

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I**

<u>Appeal No.</u>	<u>Appellant(s)</u>	<u>Respondent(s)</u>	<u>Order-in-Appeal No.</u>
E/30503/2018	The Ramco Cements Limited	CCT, Guntur G.S.T	GUN-EXCUS-000-APP-191 to 193-17-18 dated 07.02.2018 passed by CCT, Guntur
E/30504/2018	-do-	-do-	-do-
E/30505/2018	-do-	-do-	-do-

Appearance

Shri R. Parthasarthy, Advocate for the Appellant.

Shri B. Guna Ranjan, Superintendent /DR for the Respondent.

Coram:

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 26.06.2018

Date of Decision: 02.07.2018

FINAL ORDER No. A/30652-30654/2018

[Order per: P.VENKATA SUBBA RAO]

1. These appeals have been filed by the appellant against the Orders-in-Appeal No. GUN-EXCUS-000-APP-191 to 193-17-18 dated 07.02.2018.

2. Heard both sides and perused the records. The issue in brief is that the appellant is a manufacturer of cement and he has used welding electrodes in repairs and maintenance of the machinery and availed CENVAT Credit on the duty paid on the welding electrodes during the period May, 2013 to May,

2015. The department issued show cause notice seeking to deny this CENVAT credit on the ground that the welding electrodes were not used in or in relation to manufacture of final products and therefore, no credit is admissible as they do not qualify to be called as inputs under the CENVAT Credit Rules, 2004. The Learned lower authority confirmed the demands against which the appellant filed appeals before the Commissioner (Appeals) which were rejected. The present appeals are against this Orders-in-Appeal passed by the Learned First Appellate authority.

3. The facts are not in dispute that the inputs were used for repairs and maintenance of their capital goods. The simple question to be considered now is whether these qualify as inputs under the CENVAT Credit Rules, 2004 or not. The Learned Counsel for the appellant argues that in the case of their sister concern viz., M/s Madras Cements Ltd., Learned Single Member of this Bench had vide Final Order No. A/30228/2016 allowed credit of CENVAT on the welding electrodes. He also submits that in earlier Order passed by the Bangalore Bench in respect of the same assessee viz., M/s Madras Cements Ltd vide Final Order No. 21050/2015, the Hon'ble CESTAT has allowed CENVAT credit. The Division Bench of CESTAT, Bangalore has vide Final Order No. 20206/2015 has also allowed CENVAT credit on welding electrodes. He further submits that in the case of India Cements Ltd., CESTAT, Chennai had vide Final Order No. 41781 & 41782/2015 had also allowed CENVAT credit on welding electrodes. He further submits that in the case of Tamilnadu Newsprints & Paper Ltd., [2017 (357) ELT 60 (Mad.)], the Hon'ble High Court of Madras has allowed CENVAT credit on welding electrodes used in the repairs and maintenance of machinery. In view of these legal precedents, the Learned Counsel argues that the issue is no

longer *res integra* and they are entitled to CENVAT credit and same may be allowed on the welding electrodes. Accordingly, he pleads that the appeals may be allowed. He further submits that once the credit is allowed, the question of fine and penalty do not arise. He further submits that in the event that no credit is allowed on the welding electrodes to them, at least fine and penalty should not be imposed because the issue is debatable and they are entitled to the benefit of doubt.

4. The Learned Departmental Representative vehemently opposed the arguments put forth by the Learned Counsel and pointed out that in the case of Sree Rayalaseema Hi-Strength Hypo Ltd [2012 (278) ELT 167 (AP)], the Hon'ble High Court of Andhra Pradesh which has jurisdiction over the present Bench has clearly and categorically denied the CENVAT credit on welding electrodes used for repairs and maintenance of plants and machinery, holding that they are not inputs in terms of CENVAT Credit Rules. It is his argument that the judgment of the Hon'ble High Court of Andhra Pradesh is binding on this Bench and must be followed. He also explained that this issue was also dealt by the Hon'ble Apex Court in the case of Ramala Sahkari Chini Mills Ltd. [2016 (334) ELT 3 (SC)], in which the Hon'ble Supreme Court referred the matter to the Chief Justice of India to constitute a Larger Bench. The Larger Bench in its judgment has answered the question and referred to it namely that the word 'include' in the definition of inputs in the CENVAT credit enlarges the meaning of preceding words does not restrict it. Thereafter the Larger Bench referred the matter back to the appropriate Benches to decide the factual parameters of each case and entitlement of assesses to CENVAT credit and the facts of these each cases.

5. Countering the argument of the Learned Departmental Representative on the binding precedent of the Hon'ble High Court of Andhra Pradesh in the case of Sree Rayalaseema Hi-Strength Hypo Ltd (supra), the Learned Counsel submits that this judgment of the Hon'ble High court of Andhra Pradesh was already considered in the Final Order No. A/50228/2016 passed by Single Member Bench of CESTAT, Hyderabad in the following words:

"It was also observed therein that in Sree Rayalaseema Hi-Strength Hypo Ltd, the Hon'ble Court has not considered the point as to whether manufacturing operations were commercially feasible without regular repair and maintenance of the plant and machinery, by using welding electrodes."

6. Holding so, the Learned Single Member has allowed the credit on welding electrodes with consequential relief.

7. I have carefully considered the arguments on both sides, the relevant legal provisions at various points of time and other records of the case. It appears that the Government had been revising the CENVAT Rules from time to time expanding the scope of credit and also bringing about increasing harmony between the CENVAT Credit Rules and the erstwhile Service Tax Credit Rules and eventually merged them in 2004. The process of expansion of scope of CENVAT Credit continued even after 2004; simultaneously, the rates of Central Excise duties as well as Service Tax were also harmonised reducing the gaps between them and eventually, they have been merged into the Goods & Services Tax. The case of Ramala Sahkari Chini Mills Ltd before the Hon'ble Apex Court was during CENVAT Credit Rules, 2002. Rule 2(g) of these Rules defined inputs as follows:

"(i) used in or in relation to the manufacture of the final product, whether directly and indirectly, and whether the said goods are contained in the final product or not,

(ii) covered within the six categories of goods enumerated in Rule 2(g) and

(iii) used within the factory of production."

8. These Rules were subsequently replaced by CENVAT Credit Rules, 2004 vide Notification No.23/2004-CE(NT) dated 10.09.2004. These CENVAT Credit Rules, 2004 also subsumed the Service Tax Credit Rules and therefore, there was a major change in the rules. Rule 2(k) of these Rules had defined input as follows:

"(k) 'input' means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service"

9. The case before the Hon'ble High Court of Andhra Pradesh was with respect to the Rule 2(k) of CENVAT Credit Rules, 2004 as above. Subsequently in 2011, Rule 2(k) was amended as follows:

"(k) "input" means-

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final

product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (ztl), (ztlm), (ztlq), (ztlzh) and (ztlzza) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product"

10. It may be seen from the above definitions that in 2002 Rules, inputs used in or in relation to manufacture were allowed credit and this definition was further enlarged in 2004 Rules. In 2011, credit was allowed on all goods used in the factory by the manufacturers subject to some exceptions. It no longer mattered whether the inputs were used in or in relation to manufacture or not. The relevant period in the current cases is May, 2013 to May, 2015. Therefore, the definition of inputs under CENVAT Credit Rules, 2004 as amended in 2011 is relevant for the purpose. This definition, as may be seen, includes within inputs, "all goods used in the factory by the manufacturer of the final product" with some specified exceptions listed as A, B, C, D, E and F. Evidently, A to E do not cover the welding electrodes in question. 'F' refers to goods which have no relationship whatsoever with the

manufacturer of final product. It is not in dispute that the welding electrodes are used for repair and maintenance of capital goods within the factory of manufacturer and these capital goods are used for manufacture of the final product although the relationship is remote and not direct. So by no stretch of imagination can it be said that these welding electrodes have no relationship whatsoever with the manufacture of the final product. Therefore, in terms of the amended definition of inputs under CENVAT Credit Rules, 2004 (after 2011) as is applicable to the relevant period, the welding electrodes can definitely be called inputs. I, therefore, find that the judgment of the Hon'ble High Court of Andhra Pradesh in the case of Sree Rayalaseema Hi-Strength Hypo Ltd (supra) does not apply in view of the revised CENVAT Credit Rules. In consequence, I find that the assessee is entitled to input credit on the welding electrodes used in repair and maintenance of machinery in his factory. Consequently, the Orders-in-Appeal are liable to be set aside and I do so.

11. The appeals are allowed and the Orders-in-Appeal are set aside.

(Pronounced in the open Court on 02.07.2018)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)