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/2557/2011-EX [SM]

[Arising out of Order-in-Appeal No.208/(DKV) CE/JPR-I/2011 dated 12.07.2011 passed by the Commissioner of Central Excise (Appeals-I).

M/s. Ultratech Cement Ltd. …Appellant

Vs.

CCE, Jaipur-I … Respondent

Present for the Appellant : Mr.Vipul Agarwal, Advocate
Present for the Respondent: Mr.M.R. Sharma, A.R.

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

Date of Hearing/Decision: 28/12/2016

FINAL ORDER NO. ___56503/2016___

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the manufacture of cement and clinker the final products, falling under Chapter 25 of the Central Excise Tariff Act, 1985. The appellant avails cenvat credit in respect of duties paid on inputs and capital goods, used in or in relation to manufacture of the said final products. During the period June, 2009, the appellant had availed cenvat credit on cement and TMT bars used for construction of water tank /storage tank, located within the factory premises for capture use. Taking of cenvat credit on these goods was objected to by the Department, on the ground that storage tank made out of cement and steel, is immovable in nature, and thus, cenvat credit on those goods, is not available to the appellant. It has further been observed by the Department that cement and TMT bars are neither inputs nor capital goods, for the appellant for availing the benefit of cenvat credit. The authorities below have denied the cenvat benefit, by relying on the Larger Bench decision of this Tribunal in the case of Vandana Global Ltd. vs. CCE, Raipur reported in 2010 (253) E.L.T. 440 (Tri.-LB).

2. The ld. Advocate appearing for the appellant submits that the issue with regard to immovable nature of storage tank is no more *res-integra,* in view of the judgment of Hon'ble Karnataka High Court in the case of CCE, Bangalore vs. SLR Steels Ltd. reported in 2012 (280) ELT 176 (Kar.). Further, with regard to the applicability of the amended provisions of Rule 2 (k) of the Cenvat Credit Rules and the decision of Larger Bench in the case of Vandana Global Ltd. (Supra), the ld. Advocate submits that the said issues have already been dealt with by the Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd. vs. CCE & Cus. reported in 2015 (39) S.T.R. 726 (Guj.).

3. On the other hand, the ld. A.R. appearing for the Revenue, besides reiterating the findings recorded in the impugned order, further submits that since the storage tank, after its construction is attached to the earth, the same does not seem to be goods, for the purpose of availment of cenvat credit on the material used therein.

4. Heard both sides and perused the records.

5. I find that the Hon'ble Karnataka High Court in the case of SLR Steels Ltd. (Supra) have held that storage tank is specified as capital goods in the definition provided in Rule 2 (a) (A) (vii) of the Cenvat Credit Rules, 2004, and thus, steel and cement, used in the manufacture of the eligible capital goods i.e. storage tank, should merit consideration as input for the purpose of availment of cenvat credit, on the duties paid thereon. Further, the view taken by the Department that storage tank and equipments were immovable property and are not excisable, has been negatived in the said judgement by the Hon'ble High Court. Further, I find that the amendment of the definition of input w.e.f. 07.07.2009, being not clarificatory in nature, should operate prospectively. In this case, since the period under dispute, is prior to the date of the above amendment, the embargo created under explanation-2 appended to the definition of input, will not have any application, for denial of the cenvat credit. Also, the Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd. (Supra) on interpreting the decision of Larger Bench of this Tribunal in the case of Vandana Global Ltd. (supra) have held that when a new provision is added by the Legislature in the statute, then the same will be considered as new amendment and cannot be treated to be clarification of the particular thing, and as such, the amendment could operate only prospectively. In this contest the Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd. (Supra) have held as follows:-

> ***"8.*** *Mr. Y.N. Ravani, learned counsel for the Revenue has placed reliance on the decision of the Larger Bench of the Tribunal in Vandana Global Limited v. Commissioner*

of Central Excise, Raipur, 2010 (253) E.L.T. 440. We have carefully gone through the decision of the Larger Bench of the Tribunal. We do not find that amendment made in Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification of particular thing or goods and/or input and as such, the amendment could operate only prospectively. In our opinion, the view taken by the Tribunal is based on conjectures and surmises as the Larger Bench of the Tribunal used the expression that intention behind amendment was to clarify. The coverage under the input from where this intention has been gathered by the Tribunal has not been mentioned in the judgment. There is no material to support that there was any legislative intent to clarify any existing provision. For the same reason, as mentioned above, the decision of the Apex Court in Sangam Spinners Limited v. Union of India and Others, reported in (2011) 11 SCC 408 = 2011 (266) E.L.T. 145 (S.C.) would not be applicable to the facts of the instant case."

6. In view of the above settled principles of law, I do not find any merits in the impugned order, and as such, the same is set aside. The appeal is allowed in favour of the appellant with consequential relief, if any, as per law.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita