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. II

DATE OF HEARING : 01/12/2017.
DATE OF DECISION : 01/12/2017.

Excise Appeals No. 51323-51324 of 2017 (SM)

[Arising out of the Order-in-Appeal No. 51-52/(AK)CE/JPR/2017 dated 18/04/2017 passed by The Commissioner (Appeals), Central Excise, Jaipur.]

M/s Hindustan Copper Limited   Appellant

Versus

CC, Jodhpur   Respondent

Appearance

S/Shri R.P. Singh and Ranjit Ranjan, Advocates – for the appellant.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 58783-58784/2017 Dated : 01/12/2017

Per. Anil Choudhary :-

The issue in these appeals relates to allowability of Cenvat credit on itemwise second Mill Plates, TMT bars, MS Angle, Channel, Joists, Mill Plate, G.C. Sheet, Chequred Plate, as mentioned in Annexure II to the show cause notice dated 06/05/2001 for the period July 2010 to January 2011 and a similar show cause notice for the period November 2009 to April 2010 issued as it appeared to Revenue that Cenvat credit on these items are not allowable in terms of Rule 2 (a) readwith Rule 2 (k) readwith Rule 2 (l) of Cenvat Credit Rules, 2004. The show cause notices were adjudicated on contest and the proposed demand confirmed with interest and equal amount of penalty of even date.

2. Being aggrieved, the appellant preferred appeals before learned Commissioner (Appeals) who was pleased to confirmed the disallowance of Cenvat credit for both the period, but, however, were pleased to reduce the penalty of Rs. 4,84,696/- for the period July 2010 to January 2011 to Rs. 50,000/-.

3. Being aggrieved the appellant is before this Tribunal. The learned Counsel for the appellants states that the issue no longer res-integra. In the similar facts and circumstances the coordinate bench of this Tribunal in final order No. A/52998/2015 – SM (BR) dated 20/05/2015 in Excise appeal No. E/55427/2013 – EX (SM) pleased to hold that the goods, in question, are necessary for running and maintenance of plant and up-keeping of the machinery. Thus, these are directly required in the manufacturing of the excisable goods and accordingly the same should be considered as input. Reliance is also placed on the ruling of Hon'ble Rajasthan High Court in the case of **Union of India vs. Hindustan Zinc Ltd. – 2007 (214) E.L.T. 510 (Raj.)** which is confirmed by Hon'ble Supreme Court reported as **2007 (214)**

E.L.T. A115 (S.C.). Also in another preceding appeal by the same appellant being appeal No. E/2174 of 2012 – SM final order No. 54648/2016 dated 24th October 2016 also under similar facts and circumstances, this Tribunal was pleased to hold that Cenvat credit is allowable.

4. The learned Counsel for the appellant further states that the facts are not disputed with the items, in question, have been used in repair and maintenance of plant and machinery which have been further used in the manufacture of final/dutiable products. In retain/periodical maintenance, the worn out/rested and protection parts of plant and machinery are required to be repair and or replaced. Further, without proper appeal and maintenance the plant and machinery cannot function and manufacture of dutiable finished products is not possible.

5. The learned AR for Revenue relies on the impugned order and further states that Cenvat credit of inputs is allowable for fabrication for construction of capital goods but not for repair and maintenance. He further placed reliance on the decision of Hon'ble Andhra Pradesh High Court in the case of **Rayalseema Hi-Strength hypo Ltd. vs. CC & CE, Tirupati – 2012 (278) E.L.T. 167 (A.P.)**.

6. Having considered the rival contentions, I find that it is provided in the definition of input in Rule 2 (k) of Cenvat Credit Rules, 2004, inputs means – all goods used in or in relation to manufacture of final products whether directly or indirectly and

whether contained in the final product or not and includes lubricating oils, accessories and the final products etc. cleared alongwith the final products, goods used as paid or as packing material, or as full generation of steel or electricity used in or in relation to manufacture of final products or for the purpose within the factory of production. I further find that the items/inputs under dispute squarely fall within the definition of input as ____ herein and as applicable during the relevant period. I also observed that although production may be theorically possible without repair and maintenance but in all practically production of dutiable finished goods is not possible when repair and maintenance of plant and machinery, capital goods. For their repairs is also synomious to the world re-manufacture.

7. Accordingly, I hold that the appellant is entitled to Cenvat credit on the items under dispute in these appeals. Accordingly, the appeals are allowed. The impugned order is set aside. The appellant shall be entitled for consequential benefit in accordance with law.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

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