

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO.II**

Date of Hearing/Decision: 12.12.2018

Appeal No. E/53191/2018-SMC

[Arising out of Order-in-Original No. OIO-130-AG-CE-JDR-2018 dated 27/02/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-Udaipur)]

INDIA CEMENTS LIMITED

Appellants

Vs.

C E & ST-UDAIPUR

Respondent

Appearance:

Shri Himanshu Bansal, Advocate for the Appellant
Shri K. Poddar, DR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 53441/2018

Per Anil Choudhary:

1. Heard the parties.
2. The issue in dispute is regarding the Cenvat Credit on items and their usage as follow:-

S. No.	Item	Cenvat Credit	Use of the item	Machineries in which items were used
1	MS Bar	7923	Used in packing plant bulk loading system for movement of nozzle	Used for bulk loading machine for cement loaded in trucks falling under CETH ch. 84,85 or 90
2	MS Angles	6140	Used in mechanical fabrication and erection work	Used in Pre Heater Passenger lift falling under the CETH ch. 84,85 or 90.
3	HR Plate, HR Sheet	28605	Used in mechanical fabrication and erection work	Used in Pre Heater Passenger lift falling under the CETH ch. 84,85 or 90.
4	HR Plate	10600	Used in mechanical fabrication and	Used in Cement Storage Silo

			erection work	
5	HR Plate	6942	Used in mechanical fabrication and erection work	Used for preparation of Clinker Chute
6	HR Sheet	8211	Used in mechanical fabrication and erection work	Used for Belt Conveyor, covering system.
7	House Cum Operation Cabin	23970	Used for operation machine of Coal stacker and reclaimer	Used for setup of Panels, control units of Stacker and Reclaimer units falling under the CETH Ch. 84,85 or 90
8	Walkway at Boom with platform & railing and electroforg Ed Grafting	22610	Used for platform and walk way to make suitable approach to various machineries of plant & machineries.	Walkway and platform make for suitable approach to Coal Stacker and Reclaimer falling under the CETH ch. 84,85 or 90
9	MS Angles/Channel/Shapes/Section	62660	Used in mechanical fabrication and erection work of various machineries and components of plant and machineries.	Used of mechanical fabrication and erection work of coal stacker and reclaimer, bulk leading system and crusher falling under the CETH ch. 84, 85 or 90
10	Fabricated floor Grills	17285	Used in platform fabrication work	Used in suitable approach to capital power plant falling under CETH Chapter 84,85 or 90.
11	HR Plate, HR Sheet, Channels	14628	Used in mechanical fabrication and erection work	Used in Pre Heater Passenger lift falling under the CETH ch 84,85 or 90.
	Total	2,09,573/-		

3. Initially the appellant (earlier known as Mahi Cement thereafter Trinetra Cement Ltd and presently known as The Indian Cements Ltd.) is a manufacturer of cement and clinker. Vide a show cause notice dated 14.02.2013 relating to the period January, to December, 2011 invoking the extended period of limitation it was found that the appellant have taken Cenvat Credit of various items of iron and steel totalling to Rs. 23,85,015/- which seemed to be not available under Rule 2 (a) of CCR- 'definition of capital goods'. It was further alleged that these facts came in the knowledge to the Department during the audit otherwise the same would have gone unnoticed and accordingly extended period is invocable arising suppression on the part of the appellant. The show cause notice was adjudicated on contest and a reduced amount of Rs. 11,84,876/- was confirmed allowing the credit for Rs. 4,66,122/- and drop the demand for Rs. 7,37,017/- along with interest and equal amount of penalty. Being aggrieved the appellant have preferred appeal before the Ld. Commissioner (Appeals) who was pleased to allow the appeal in part thus, allowing further credit on items like cable tray and the thus retaining disallowance at Rs. 2,09,573/- reducing the penalty proportionately at 50% of the credit disallowance upheld.
4. Being aggrieved the appellant is before this Tribunal.
5. Praying for allowance of the credit on the items aforementioned stating that undisputedly the items have been used for fabrication of machinery like bulk loading machine (loading system), pre heater passenger lift, fabrication of Storage cello for cement, for preparation of clinker chute, used in belt conveyer, covering system, used for set up of panal, controls units of stacker and reclaimer units which fall under CETH 84,85 or 90, walk away and platform suitable approach for coal staker and reclaimer etc.

6. Heard the parties.
7. Having considered the rival contentions I find that the Cenvat Credit disallowed vide the impugned order- in- appeal is following the ruling of the Larger Bench of this Tribunal in **Vandana Global Ltd. V/s CCE 2010 (253) ELT 440**. The said decisions stands reversed by Hon'ble Chhattisgarh High Court vide a order dated 13 September 2017 reported at 2018, (16) GSTL 462 wherein it has been held that amendment to explanation 2 of Rule 2 (k) of CCR 2004 vide a Notification No. 16/2009-CE is not clarificatory but only prospective in operation. Further following ruling of Hon'ble Gujarat High Court in **Mundra Ports and Special Economic Zone Ltd V/s Commissioner 2015 (39) STR 726 (Guj.) & Thiru Arooran Sugars V/s CESTAT, Chennai reported in 2017 (355) ELT 373 (Mad.)** It was held that Section 37 of the Central Excise Act is a rule making power. Section 37 (2) xiv (a) provides for the credit of duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of excisable goods. It was further held that there is no concept of excluding capital goods and components of capital goods on the ground of being embedded to earth. It has also been held that item like angles, joist, beams, bars etc which go into fabrication of such structures in the plant are to be treated as inputs used in fabrication of the capital goods which are further used for production of excisable goods. I further find that in the appellant's own case in the case of India Cement Ltd. Hon'ble Madras High Court in its judgement reported at 2014 (310) ELT 636 and 2012 (285) ELT 341 have held that a manufacturer- assessee is entitled to Cenvat Credit a supporting structures and structural items required for fabrication and or supporting of plant and machinery as

without the said activity of fabrication no excisable goods can be manufactured.

8. Accordingly, this appeal is allowed and the Cenvat Credit in dispute Rs. 2,09,573/- is held allowable to appellant assessee. Penalty stands set aside. Appellant is entitled to consequential benefit.

(Order Dictated & pronounced in the open court)

(Anil Choudhary)
Member (Judicial)

Rekha