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/58062/2013-EX [SM]

[Arising out of Order-in-Appeal No.17/RPR-II/2013 dated 19.03.20913 passed by the Commissioner of Central Excise (Appeals-II), Raipur]

M/s.Steel Authority of India Ltd. …Appellant

Vs.

Commissioner of Customs & Central Excise, Raipur … Respondent

Excise Appeal No.E/3565/2012-EX [SM]

[Arising out of Order-in-Appeal No.18/RPR-II/2012 dated 9.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Raipur]

M/s.Steel Authority of India Ltd. …Appellant

Vs.

Commissioner of Customs & Central Excise, Raipur … Respondent

Excise Appeal No.E/4092/2012-EX [SM]

[Arising out of Order-in-Appeal No.174/BPL/2012 dated 11.09.2012 passed by the Commissioner of Central Excise (Appeals), Bhopal]

M/s.Bhilai Jaypee Cement Plant …Appellant

Vs.

Commissioner of Customs, Central Excise &
Service Tax, Bhopal … Respondent

Present for the Appellant : Ms.Sukriti Das, Advocate
Present for the Respondent: Mr.R.K. Mishra, D.R.

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

Date of Hearing/Decision: 03.03.2017

ORDER NO. _____54116-54118/2017__

PER: S.K. MOHANTY

Denial of cenvat credit on fish plates, fish bolts and concrete sleepers, used for laying of railway tracks within the factory and in the area adjacent to the factory, is the subject matter of dispute in all these appeals. Thus, all these appeals are taken up for hearing together, for disposal by a common order.

2. The ld. Commissioner (Appeals) vide the impugned orders has upheld the Orders-in-Original passed by the lower authority denying cenvat credit in respect of the disputed goods, for the reason that the same are immovable property, being permanently embedded to the earth, and thus, fall outside the purview of 'capital goods' in terms of Rule 2 (a) (A) of the Cenvat Credit Rules, 2004.

3. The ld. Advocate appearing for the appellant submits that the issue involved in this case is no more *res-integra,* in view of the decision of this Tribunal in the case of SAIL vs. CCE, Raipur - Final Order No. A/55764/2016-EX (DB) dated 08.12.2016, wherein by applying the user test, the Tribunal allowed cenvat credit of Central Excise Duty paid on the disputed goods, holding that the same as capital goods.

4. On the other hand, the ld. D.R. appearing for the respondent, reiterates the findings recorded in the impugned order.

5. Heard both sides and examined the case records. I find that on the identical set of facts, this Tribunal by applying the user test to the disputed goods, has extended the cenvat benefit under the head "capital goods". Relevant paragraph of the said decision, is extracted herein below:-

> ***"6***. *On the first issue regarding eligibility of the cenvat credit on railway track materials used and installed inside the factory premises, we note that these railway lines created by using these materials were exclusively used by the appellants for movement of the raw materials, processed materials, etc. in the course of manufacture of dutiable final products. The railway track is part and parcel of material handling system integrally connected with the production on movement of dutiable goods. We note that the Hon'ble Supreme Court in Jayaswal Neco Ltd. (supra) examined similar sets of facts and allowed credit under the erstwhile Central Excise Rules, 1944. The Hon'ble Supreme Court examined in detail the expression 'in the manufacture of goods" and held that the expression "shall include all processes', which are directly related to the actual production. The goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The Hon'ble Supreme Court applied "user criteria" to hold that the use of railway tracks is related to the actual production of goods and without the use of railway tracks, commercial production would be inexpedient. Railway tracks used in transporting raw materials and manufactured metals was considered as a handling system for raw materials and processed materials. Considering the principle and the final finding of the Hon'ble Supreme Court in the above case, we find that the denial of credit to the appellant is not justifiable. In*

fact, the Tribunal applied the above principles laid down by the Hon'ble Supreme Court in the appellant's own case in a bunch of matters reported as Tata Steels Ltd. (supra) and allowed the credit. It is also noted that after the decision of the Hon'ble Supreme Court in Jayaswal Neco Ltd. (supra), the jurisdictional Commissioner vide his order dated 7.8.2015 has dropped the demand against the appellant for latter periods. The Tribunal has allowed the credit on railway track materials as integral handling equipments in various other cases also. Reference can be made to Aditya Cement - 2016 - TIOL-2582 (CESTAT-DELHI), Jindal Steels and Powers Ltd. - 2015-TIOL-2115 (CESTAT-Delhi) and Ultra Tech Cement Ltd. - 2016-TIOL-1967(CESTAT-Hyderabad)."

6. In view of above position of law, I do not find any merits in the impugned order and accordingly, after setting aside the same, I allow the appeals with consequential benefit in favour of the appellant.

[Dictated & pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita