

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 29.05.2017

Appeal No. E/161/2012-SM& E/424/2012-SM

[Arising out of the Order-in-Appeal No. 34/RPR-II/2011 dated 19/10/2011, passed by the Commissioner (Appeals-II), Customs and Central Excise, Raipur (C.G.)

Crest Steel & Power Pvt. Ltd ... Appellant

Vs.

CCE, Raipur ... Respondent

&

CCE, Raipur ... Appellant

Vs.

Crest Steel & Power Pvt. Ltd ... Respondent

Appearance:

Present Shri Abhishek Jajoo, Advocate for the appellant
Present Shri Sanjay Jain, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53601-53602/2017

Per Ashok K. Arya :

- 1.** *M/s Crest Steel and Power Pvt. Ltd* has filed an appeal against Order in Appeal no. 34/2011 dated 19/10/2011 whereunder Cenvat credit

on steel structures used in the manufacturing of supporting structurals has been denied. The period involved is from August, 2007 to October, 2009.

1.1. The revenue has also filed cross appeal against the same Order in Appeal contesting the dropping of the demand based on non-application of extended period clause

2. Both sides represented by the Ld. Counsel, Shri Abhishek Jajoo for the appellant and Shri Sanjay Jain for the revenue have been heard.

3. After having carefully considered the facts of the case and the submissions of both the sides, it appears that subject matter is covered by Hon'ble Madras High Court decision in case of *India Cement Ltd .Vs CESTAT, Chennai* 2015 (321) ELT209 (Madras), whereunder the Hon'ble Madras High Court has observed as under :

9. It is not in dispute that the impugned goods were used for fabrication of structurals to support various machines like crusher, kiln, hoopers, etc., and that without these structurals, the machinery could not be erected and would not function.

10. In the case of *Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*, reported in 2010 (255) [E.L.T.](#) 481, relied on by the learned counsel appearing for the assessee, the Apex Court, while dealing with the issue in question, in Paragraph Nos. 7 and 8, held as follows :

“7. In the present case, it is seen that the items in question were used in the erection of various machineries such as, - new additional Electrostatic Precipitator for raw mill project, additional fly ash handling system, MMD crusher etc. for the Dry Process Cement Manufacturing Plant. It is evident that MS Angles, MS Beams, MS Channels etc. were used in the erection of machineries it become component of the same, which are integral part of Dry Process Cement Manufacturing Plant. It is noted that Fly Ash handlish system is a pollution control equipment and particularly mentioned in Rule 2(a)(A)(ii) of Rules, 2004. The allegation in the above show cause notice that the Chapter Heading of these items were not covered under Rule 2(a) of the Rules, 2004, is not sustainable, in respect of pollution control equipments because the rule does not specify the tariff headings under which pollution control equipment should be falling. The appellant

established that these items were used for erection of capital goods namely Dry Process Cement Manufacturing Plant, which falls under Chapter 84, as mentioned in Serial No. (i) of Rules 2(a)(A). Thus, the items in question are covered in serial No. (iii) of Rules 2(a)(A) of the Rules, C.B.E. & C. has clarified that all parts, components, accessories which are to be used with capital goods in serial (i) and (ii) of Rules 2(a)(A) and classifiable under any chapter heading are eligible for availment of Cenvat credit. A plain reading of serial (iii) cannot lead to a different conclusion either.

8. After considering the use of the goods in question, in our considered view, the present case is covered by the decision of the Hon'ble Madras High Court in appellant's own case as referred above. We have also noticed that the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. (supra) as relied upon the Hon'ble High Court in the appellant's own case, allowed Modvat credit on MS channels, steel plants etc. as capital goods used for erection of chimney for diesel generating set. The findings of the Commissioner that these are structures fixed to earth with concrete foundations and are immovable appears to be beyond the scope of the show cause notice. So, the case of M/s. Triveni Engineering & Industries Ltd. (supra) as relid upon by the learned AR is not applicable in the present case."

