IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 22/06/2017.
DATE OF DECISION : 22/06/2017.

Excise Appeal No. 3849 of 2010

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/ 54/2010 dated 30/09/2010 passed by The Commissioner, Customs & Central Excise, Raipur.]

M/s Devi Iron & Power Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri R.K. Verma, Advocate – for the appellant.

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54293/2017 Dated : 22/06/2017

Per. Justice (Dr.) Satish Chandra :-

The present appeal has been filed by the appellants against the order-in-original dated 30/09/2010.

2. The brief facts of the case are that during the period of dispute, the appellant are engaged in the manufacture of sponge

iron. The appellants has used various steel items, such as, angles, channels, beam, joists, flats, plates etc. which was for the support structures on which various capital goods was placed. The appellant has claimed Cenvat credit on these items, but the same was denied by the lower authority. Being aggrieved, the appellant has filed the present appeal.

3. Heard Shri R.K. Verma, Advocate, the learned Counsel for the appellant and Shri R.K. Mishra, learned DR for the Revenue and have perused the appeal record.

4. After hearing both the parties, it appears that the identical issue has been put up before the Tribunal in the case of **Singhal Enterprises Pvt. Ltd. vs. CCE, Raipur** reported in **2016 (341) E.L.T. 372 (Tri. – Del.)**, where it was observed that :-

> "13. Now we turn to the question, whether credit is admissible on various structural steel items, such as, MS Angles, Sections, Channels, TMT Bar, etc., which have been used by the appellants in the fabrication of support structures on which various capital goods are placed? The same stands denied by the lower authority. The learned DR has sought disallowance of the same by citing the decision of the Larger Bench in the case of *Vandana Global Ltd.* (supra) and other judgments. Further, he has brought to our notice and emphasized the amendment carried out in Explanation-II to Rule 2(a) which defines the term "Input" w.e.f. 7-7-2009. It has further been pleaded that the Cenvat credit claimed for the period prior to this will be covered within the decision of the Larger Bench in the case of *Vandana Global Ltd.* (supra).

14. The Larger Bench decision in *Vandana Global Ltd.'s* case (supra) laid down that even if the iron and articles were used as supporting structures, they would not be eligible for the credit. Considering the amendment made w.e.f. 7-7-2009 as a clarification amendment and hence to be considered retrospectively. However, we find that the said decision of the Larger Bench was considered by the Hon'ble Gujarat High Court in the case of *Mundra Ports & Special Economic Zone Ltd.,* 2015 (04) LCX0197 = 2015 (39) S.T.R. 726 (Guj.), wherein it was observed that the amendment made on 7-7-2009 cannot be held to be clarificatory and as such would be applicable only prospectively.

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

suitably 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".

5. Similar issue came up again in the case of **CCE & ST, Raipur vs. M/s Mahamaya Ispat** Tribunal vide final order No. 55255 of 2016 dated 21/11/2016, following the above decision allowed the Cenvat credit on similar items.

6. By following the earlier orders (supra), we set aside the impugned order and allow the appeal of the assessee.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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