CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 31.07.2017

Appeal No. E/50461/2017-SM

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-508-16-17 dated 19/12/2016, passed by the Commissioner (Appeal), Central Excise Bhopal)

Bhandari Foils & Tubes Ltd. … Appellant

Vs.

CCE & ST Bhopal … Respondent

Appearance:

Present Ms. Priyanka Goel, Advocate for the appellant
Present Ms Kannu Verma Kumar, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 55646/2017

Per Ashok K. Arya :

1. The appellant namely Bhandari Foils & Tubes Ltd. is in appeal against Order in Appeal No. 508/16-17 dated 19/12/2016, whereunder Cenvat credit on Channels, Joist, Plates, Angles, TMT bars etc has been denied and the revenue involved is of Rs. 4,23,997/-.
2. Both sides represented by Ld. Advocate Ms. Priyanka Goel for the appellant and by Ms. Kannu Verma Kumar , Ld DR have for the Revenue have been heard.

3. The issue involved is entitlement to Cenvat Credit on the items namely Channels, Plates, TMT bars etc. for which appellant has claimed Cenvat credit as inputs as well as capital goods under Rule 2 (k) and Rule 2 (a) (A) of Cenvat Credit of Rules, 2004. The period involved is December 2006 to March, 2009.

4. After having carefully considered the facts of the case and submissions of both sides, it appears that the matter is covered by Tribunal's decisions in cases of *CC & CCE., Vishakhapatnam-II V/s APP Mills Ltd*. 2013 (291) ELT 585 (Tri.-Bang.) and *Simbhaoli Sugars Ltd. Vs CCE, Meerut-II* 2016 (335) ELT 328 (Tri.-All.), whereunder Cenvat credit for subject items has been allowed to the assessee. The Tribunal in the case of CC *& CCE Vishakhapatnam V/s APP Mills Ltd* (supra) has observed as under:-

> **4.** After giving careful consideration to the submissions, I have found force in the arguments of the learned counsel. The ratio of the decision of Apex Court is found to be squarely applicable to the facts of the instant case. The Apex Court was seized of the question whether the steel plates and M.S. channels used in the fabrication of chimney would fall within the purview of Sl. No. 5 of the table annexed to Rule 57Q as this Rule stood on or after 1-3-1997. The Rule considered by the court, shorn of unnecessary portions, is as follows:
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> "**RULE 57Q. Applicability.** - (1) The provisions of this section shall apply to goods (hereafter in this section, referred to as the "final products") described in column (3) of the Table given below and to the goods (hereafter, in this section, referred to as "capital goods"), described in the corresponding entry in column (2) of the said Table, used in the factory of the manufacturer of final products.

TABLE

Sl. No.	**Description of capital goods falling within the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer**	**Description of final products**
(1)	(2)	(3)
1.	………………………… ….	… … … … …
2.	……………..	
3.	All goods falling under chapter 85 (other than those falling under heading Nos. 85.09 to 85.13, 85.16 to 85.31, 85.39 and 85.40);	
4.	……………...	
5.	Components, spares and accessories of the goods specified against S. Nos. 1 to 4 above;”	

The above provision requires to be compared with Rule 2(a) (shorn of unnecessary portions) of the CCR, 2004, reproduced below :

“**RULE 2. Definitions** - In these rules, unless the context otherwise requires, -

(a) “capital goods” means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) …………….

(iii) Components, spares and accessories of the goods specified at (i) and (ii);

(iv) …………….

(v)…………….

(vi) …………….

(vii) …………….

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

……………" (2)

4.1 Obviously, clause (i) of Rule 2(a)(A) is *pari materia* with clause (3) of the table annexed to Rule 57Q. Similarly, clause (iii) of Rule 2(a)(A) is *pari materia* with clause (5) of the table annexed to Rule 57Q. In the case of *Rajasthan Spinning & Weaving Mills Ltd.* (supra), the Hon'ble Supreme Court considered the question whether the steel plates and channels used in the fabrication of chimney for DG set would fall within the purview of Sl. No. 5 of the table annexed to Rule 57Q. The Hon'ble Supreme Court found that the DG set fell under Heading No. 85.02, Chapter 85, of First Schedule to the Central Excise Tariff Act and *ipso facto* got covered under Sl. No. 3 of the table *ibid*. Hon'ble Supreme Court further noted that the chimney attached to the DG set was undisputedly covered by Sl. No. 5 of the table *ibid*. On this basis, it was held that the chimney was an integral part of the DG set and, therefore, MS channels, plates, etc., used in its fabrication were to be treated as accessories in terms of Sl. No. 5 of the table *ibid*. This ruling was rendered by applying the "user test". The facts of the present case are perfectly analogous to those of *Rajasthan Spinning & Weaving Mills Ltd.* (supra). It is not in dispute that MS angles, plates, etc., were used to fabricate structural support for machinery which was used for manufacturing excisable goods. It is, again, not in dispute that the machinery is squarely covered by clause (i) of Rule 2(a)(A) of the CCR, 2004. The immediate question is whether the structural support for the machinery could be treated as 'capital goods'. Indeed, it should be held to be an integral part of the machinery and hence to be covered by clause (i) *ibid*. If that be so, as held by the Hon'ble Supreme Court in the aforesaid case, the plates, angles, etc., used for fabricating structural support are liable to fall within the purview of clause (iii) of Rule 2(a)(A). In the result, it has to be held that the MS angles, plates and rounds used by the respondent for fabricating structural support for machinery would qualify to be 'capital goods' for CENVAT credit. Consequently, the impugned order can only be sustained.

4.2 The view of the Tribunal's Larger Bench in the case of *Vandana Global Ltd.* (supra), taken much before the Hon'ble Supreme Court decided the case of *Rajasthan Spinning & Weaving Mills Ltd.* (supra), was to the effect that the supporting structure for a machinery could not be considered to be part or accessories of the machinery and, therefore, the steel items used for constructing such supporting structure would not be 'capital goods' for the purpose of CENVAT credit. This view of the Larger Bench is no longer valid as it runs contrary to the subsequent ruling of the Apex Court.

5. Considering above observations of the Tribunal and following Tribunal's decision (supra) the impugned order is set aside and appeal allowed with consequential relief, if any, to the appellant.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

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