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

Date of hearing/decision: 12.07.2018

Excise Appeal No. 51448 of 2018
(Arising out of Order-in-Appeal No. 229-232(SM)CE/ JPR/2018 dated 01.02.2018 passed by the Commissioner (Appeals) Jaipur).

CCE&ST, Jaipur Appellant

Vs.

M/s Shree Cement Limited Respondent

Appearance:

Sh. K. Poddar, AR for the appellant- Revenue
Sh. Himanshu Bansal, Advocate for the Respondent- assessee

Coram:

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

Final Order No. 52496/2018

Per: **V. Padmanabhan**:

The present appeal is filed by the Revenue against the Order-in-Appeal No. 229-232(SM)CE/ JPR/2018 dated 01.02.2018 passed by the Commissioner (Appeals) Jaipur.

2. The appellant is a manufacturer of cement and clinker falling under Chapter 25 of the Central Excise Tariff. They avail cenvat credit on 'Cable Tray', under the category of capital goods. The department was of the view that 'Cable Tray' cannot be considered as capital goods and are not covered by any of the sub-rule of Rules 2(a) of the Cenvat Credit Rules, 2004, which defines "capital goods". Accordingly, show cause notice was issued and

original authority ordered for reversal of cenvat credit availed on ‘Cable Tray’. However, the Commissioner (Appeals), vide the impugned order, allowed such credit. Hence the present appeal filed by the Revenue.

3. Arguing the grounds of appeal, Shri Poddar submitted that definition of capital goods under Rule 2(a) makes it clear that ‘Cable Tray’ cannot be included under any of sub rules. The said item is classifiable under Central Excise Tariff 7308.90 and is used for electrical and instrument cable in the factory. As such, he submitted that the cenvat credit is deniable.

4. Ld. Counsel Sh. Himanshu Bansal for the respondent justified the impugned order. He pointed out that the order stands passed by following the CESTAT decision in the party’s own case reported as ***2016 (332) ELT 759 (Tri. Del.).***

5. After hearing both sides and on perusal of record, it is noted that the issue involved in the present appeal has already been decided by the Tribunal in the respondent’s own case (supra) in which the Tribunal observed as follows:

> *“The short issue involved in the matter is that whether appellant are entitled to avail Cenvat credit on cable tray which have been procured by the appellant for holding the cable in their factory for manufacturing of cement.*
>
> ***2.*** *Heard the parties.*
>
> ***3.*** *The cable tray is an accessory which holds the cable and in case of a fault through the cable tray the damage portion of the cable can be found out and same can be repaired. Without this cable tray smooth functioning of the plant is not possible. In these circumstances, I hold that these cable tray are used to hold the cable for power distribution system.*

> ***4.*** *In these circumstances, the appellant is entitled to take Cenvat credit on cable trays being an accessory to the capital goods.*
>
> ***5.*** *Therefore, I set aside the impugned orders and allow the appeals with consequential relief, if any*."

6. By following the same, I find no infirmity in the impugned order which is sustained and appeal filed by Revenue is rejected.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Pant