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

Date of Hearing/Decision: 17.10.2017

Appeal No. E/50761/2017-SM

(Arising out of Order-in-Appeal No. BHO/EXCUS/002/APP/250-16-17 dated 23.11.2016 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur)

CCE & ST, Raipur — Appellant

Vs.

Jayaswal Neco Industries Ltd. — Respondent

Appearance

Shri G.R. Singh, AR - for the appellant

Shri Rahul Tangri - for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**

Final Order No. 58107 /2017

Per Anil Choudhary :

1. The issue in this appeal is regarding allowability of Cenvat credit taken on vehicles/truck chassis falling under chapter 87 of CETA 1985 during the period 2009 – 10 to 2012 – 13.

2. As per show cause notice, dated 24, June 2014, respondent have taken Cenvat credit on vehicles/ body of Tippers/chassis etc., which are used in the activity of mining, wherein the mined ore is lifted to the surface – factory premises of the respondent for consumption in manufacture of dutiable outputs. The appellant is manufacturer of excisable goods falling under Chapter 72. During the course of audit it was observed that they availed Cenvat credit on vehicle/truck chassis falling under chapter 87 as capital goods

amounting to Rs.44,12,222/- during the period 2009 – 2012 (up to December, 12). It appeared to revenue that these vehicles do not fall under the definition of capital goods as defined under Rule 2(A) of CCR 2004. Accordingly, it was proposed to disallow the Cenvat credit availed. The Show Cause Notice was adjudicated vide O-I-O dated 30/09/2015 and the proposed disallowance confirmed with interest and further penalty of Rs. 42,62,872/- was imposed under Rule 52 of CCR readwith Section 11 AC and 11 AC (1b) of the Act. Being aggrieved the appellant preferred appeal before Ld. Commissioner (Appeals) who was pleased to allow the appeal observing that there is no dispute as regards receipt of imported chassis by the appellant and its use, after bodybuilding upon it for by the job worker – bodybuilder. It is also not disputed that such dumpers/Trippers have been used in the captive mines of the appellant for transportation of mined goods from the mines to stockyard located near the mines. Taking notice of the contention of the assessee that these dumpers/tippers are being used for material handling and thus is part/necessary of raw material handling system, which falls under Chapter 84/85. It was further noticed that although the appellant on availing Cenvat credit on dumpers and tippers falling under Chapter 87 which are not mentioned in the definition of capital goods, but undoubtedly they are mentioned chapter 84, and goods falling under chapter 84 qualify as capital goods. Further clause (III) to Rule 2(a) refers to components spares and acessaries of goods of chapter 82, 84, 85 and 90. Accordingly, pray’s to hold that the Cenvat credit was admissible on dumpers/ tippers, as are part of the material handling system for moving the mined ore from the mine to the surface.

Reliance was also placed by the Ld. Commissioner (Appeals) in assessee's own case in Order in Appeal No. BHO –EXCUS-002-APP-88-16-17.

3. Being aggrieved the Revenue is in appeal on the ground that though the Trippers/dumpers may be used for handling raw material, but going by the definition of capital goods, tippers are dumpers cannot be admissible for Cenvat credit in terms of Rule 2(A) of CCR 2004 as was in force during the material time. Further reliance is placed on the ruling of this Tribunal in the case of *Ganta Ramanaiah Naidu V/s CCE, Guntur* 2010 (18) STR 10 (Tri.-Bang.)

4. The Ld. Counsel for the respondent assessee states that the ruling of *Ganta Ramanaiah Naidu* (supra) is distinguishable as it was a dispute for the period prior to September 2007 for availing Cenvat credit on tippers where the assessee was engaged in site formation and clearance service. The Ld. Counsel further states that in the facts of this appeal tippers have admittedly been used in mines for transportation of mined goods, that is raw materials to the stockyard located on the surface near the mine within the captive mine area. This mined ore is further used in manufacture of final dutiable products. If the appellant would not had been using dumpers/tippers they would have alternatively installed conveyor belt etc., for moving the material from the base of the mind to the surface. Thus, in their case dumpers/tippers are used in lieu of conveyor belt system or lift and as such are part of the material handling system convenience. They rely on the ruling of Tribunal in *Jindal Stainless Steel Ltd. versus CCE* 2009 (245) ELT 244 wherein it has been held under similar facts and circumstances that tippers are accessories to

conveyor system which fall under Chapter 85 of the CETA. Thus, tippers are covered by definition of capital goods under Rule 2b of CCR 2002, which is equivalent to Rule 2(A) of CCR 2004. It was categorically held that the tippers are nothing but acessaries to conveyor system. As conveyor system falls under chapter 85, the dumpers and tippers used for moving the material are squarely covered by the definition of capital goods.

5. Having considered rival contentions I find that in the facts of the present case, the dumpers/tippers/vehicles in question have been used by way of material handling system for moving the mined ore from the base of the mine to the stockyard at surface which is located within the mine area. Accordingly, I hold that the dumpers and tippers in the case of the present respondent are entitled to Cenvat credit being used as part of the material handling system. Further, evidently such mined ore is used by the appellant in their factory for production of dutiable outputs. Accordingly, I find no merit in this appeal by Revenue and the same is dismissed. The impugned order in appeal is upheld. The respondents shall be given consequential benefits in accordance with law.

(Dictated & pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Rekha