IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/2619/2012-EX [SM]

[Arising out of Order-in-Appeal No.90/RPR-I/2011 dated 23.05.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur]

For approval and signature:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Cosmos Castings India Ltd. …Appellant

Vs.

C.C.E., Raipur … Respondent

Present for the Appellant : Ms. Aastha Gupta, C.A.
Present for the Respondent: Shri. R.K. Mishra, Advocate

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 29/11/2016

FINAL ORDER NO. __56499/2016___

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the manufacture of various iron and steel products, falling under Chapter 72 of the Central Excise Tariff Act, 1985. During the period November, 2004 to March, 2009 the appellant had availed cenvat credit on various duty paid goods namely, M.S. Channels, beams, joys, round, sheets, angles, plates, rails, sheets, squares and coils etc. classifying the same as either inputs or capital goods. Taking of cenvat credit was denied by the Department on the ground that the same are not confirming to the definition of either inputs or capital goods, as defined in the Cenvat Credit Rules, 2004.

2. Ms. Astha Gupta, ld. Consultant appearing for the appellant submits that the disputed goods were used for manufacture/fabrication of capital goods and there components, installed within the factory. Thus, he submits that the disputed goods should merit consideration as inputs, as well as capital goods, for the purpose of availment of cenvat credit. The ld. Consultant has produced the Certificate dated 18.11.2010 and 21.08.2012 issued by M/s.Prakash Upadhyay, the Chartered Engineer, showing the particulars of disputed goods, used for manufacture and fabrication of various capital goods and components, installed in the factory. However, such certificates produced by the appellant were not considered by the authorities below and the cenvat demand was confirmed against the appellant. She relies on the decision of this Tribunal in the case of C.C.E. & S.T., Raipur vs. Mahamaya Steel Industries Ltd. Reported in 2016 -TIOL -1099-CESTAT-Del. and Singal Enterprises Pvt. Ltd. Vs. Commissioner of Customs and Central Excise, Raipur reported in 2016 - TIOL-2451 (CESTAT-Del.) to state that cenvat credit on the disputed goods should be available to the appellant as cenvat credit.

3. Shri R.K.Mishra, the ld. A.R. appearing for the Revenue, on the other hand, reiterates the findings recorded in the impugned order.

4. I have heard the ld. Counsel for both sides and examined the records. I find that the Commissioner (Appeals) has acknowledged receipt of the Chartered Engineer's Certificate produced by the appellant. However, the contents of the Certificate regarding use of the disputed goods for fabrication/manufacture of the capital goods and their components, described therein were not considered while passing the impugned order. In context with availment of cenvat credit on the disputed goods, this Tribunal in the case of M/s. Mahamaya Steel Industries Ltd. (supra), has extended the cenvat benefit to the disputed goods by placing reliance on judgement of Hon'ble Supreme Court in the case of CCE vs. Rajasthan Spinning Mills reported in 2010 (255) ELT 481 (S.C.). The relevant paragraph in the said decision is extracted herein below:-

> *"9. The plea of the Revenue is that the credit taken on structural items amounting to Rs.21,60,362/- and cement Rs.38,122/- is not legal and proper. These structural items are used by the appellant only to support the capital goods. I find that such assertion by the Revenue is without any supporting evidence whereas the Respondent have produced detailed certificate indicating the usage of various steel items in the fabrication of conveyors, cooling bed, overhead tanks, billet, pusher bed, re-heating furnace and heating furnace and ancillary heating furnace. Thus, the usage of various M.S. items in relation to fabrication of various capital goods, components of capital goods has been explained by the respondent before the lower*

> *Appellate Authority. The certificate also states that the various items are fabricated at site and later on, erected and bolted to the concrete footing with the help of nuts and foundation bolts. Here, it is necessary to refer to the Hon'ble Supreme Court□s decision in the case of CCE Vs. Rajasthan Spinning Mills - 2010 (255) ELT 481 (SC). The Hon'ble Supreme Court while allowing the credit on M.S. items like angles, sheets, etc. evolved "user test" to determine whether these items can be considered as components or accessories of capital goods on applying this principle. I find that there is no error in the findings by the ld. Commissioner (Appeals) in as far as eligibility of credit on steel structural items."*

5. In view of above, I do not find any merits in the impugned order and allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita