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

Excise Appeal No. 971 of 2012

[Arising out of Order-in-Appeal No. 6/RPR-I/2012 dated 16.01.2012 passed by the Commissioner of Central Excise & Customs (Appeals), Raipur]

M/s. Ind Synergy Ltd. **Appellant**

Vs.

Commissioner of Central Excise & ST, Raipur **Respondent**

Appearance:

Shri Manish Saharan, Advocate for the Appellants
Ms. K V Kumar, AR for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of **Hearing/ Decision: 04.07.2017**

FINAL ORDER NO. 55010 /2017

Per: V. Padmanabhan:

The present appeal is filed against the Order-in- Appeal No. 6/RPR-I/2012 dated 16.01.2012. The appellant is a manufacturer of sponge iron and billets falling under chapter 72 of the Central Excise Tariff Act, 1985. The dispute covered the period 2008-2009 and 2009-2010 and involves cenvat credit amount to Rs. 14,46,716/- in respect of cement which was used in connection with installation of capital goods. Revenue was of the view that the appellant was not entitled to such cenvat credit upon cement as inputs. Accordingly, in the proceedings before the authorities below, such cenvat credit was ordered to be reversed. Aggrieved by the decision, present appeal has been filed.

2. Heard Shri Manish Saharan, learned counsel for the appellant. He submitted that cement has been used in connection with installation of capital goods without which these cannot be installed and made functional. He further relied upon the Tribunal's decision in the case of ***Andhra Sugars Ltd. vs. CCE Guntur [2016 (343) ELT 1051 (Tri-Hyd***)] in which case cenvat credit stand allowed for cement used for foundation of machinery. Accordingly, he prayed that cenvat credit may be allowed.

3. Learned DR reiterated the findings of the authorities below.

4. After hearing both the sides and perusal of records, I find that the issue stand decided in favour of the appellant in the decision cited by the learned counsel. The Tribunal allowed such cenvat credit on cement as inputs with the following findings:

> ***"14.*** *In the case on hand, the appellants used the cement for erecting and installing machinery (capital goods). It was used within the factory of production. The definition of capital goods does not require that capital goods should be used in the process of manufacturing. The only condition is that capital goods should be used in the factory of the manufacturer. It cannot be disputed that cement is necessary for laying foundation to fix machinery,*

and for support structures of capital goods. It is the case of appellant that credit was not taken on cement used for construction of building or civil structure. They have availed credit only on that quantity of cement used for essential and technical foundation without which the machinery cannot operate or function and the manufacture of excisable goods will not take place.

15. *The Hon'ble High Court of Madras in the case of CCE, Tiruchirapalli v. India Cements Ltd. - 2014 (305) E.L.T. 558 (Mad.) and India Cements Ltd. v. CESTAT Chennai - 2015 (321) E.L.T. 209 (Mad.) had occasion to consider the eligibility of credit availed on steel items and cement as capital goods used for construction of support structures of capital goods. The credit was held to be admissible. The Hon'ble Court observed that the steel items being used for fabrication of structure for support/erection of various machines, by applying the user test as laid in Rajasthan Spinning & Weaving Mills case 2010 (255) E.L.T. 481 (S.C.) would be eligible for credit as capital goods."*

5. In view of the above discussions, the impugned order is set aside. Appeal is allowed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

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