IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. E/51695/2016-EX[SM]
[Arising out of Order-In-Appeal No. 40-42(AK) CE/JPR/2016, dated 10.03.2016 passed by Commr.(Appeals), Central Excise Commissionerate, Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Sanjog Steels Pvt. Ltd. ...Appellant

Vs.

C.C.E. Jaipur-I …Respondent

Appearance:
Ms. Rinki Arora (AR) for the Appellant
Mr. R.K. Mishra, (AR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision.10.02.2017

Final Order No. 54119 /2017

Per S.K. Mohanty:

Brief facts of the case are that the appellant is engaged in the manufacture of MS Ingots, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of Central Excise duty and service tax, paid on various inputs and input services. During the period April, 2008 to February, 2009 the appellant availed cenvat credit of central excise duty paid on TMT Bars, Ms Angles/Channels, H.R. Plate, shapes and sections, MS Plates, LPG, Cement, Sheets etc. as 'capital goods'. Credit taken by the appellant on the disputed goods was denied by the authorities below, on the ground that the same are not conforming to the definition of either 'capital goods' or 'inputs' for the purpose of taking cenvat credit. The Ld. Commissioner (Appeals) vide the impugned order dated 10.03.2016 has relied on the Larger Bench decision of this Tribunal in the case of Vandana Global Ltd. Vs. C.C.E Raipur, reported in 2010 (253) E.L.T 440 (Tri.-LB), to deny the cenvat credit on the disputed goods.

2. Ms. Rinki Arora, the Ld. Advocate appearing for the appellant submits that the disputed goods were used by the appellant for fabrication of capital goods which were installed within the factory premises. Thus, she submits that the same should be considered as 'input' as per the explanation provided in Rules 2(k) of the Cenvat Credit Rules, 2004. It is her submission that the period involved is from April, 2008 to February 2009, which is prior to the date of amendment of the definition of input, with effect from April 2011. Thus the embargo created in the said amended definition restricting cenvat benefit on the disputed goods, is not applicable to the present case. In support of such stand, the Ld. Advocate has relied on the judgment of Hon'ble Gujrat High Court in the case of *Mundra Ports & Special Economic Zone Ltd. Vs. Commissioner, 2015 (39) S.T.R 726 (Gujrat.) and also the decisions of Tribunal in the case of Singhal Enterprises Pvt. Ltd. Vs. Commr. of Cus. & C. Ex., Raipur, 2016 (341) E.L.T 372 (Tri.-Del.), Commr. of C. Ex., Raipur Vs. Orissa Concrete & Allied Industries Ltd., 2016(341) E.L.T. 347 (Tri. –Del.), Devi Iron & Power Pvt. Ltd. Vs. Commissioner of C. Ex. & S.T., Raipur, 2016 (341) E.L.T. 341 (Tri. -Del), M/s. Ultratech Cement Ltd. Vs. Commissioner of Central Excise And Service Tax Jaipur-II, 2016-TIOL-3364-CESTAT-DEL and M/s Manglam Cement Ltd. Vs. Commissioner of Central Excise Jaipur 2017-TIOL-141-CESTAT-DEL.* She also submits that the Commissioner (Appeals) vide the impugned order has decided three appeals against the

appellant out of which, two appeals filed against the same appellate order dated 10.03.2016 were allowed by the Tribunal vide final order no. 54056-50457/2016-EX-(SM)-dated 6.10.2016.

3. On the other hand, Shri R.K. Mishra the Ld. AR appearing for the respondent, reiterates the finding in the impugned order.

4. Heard both sides and perused the records.

5. I find that the ld. Commissioner (Appeals) disposed of three appeals vied the impugned order. Appeals filed by the appellant against two such case, were allowed by the Tribunal, holding that the explanation appended to Rule 2(k) *ibid* will be applicable prospectively and the same will have no retrospective application.

6. In view of above fact that the order dated 10.03.2016 passed by the Ld. Commissioner (Appeals), the impugned order here in, has already been set aside by the Tribunal and the appeals have been allowed in favor of the appellant, I am of the view that the present appeal arising out of the same impugned appellate order, must also be allowed. Accordingly, the impugned order is set aside and appeal filed by the appellant is allowed.

(Dictated and pronounced in the open court)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi