CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/2103/2012	RAK CERMICS INDIA PVT. LTD.	CCE,ST&C, Visakhapatnam-II	O-I-O (*denovo)* No. 36/2012(RS), dt. 18.04.2012 passed by CCCE, Visakhapatnam.
E/2349/2012	SSP SPONGE IRON PVT. LTD	CCCE&ST, Tirupati	O-I-A No. 38/2012 (T) CE, dt. 04.06.2012 passed by CCCE&ST (Appeals), Guntur
E/22688/2014	BHARATHI CEMENT CORPN. PVT. LTD	CCCE&ST, Tirupati	O-I-O No. 15/2014 (C.Ex.) De-novo, dated 30.04.2014 passed by CCE.C&ST, Tirupati

Appearance
S/Shri Rajesh Chander Kumar, B. Venugopal, Y. Srinivasa Reddy, Advocates for the Appellants.

Shri Govindappa Hemanth, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr C J Mathew, MEMBER(TECHNICAL)

Date of Hearing: 19.02.2018
Date of Decision: 19.02.2018

FINAL ORDER No. A/30453-30455/2018

[**Order per: M V Ravindran, Member (Judicial)**]

1. These three appeals filed by different parties are against Orders-in-Original (*denovo)* Nos. 36/2012(RS), dt. 18.04.2012, 15/2014 (C.Ex.) De-

novo, dated 30.04.2014 and O-I-A No. 38/2012 (T) CE, dt. 04.06.2012. Since the issue involved in all these appeals is similar, they are being disposed of by common order.

2. Heard both sides and perused records.

3. The common issue that arises for consideration in these appeals is whether the appellants herein are eligible to avail CENVAT credit on MS Plates, MS Channels and angles, SS Sheets, MS Chequer Coils, MS Flats, welding electrodes, bolts, nuts and screws used in the appellants manufacturing premises or otherwise.

4. In appeal No. E/2103/2012, appellant is having manufacturing premises and during the period April 2005 to April 2006, procured MS flats, channels & angles, SS sheets etc. and used the same for fabrication of various machinery and supporting structures. Lower authorities are denying the CENVAT credit on the ground that these materials/goods are not capital goods and are not inputs for capital goods, relying upon the decision of the Larger Bench of the Tribunal in the case of Vandana Global Limited [2010(253)ELT 440(Tri.LB)]. The adjudicating authority has recorded the findings that the explanation inserted into the definition of "inputs" under rule 2 (k) of CENVAT Credit Rules 2004, on 07.07.2009 would apply for the period prior to 07.07.2009 also and came to a conclusion that since the material/goods on which CENVAT credit was availed are not inputs as well as capital goods and being used for

fabrication of various machineries and supporting structures embedded on earth are not excisable goods.

5. In appeal No. E/2349/2012, the appellants therein have availed CENVAT credit on steel items for fabrication of various machineries in the factory premises during the period March 2009 to June 2009 which was denied to appellant on the same grounds relying upon the decision of Larger Bench of Tribunal in the case of Vandana Global Limited. The appellants had defended the case by stating that these materials/goods were used for fabrication of capital goods raw material hoppers, Electro Static Precipitator, Belt Conveyor, Separation House, Product House (Hopper).

6. In appeal No. E/22688/2014, the appellant therein had availed CENVAT credit on MS items and cement used in fabrication of capital goods and also used for laying railway track within the factory premises, during the period January 2008 to August 2008, which was sought to be denied on the same grounds as being not inputs for capital goods.

7. Ld. Counsel appearing for the three appellants, submit that the issue is no more *res integra* as the Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Ltd [2015 (39) STR 726 (Gujarat)] and the Hon'ble High Court of Madras in the case of Thiru Arooran Sugars [2017 (355) E.L.T 373 (Mad.)] has held that these items are inputs and Central Excise duty paid on these inputs are eligible for availment of

CENVAT credit under rule 2(k) of CENVAT Credit Rules, 2004, prior to 07.07.209. In the case of Mundra Ports & SEZ Ltd, Hon'ble High Court of Gujarat has explicitly over ruled the Larger Bench decision of the Tribunal in the case of Vandana Global Ltd. Further, Ld. Counsel appearing for Bharathi Cement Corporation Pvt. Ltd. submits that identical issue in the appellant's own case for the period September 2008 to June 2009, the Bench by Final Order No. A/30999-31000/2017, dated 20.06.2017 has allowed the appeal filed by appellant and rejected the appeal filed by Revenue. He produces copy of the said order.

8. Ld. DR reiterated the findings of the lower authorities and submits that CENVAT credit cannot be availed on the items which are used for fabrication of machinery or supporting structures even if it is prior to 07.07.2009.

9. On careful consideration of the submissions made, we find that the issue is no more *res integra* in all these appeals. It is a fact that CENVAT credit of Central Excise Duty paid on MS flats, angles etc. are availed and are undisputedly used for fabrication of various machineries and supporting structures. We find that the issue has been settled by Hon'ble High Court of Gujarat in the case of Mundra Ports & SEZ Limited and also by Hon'ble High Court of Madras in the case of Thiru Arooran Sugars. This Bench has been following the ratio laid down by these two decisions as is evident from the Final Order passed by this Bench in the case of Bharathi Cement Corporation Pvt. Ltd.

10. Since the issue is already decided in favour of the assessee, respectfully following the same, we hold that the impugned orders are unsustainable and liable to be set aside which we do so. Impugned orders are set aside and appeals are allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(C J MATHEW)
MEMBER (TECHNICAL)

(M V RAVINDRAN)
MEMBER (JUDICIAL)

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