11. As far as the reliance placed on the decision reported in 2011-TIOL-73-SC-CX = 2011 (270) [E.L.T.](#) 465 (S.C.) (*Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi - III*) in Civil Appeal No. 5295 of 2003, dated 2-8-2011 by the learned Standing Counsel appearing for the Revenue is concerned, we find that this Court had earlier considered the case of the assessee in two similar cases of the previous assessment years in C.M.A. No. 1301 of 2005, dated 31-12-2012, where a reference was made to an order passed earlier in respect of the very same assessee. While dismissing the appeal filed by the Revenue, the Division Bench of this Court held as follows :

"8. Even though learned standing counsel appearing for the Revenue submitted that the judgment in the assessee's own case reported in AIT-2011-358-HC (*The Commissioner of Central Excise v. M/s. India Cements Limited*) had been appealed against, as of today, there are no details; in any event, the fact herein is that the Revenue does not controvert the facts found by the Assistant Commissioner that the impugned goods were used for fabrication of structurals to support various machines like crusher, kiln, hoppers, pre-heaters conveyor system etc. and that without these structurals, the machinery could not be erected and would not function.

9. In the decision reported in AIT-2011-358-HC (*The Commissioner of Central Excise v. M/s. India Cements Limited*), pointing out to Rule 57Q and the interpretation placed by the Apex Court in the decision reported in 2010 (255) [E.L.T.](#) 481 (*Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*) and in particular Paragraph Nos. 12 and 13, wherein the Apex Court had applied the user test by following the *Jawahar Mills's* case, this Court held that steel plates and M.S. Channels used in the fabrication of chimney would fall within the ambit of "capital goods". In the face of this decision in the assessee's own case there being no new circumstance or decision in favour of the Revenue, we do not find any good ground to take a different view herein too.

10. As far as the reliance placed by the Revenue on the decision reported in 2011 (270) [E.L.T.](#) 465 (S.C.) (*Saraswati Sugar Mills v. Commissioner of*

C.Ex., Delhi-III) is concerned, we do not think that the said decision would be of any assistance to the Revenue, considering the factual finding by the Tribunal therein in the decided case that the machineries purchased by the assessee were machineries themselves. Thus, after referring to the decision reported in 2010 (255) [E.L.T.](#) 481 (*Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*), the Apex Court held that in view of the findings rendered by the Tribunal that the machineries were complete and having regard to the meaning of the expression “components/parts”, with reference to the particular industry in question, the Apex Court rejected the appeal filed by the assessee.

11. Thus going by the factual finding, which are distinguishable from the facts found by the authorities below in the case on hand, we have no hesitation in rejecting the Revenue’s appeal, thereby confirming the order of the Tribunal.

12. Learned standing counsel appearing for the Revenue pointed out that the Tribunal had merely passed a cryptic order by referring to the earlier decisions. We do not think that this would in any manner prejudice the case of the Revenue, given the fact that on the identical set of facts, the assessee’s own case was considered by this Court and by following the decision reported in 2010 (255) [E.L.T.](#) 481 (*Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*), the Revenue’s appeal was also rejected. In the circumstances, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, C.M.P. No. 16107 of 2005 is also dismissed.”

12. From a perusal of the above said judgment, it is seen that there is no change in the circumstance and this Court had already considered the issue and held that the decision reported in 2011-TIOL-73-SC-CX = 2011 (270) [E.L.T.](#) 465 (S.C.) (*Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi - III*) in Civil Appeal No. 5295 of 2003, dated 2-8-2011 is distinguishable on facts. This Court applied principles laid down in the decision reported in 2010 (255) [E.L.T.](#) 481 (*Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*) and held that the Tribunal was justified in allowing the assessee’s contention in respect of the very same assessee.

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15. Accordingly, following the principles laid down in the decision reported in 2010 (255) [E.L.T.](#) 481 (*Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*) and the earlier decisions of this Court in C.M.A. No. 3101 of 2005, dated 13-12-2012 and C.M.A. No. 1265 of 2014, dated 10-7-2014, we are inclined to allow the appeal, thereby set aside the order of the Tribunal. Accordingly, this civil miscellaneous appeal stands allowed. No costs. Consequently, M.P. No. 1 of 2011 is closed.

3.1. The Tribunal in the case of *Singhal Enterprise Pvt. Ltd Vs CCE Raipur* 2016 (341) ELT 372 (Tri- Delhi) has also held that structural steel items used in fabrication of support structurals are to be treated as parts of capital goods and are eligible for claiming Cenvat credit by the manufacturers. The Tribunal in the said decision has observed as under:

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 suitable supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitable 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.

3.2. In the light of above discussions and following Hon'ble Madras High Court and Tribunal's decisions (supra), the subject input items are held to be eligible for claiming Cenvat credit.

4. In the result, the impugned order is modified to above effect and appeal filed by *M/s Crest Ltd Power Pvt. Ltd* is allowed and the appeal filed by the Revenue is rejected as without merits.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

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