CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench - SMB
Court – I

Appeal No. E/30477/2018

(Arising out of Order-in-Appeal No. GUN-EXCUS-000-APP-224-17-18 dated 07.03.2018 passed by Commissioner of Central Tax (Audit), Visakhapatnam)

M/s The Andhra Sugars Limited **…..Appellant(s)**

Vs.

Commissioner of Central Tax,
Guntur – G S T **…..Respondent(s)**

Appearance
Shri Mohammed Rahim, Advocate for the Appellant.
Shri Anwer Moin, (AR) for the Respondent.

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

Date of Hearing: 13/08/2018
Date of Decision: 13/08/2018

FINAL ORDER No. A/31045/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. GUN-EXCUS-000-APP-224-17-18 dated 07.03.2018.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding availment of CENVAT credit of the Central Excise duty paid on Welding Electrodes, Steel Plates, Sheets and Angles which were used exclusively for repair and maintenance within the factory premises during the period May 2015 to March 2016. The appellant was issued a show cause notice for reversal of such CENVAT credit availed during the period in question. The Adjudicating Authority dropped the proceedings issued by the said show cause notice. Revenue was preferred an appeal before the First Appellate Authority who following the judgment of the Hon'ble High Court of Andhra Pradesh in the case of *Sree Rayalaseema Hi Strength Hypo Ltd.,* [2012 (278) ELT 167] set aside the Order-in-Original.

4. On careful consideration of submissions made by both sides, I find that the Adjudicating Authority was correct in setting aside the demands raised by the show cause notice, for more than one reason.

5. Firstly, there is no dispute as to the fact that the Welding Electrodes, Steel Plates and Sheets, Angles were used exclusively for repairs and maintenance within the factory during the period May, 2015 to March, 2016. The First Appellate Authority has categorically recorded the same and not disputed as to the exclusive usage of this

inputs for repairs and maintenance. It is seen from the records, these repairs and maintenance was in respect of the plant and machinery which is used for manufacturing of final products was the claim which has not been disputed by the lower authorities. If that be so, I find that the First Appellate Authority was completely mis-understood the provisions of Rule 2 (k) of the CENVAT Credit Rules, 2004 which defines the term "input" which is as under:

> *(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), (zzl), (zzm), (zzq), (zzzh) and (zzzza) 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.*

It can be seen from the above reproduced definition, the said definition includes all goods used in the factory by the manufacturer of the final products. In the case in hand, it is undisputed that appellant is a manufacturer and has used various inputs in this case, exclusively for repairs and maintenance of plant and machinery which are used for the manufacturing activity.

6. In my considered view, the impugned order has not considered this definition of inputs in its correct perspective and accordingly, I hold that the impugned order is unsustainable and liable to be set aside and I do so.

7. The impugned order is set aside and the appeal stands allowed.

(Order dictated & pronounced in open court)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….