

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD.**

REGIONAL BENCH.

EXCISE APPEAL NO. 31319 OF 2018 (SM)

[Arising out of the Order-in-Appeal No. GNT-EXCUS-000-APP-96-18-19 dated 13/07/2018 passed by Principal Commissioner (Appeals), Central Tax & Customs Guntur, Visakhapatnam – 530 035.]

M/s DRA Industries Ltd.,

APIIC Industrial Complex,
Attivaram Village, Ozili Mandal,
SPSR Nellore District –524 421.

...Appellant

Versus

**Commissioner of Central Tax,
Guntur CGST Commissionerate,**

Kanavarithota,
Guntur –522 004.

...Respondent

APPEARANCE:

None for the appellant.

Shri V.R. Pavan Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 30077/2022

DATE OF HEARING : 21.07.2022

DATE OF DECISION: 30.08.2022

P.V. SUBBA RAO

None appeared on behalf of the appellant despite notice. It is found that nobody has been appearing on behalf of the appellant during the previous dates on which the matter was listed as well. Shri V.R. Pavan Kumar, learned Authorized Representative represented for the Department.

2. I have considered the submissions made by Shri V.R. Pavan Kumar and perused the records.

3. This appeal is filed against the order-in-appeal dated 13.07.2018¹ passed by the Commissioner (Appeals), Visakhapatnam, whereby he upheld the order dated 10.11.2016 passed by the Assistant Commissioner and rejected the appellant's appeal.

4. The facts of the case are that the appellant manufactures MS Billets and avails the benefits of Cenvat credit and pays central excise duty on its final products. The Superintendent of Central Excise has found that the appellant had availed Cenvat credit on welding electrodes and HR Coils/Sheets during the period July 2015 to March 2016 amounting to Rs. 18,208/- and Rs. 3,44,264/- respectively under the category of inputs. A show cause notice dated 28.07.2016 was issued by the Assistant Commissioner alleging that the HR Coils and welding electrodes were used by the appellant for lining around furnaces and for repair of capital goods. It was alleged that they do not, therefore, qualify as inputs under Rule 2 (k) of Cenvat Credit Rules, 2004². It was proposed to deny the above said Cenvat credit and recover the same under Rule 14 of CCR and readwith Section 11A (1) of Central Excise Act alongwith interest under Section 11AA. It was further proposed to impose a penalty under Rule 15 (1) of CCR readwith Section 11AC. After following due process, the

¹ **impugned order**

² **CCR**

learned Assistant Commissioner has denied the Cenvat credit on both HR Coils and welding electrodes and ordered the recovery under Rule 14 of CCR readwith Section 11A and interest under Section 11AA. He also imposed penalty of Rs. 5,000/- upon the appellant under Rule 15 (1) of CCR readwith Section 11AC. On appeal, the learned Commissioner (Appeals) has upheld this order. Hence this appeal.

5. The short question to be answered is whether HR Sheets/ Coils and welding electrodes which are used for lining the plant and in its maintenance qualify as inputs under Rule 2 (k) of CCR, 2004 or not. Rule 2 (k) as applicable during the relevant period reads as follows :-

"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 [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service, or];

(v) all capital goods which have a value upto ten thousand rupees per piece.

but excludes -

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

(B) any goods used for -

(a) construction or execution of works contract 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 service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;]

(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”.

6. As may be seen “all goods used in the factory by the manufacturer all final products” qualify as inputs under CCR. Therefore, Cenvat credit is admissible on such goods. There is no dispute that the welding electrodes were used for maintenance of the plant and the HR Coils/Sheets were used in making lining around the furnaces in the plant. Evidently, the plant will be within the factory. Since the HR Coils as well as the welding electrodes are used within the factory of manufacturer, Cenvat credit is admissible on both as inputs. I also find that this issue is no longer *res integra* and the jurisdictional High Court of Andhra Pradesh has, in the case of **Sree Rayalaseema Hi-Strength Hypo Ltd. versus Commissioner of Customs & Central Excise, Tirupati**³ held that the goods in used their repair and maintenance qualify as inputs under Rule 2 (k) of CCR. Paragraph 8 of this judgment is reproduced below :-

³ 2012 (278) E.L.T. 167 (A.P.)

"8. In that view of the matter, we are not inclined to agree with the submission of the learned counsel for the assessee. The second explanation to the definition of 'input' under Rule 2(k) of the Rules of 2004 puts it beyond doubt that unless the goods are used in the manufacture of capital goods, which are thereafter used in the factory, they do not qualify as inputs. Repair and maintenance being distinct from manufacture, CENVAT credit cannot be claimed under Rule 2(k) of the Rules of 2004 on the duty paid on welding electrodes used for repairs".

7. Respectfully following the judgment of the jurisdictional High Court, I hold that the appellant is entitled to Cenvat credit as inputs on the HR Coils/Sheets and welding electrodes used in repair and maintenance of the capital goods. The impugned order cannot, therefore, be sustained.

8. The appeal is allowed and the impugned order is set aside with consequential relief, if any, to the appellant.

(Order pronounced in open court on 30/08/2022.)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK