engine may be allowed as input under Rule 2 (k) of Cenvat Credit Rules 2004. The said claims by the appellant were rejected by the Adjudicating Authority vide letter dated 19/03/2009. Thereafter, appellant being aggrieved, filed appeal before Commissioner (Appeals) who vide order-in-appeal dated 09/10/2013, held that the Adjudicating Authority has breached the provisions of natural justice while deciding the issue against the appellant without issue of show cause notice and remanded to the Assistant Commissioner.

4. In compliance to the order of remand, in the second round the appellant was called upon to show cause why the credit on dumpers and the locomotive engine should not be held as inadmissible under Rule 2 of Cenvat Credit Rules, 2004. And vide

order-in-original, in the second round dated 31/03/2012, the Assistant Commissioner vide order-in-original was pleased to reject the claim. Being aggrieved, the appellant had filed the appeal before Commissioner (Appeals) who vide the impugned order had been pleased to reject the appeal, observing that the appellant have requested for availment of Cenvat credit on dumpers classifiable under Chapter Heading 87 which are used for transportation of limestone from the captive mines to crushers/hoppers installed inside the factory. Further credit on locomotive engine falling under Chapter Heading 86 used for hauling inputs etc. from the exchange yard to the place of manufacture in the factory. The said engine is also used by the appellant for hauling of railway wagon loaded with cement manufactured by them to the point of exchange yard. Considering the definition under Rule 2 (k) of Cenvat Credit Rules, 2004 readwith Rule 2 (a) definition of capital goods, the learned Commissioner found that only in case of those goods which are used in or in relation to the manufacture of final goods within the factory of production can be treated as inputs. On the other hand, capital goods have been specifically defined to be capital goods, only for all goods falling under Chapter 82, 84, 85, 90, Heading number 68.02, 6801.10 of the First Schedule to the Central Excise Tariff Act. Further observed that dumpers falling under Chapter Heading No. 87 and locomotive engine falling under Heading No. 86 do not find space in the aforesaid specified chapters to be either the capital goods or the inputs. Further observed that it is clear that dumpers and the locomotive engines are not being used in the factory of production/plant. Referring to ruling of Hon'ble Supreme Court in **Maruti Suzuki Ltd. vs. CCE, Delhi – III** reported in **2009 (240) E.L.T. 641 (S.C.)** where it is held that the crucial requirement is that the goods must be used in or in relation to the manufacture of final product to qualify as an input and that this pre-supposes that the element of manufacture must be present. The second explanation to the definition in Rule 2 (k) makes it clear that only goods used in the manufacture of capital goods which are further used in the factory in the manufacture would qualify as input. The said explanation puts it beyond doubt when the goods are used in the in the manufacture of capital goods, which are thereafter used in factory, they do not qualify as inputs.

5. Being aggrieved the appellant is before this Tribunal. The learned Counsel for the appellant urges that the issue is no longer res-integra and Division Bench of this Tribunal in **M/s SD Bansal Iron and Steel Pvt. Ltd. vs. CCE, Bhopal** reported in **2017 – TIOL – 784 – CESTAT – DEL.** have held in the said case that the appellant has used dumpers/tippers for movement of raw materials such as ingots and billets within the factory. Movement of coal as well as other finished products from one part of the factory to the other have also been handled by making use of dumpers and tippers. Further, Hon'ble Supreme Court in the case of **CCE vs. Rajasthan State Chemical Works** reported in **2002 – TIOL – 66 – SC – CX – LB** observed that

the processing and handling of raw materials is also in or in relation to manufacture, if integrally connected with further operation leading to manufacture of goods. Accordingly, dumpers tippers which are used within the factory will be entitled to Cenvat credit as capital goods. So far the issue of credit on locomotive engine is concerned, the learned Counsel placed reliance on the coordinate Bench ruling of this Tribunal in the case of **CCE, CUS & ST, BBSR – I vs. Bhushan Steel Ltd.** reported in **2012 (286) E.L.T. 745 (Tri. – Kolkata)**, wherein the issue was of credit of duty paid on diesel locomotive used within factory premises. It was held that diesel locomotive used to carry molten metals in torpedo ladle car in the process of manufacturing of iron and steel products in the integrated steel plant, having railway siding within the factory premises and laid down lines within the factory connecting one plant to another plant for movement of raw material, semi-finished and finished goods, Cenvat credit of duty paid on the diesel locomotive is admissible in terms of Rule 3 of Cenvat Credit Rules, 2004.

6. The learned AR for Revenue have relied on the impugned order.

7. Having considered the rival contentions, we are satisfied that the rulings relied upon by the Counsel for the appellant cover the facts in the present appeal squarely on all fours. Accordingly, following the precedent rulings of this Tribunal and Hon'ble Supreme Court, as aforementioned, we allow this appeal

and set aside the impugned order. The appellant is entitled to consequential benefits in accordance with law.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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