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

Àppeal No.	Appellant	Respondent	Impugned Order
E/2715/2011	Ultratech Cement Ltd	CCCE & ST, Guntur	OIA: 15/2011 (T) CE dated 22.06.2011 passed by CCCE & ST (Appeals), Guntur
E/2735/2011	CCE & ST, Tirupati	Ultratech Cement Ltd	

Appearance:
Shri G. Prahlad, Advocate for the Assessee.
Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Revenue.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 21.12.2018
Date of Decision: 21.12.2018

FINAL ORDER No. A/31618-31619/2018

[Order per: M.V.Ravindran.]

1. These two appeals are directed against Order-in-Appeal No. 15/2011 (T) CE dated 22.06.2011. Appeal E/2715/2011 is filed by the assessee while E/2735/2011 is filed by the revenue against the same order. Assessee is in appeal for denying CENVAT credit on the welding electrodes while the revenue is in appeal against the said order for dropping of the demands raised by invoking extended period.

2. The relevant facts that arise for consideration are appellant during the period in question 24.09.2009 to 23.09.2010 availed CENVAT credit on various items including welding electrodes. On scrutiny of records, the audit party noticed that the appellant's availment of CENVAT credit of the duty paid on welding electrodes is incorrect. Accordingly, a show cause notice was issued for demand of such credit by invoking extended period. Appellant contested the show cause notice on the ground that these welding

electrodes were used for fabrication and repairs and maintenance within the factory premises as also on limitation. Hence, they are eligible to avail CENVAT credit. The adjudicating authority held that extended period is rightly invoked and confirmed the demands raised with interest and imposed penalties. On an appeal, the first appellate authority concurred with the views of the adjudicating authority that welding electrodes used in the factory premises are ineligible for availment of CENVAT credit, but set aside the demands confirmed by invoking extended period, on the ground that appellant had been filing returns regularly and the revenue was aware of it.

3. Learned counsel submits that identical issue came up before the Bench in the case of ITC Ltd [2018 (4) TMI 1313 (CESTAT-HYD)] and in their own case reported at [2016 (10) TMI 1169 (CESTAT-HYD)]. He also submits that judgment of the Supreme Court in the case of Ramala Sahkari Chini Mills [2010 (260) ELT 321 (SC)] would apply in its full force as appellant had been contending that the welding electrodes were used within the factory premises for repairs and maintenance as well as for fabrication. He also relies upon the judgment of Hon'ble High Court of Chattisgarh in the case of CCE & ST, Bilaspur Vs Singhal Enterprises P Ltd [2018 (359) ELT 313] and also the judgment of Hon'ble High Court of Madras in the case of Tamilnadu Newsprints and Paper Ltd Vs CCE, Tiruchirapalli [2017 (357) ELT 60 (Mad.)] took propositions that they had availed CENVAT credit on welding electrodes.

4. Learned departmental representative, on the other hand, submits that welding electrodes which are used are not eligible for CENVAT credit is the law settled. It is his submission that Hon'ble High Court of Bombay in the case of Manikgarh Cement [2018 (360) ELT 86 (Bom.)] and Lloyd Metals and Engineers Ltd [2010 (252) ELT 355 (Bom.)], clearly held that welding

electrodes used for repairing/ maintenance of capital goods were not eligible for CENVAT credit. He also relies upon the judgment of Hon'ble High Court of Allahabad in the case of CCE, Lucknow Vs Nandganj Sihori Sugar Co. Ltd [2017 (357) ELT 13 (All.)] for the same proposition.

5. On careful consideration of the submission made, we find that in the appellant's own case on similar and identical issue of denial of CENVAT credit on welding electrodes was decided by this Bench as reported at 2016 (10) TMI 1169 (CESTAT-HYD) which holds a view that appellant are eligible for CENVAT credit. We also find that the Supreme Court in the case of Ramala Sahkari Chini Mills Ltd [2016 (334) ELT 3 (SC)] has held that welding electrodes used in the maintenance of machines are eligible for CENVAT credit. Further, we find that the Apex Court in the case of Ramala Sahkari Chini Mills Ltd [2016 (334) ELT 3 (SC)] has held as under.

> *"We have heard the learned counsels for the parties. We have also read and considered the order dated 29th November, 2010 [2010 (260) E.L.T. 321 (S.C.)] of this Court referring the matters to a larger bench for a decision on the question as to whether the definition of the term "input" in Rule 2(g) of the Cenvat Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g). The answer to the question referred, according to us, is self-contained in the order of reference which has referred, inter alia, to a three Judge Bench decision of this Court in Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617]. There are other decisions of this Court by Coordinate Benches (three judge) on the issue which need not be adverted to specifically inasmuch as it has been clearly held in Regional Director, Employees' State Insurance Corporation (supra) that the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. We answer the question referred to us in the above manner leaving it for the appropriate bench of this Court to decide on the factual parameters of the case(s) and the entitlement of the assessee(s) to Cenvat credit in the facts of each case."*

6. The interpretation given by the Apex Court in the case of word 'inputs include' would fully apply in the case in hand and accordingly, we hold that the impugned order to the extent contested by the appellant is liable to be set aside and the order contested by the revenue needs to be upheld.

7. As regards reliance placed by the learned departmental representative on the judgment of Manikgarh Cement (supra) and Lloyd Metals and

Engineers Ltd (supra), we find from the copy of judgment which has been produced before us that their Lordships were not appraised of the judgment of the Larger Bench of Supreme Court in the case of Ramala Sahkari Chini Mills Ltd (2016 (334) ELT 3). As regards Hon'ble High Court of Allahabad, we find that their Lordships though having referred to Ramala Sahkari Chini Mills Ltd (supra) did not state anything on this issue. We find that the Larger Bench decision of the Ramala Sahkari Chini Mills Ltd (supra) was not before their Lordships during proceeding.

8. In view of the foregoing and in the facts and circumstances of this case, we hold that the appeal of the assessee needs to be allowed and we do so and the appeal of the revenue needs to be rejected and we do so.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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