CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH – COURT NO – I

Central Excise Appeal No.31240 of 2018

(Arising out of Order-in-Appeal No. GUN-EXCUS-000-APP-056-057-18-19 passed by Commissioner of Central Excise (Appeals) Guntur)

M/s Nelcast Ltd **Appellant**
Plot No. 34,
Industrial Estate, Gudur,
Nellore District
A.P.

VERSUS

Commissioner of Central Tax, **Respondent**
Guntur-GST,
C.R. Buildings,
Kannavarithota ,
GUNTUR.

WITH

Central Excise Appeal No.31241 of 2018

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GUNTUR.

APPEARANCE

Shri V.A.A. Ravi Kumar, Adv for the Appellant.
Shri Mir Anwar Mohiuddin, Authorised Representative for the Respondent.

CORAM: HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No./30504-30505/2019

DATE OF HEARING: 06.05.2019
DATE OF DECISION**:** 06.05.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

Heard both sides and perused the records. The issue which falls for consideration in this case is whether the appellant is entitled to CENVAT credit on the welding electrodes used within the factory of manufacture after 01.04.2011. It is the case of the Revenue that the welding electrodes were not used by the appellant for manufacture of final products and they have no relationship whatsoever with the manufacture of final products. The appellant manufactures iron castings which do not involve welding. Welding electrodes in question were used in maintenance and repair of their machinery on which no excise duty is paid because they are used within the factory of manufacture. Accordingly show cause notices were issued and the demands were confirmed to recover the CENVAT credit availed by the appellant on welding electrodes under Rule 14 read with Section 11A(1) and 11(AA) of Central Excise Act 1944. It was also proposed to impose penalties under Rule 15(1) of CENVAT Credit Rules 2004 read with Section 11AC of Central Excise Act 1944. After following due process, the lower authority confirmed the demands and imposed penalties as proposed in the show-cause notices.

2. Aggrieved, the appellant appealed before the first Appellate Authority who upheld the order of the lower authority and rejected their appeals. Hence these appeals.

3. Learned counsel for the appellant submits that after the Rule 2(k) of CENVAT Credit Rules 2004 was amended on 01.03.2011, (effective from

01.04.2011) and the definition of 'inputs' has been enlarged to include all goods used in the factory by the manufacturer of the final products and subject to some exclusions indicated therein. He would assert that welding electrodes were not excluded in the definition. It is not in dispute that the welding electrodes were used by them within the factory of manufacture of final products. The only reason Revenue sought to deny them CENVAT Credit on these welding electrodes is on the ground that they were not used in or in relation to manufacture of their final products but are used for repair and maintenance of their machinery and capital goods. Therefore, the Revenue's view is that these goods have no relationship whatsoever with the manufacture of the final products. Learned counsel would argue that such an interpretation is erroneous as the capital goods in question are those which are used by them for manufacture of their final products. The welding electrodes are used in maintenance of their capital goods. Therefore there is a direct relationship between the use of welding electrodes and the manufacture of their final products. Once this position is accepted, CENVAT credit cannot be denied on the welding electrodes to them. He relies on the decision in the case of India Cements Ltd Vs CCE & C Hyderabad [2016(341)ELT 422 ((Tri-Hyd)] wherein this Bench has held that for the period post 1st April 2011, welding electrodes used in repair and maintenance of capital goods within the factory of manufacture are eligible for CENVAT credit as per the revised definition of inputs under Rule 2(k) of CENVAT Credit Rules 2004. He further relies on the judgement of the Hon'ble High Court of Madras in the case of Tamailnadu Newsprints & Paper Ltd [2017(357)ELT 60 (Mad) wherein the Hon'ble High Court of Madras allowed credit on welding electrodes used in repair and maintenance of machinery even for the period prior to 1st April 2011. He would argue that their case is squarely covered by the case of India Cements Ltd (supra) of this very Bench and therefore they are entitled to CENVAT Credit. Learned A.R. reiterates the findings of the impugned orders and asserts that the welding electrodes in question were used post 01.04.2011 but not in manufacture of final products but for repair and maintenance of machinery. These welding electrodes have no relationship whatsoever with the manufacture of final products and therefore they are excluded by virtue of exclusion part of the definition of inputs under Rule 2(k)(F) which excludes any goods which have no relationship whatsoever with the manufacture of the final products.

4. I have considered the arguments of both sides and perused the records. It is not in dispute that the welding electrodes in question were used after 01.04.2011 when the definition of "inputs" has been enlarged to include all goods used in the factory of manufacture of the final products subject to some exceptions. The only exception which the department relies on is clause (F) of Rule 2(k) on the ground that the welding electrodes being used in the maintenance and repair of capital goods have no relationship whatsoever with the manufacture of the final products. I do not agree with this interpretation of Clause (F) of Rule 2(k) of CENVAT Credit Rules 2004. If welding electrodes are used for repair and maintenance of machinery and such machinery are used in manufacture of final products and the welding electrodes are used within the factory of manufacture, they are squarely covered by the definition of "inputs" under Rule 2(k) of CENVAT Credit Rules 2004. Therefore they are entitled to CENVAT Credit on the welding electrodes so used. Identical case was also decided by this Bench in the same manner in the case of India Cements Ltd (supra). In

view of the above, the appeals are allowed and the impugned orders are set aside. The appeals are allowed with consequential relief.

(dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy