

these items have been used for fabrication of support structures which are embedded to earth. Therefore, they were not entitled to avail Cenvat Credit on these items.

3. The appellant is not disputing the payment of duty on account of reversal of cenvat credit along with interest but only contesting imposition of penalty on the ground that during the impugned period there was divergent views of this Tribunal whether on items used in fabrication of support structure which are embedded to earth, the assesee is entitled to avail Cenvat Credit or not. To support this appellant has produced judgment of this Tribunal in the case of ***Jindal Vijaynagar Steels Ltd. Vs. CCE Belgaum 2005 (191) ELT 459 (Tri-Bang.)*** but the Ld. AR relied on the decision of ***Sarita Steel & Industries Ltd. Vs. CCE Visakhapatnam 2006 (203) ELT 274 (Tri-Del)*** to say that on such items which are used in fabrication of support structures which are embedded to earth are not entitled for Cenvat Credit. In that circumstances, the contention of the Id. AR is that penalty cannot be waived.

4. Heard the parties.

5. Considering the fact that in the case of ***Dalmia Cements (Bharat) Ltd. Vs. CESTAT Chennai 2016 (341) ELT 102 (Madras)*** the Hon'ble High Court has held that on the items used in fabrication of support structures are entitled for Cenvat Credit. Therefore, I hold that penalty imposed on the appellant is not sustainable. Accordingly, penalty imposed on

the appellant is set aside. In these terms, appeal is disposed of.

[Dictated and Pronounced in the open court]

(Ashok Jindal)
Judicial Member

Bhanu