CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>HYDERABAD</u>

REGIONAL BENCH

Central Excise Appeal No. 2759 of 2012

(Arising out of Order-in-Appeal No.54/2012(H-III)CE dated 06.07.2012 passed by Commissioner of Customs & Central Excise & Service Tax (Appeals-I & III) Hyderabad)

ITC Ltd **...Appellant**
Paperboards & Specialty Papers Division,
P.B.No.4,
Sarapaka (Village)
Bhadrachalam,
Khammam Distt
Andhra Pradesh - 507128

Verses

Commissioner of Customs Central Excise & Service Tax **...Respondent**
Hyderabad-III
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbag,
Hyderabad-500004

AND

Central Excise Appeal No. 27347 of 2013

(Arising out of Order-in-Original No. HYD-EXCUS-003-COM-009-13-14 Dated 31.03.2013 passed by Commissioner of Customs & Central Excise & Service Tax , Hyderabad-III)

ITC Ltd **...Appellant**
Paperboards & Specialty Papers Division,
P.B.No.4,
Sarapaka (Village)
Bhadrachalam,
Khammam Distt
Andhra Pradesh - 507128

Verses

Commissioner of Customs Central Excise & Service Tax **...Respondent**
Hyderabad-III
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbag,
Hyderabad-500004

<u>APPEARANCE:</u>
Mr Narender Dave Adv. for the appellant
Mr V.R. Pavan Kumar, A.R. for the Respondent

<u>CORAM:</u>
HON'BLE MR ANIL CHOUDHARY MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NOs. <u>30379-30390/2023</u>

Date of Hearing: 21.08.2023

PER ANIL CHOUDHARY

The issue involved in these appeals is whether the appellant Assessee have rightly taken CENVAT credit on HR plates, Base plates, MS channels, MS plates, Angles, etc.

2. The brief facts are that the appellant is engaged in the manufacture of paper and paperboards. Having their manufacturing facility in Khammam district, Telangana, Appellant has undertaken expansion of their manufacturing capacity. for such purpose, they purchased various items for fabrication and erection of plant and machinery. The various items manufactured *interalia* include kilns, boilers, gas plant, coal handling plant, chipper, fiber line, filter apparatus, cable trays, cooling tower, storage tank etc. Periodical show cause notices were issued for denial of CENVAT credit for the period December 2009 to August 2015. The present dispute in these two appeals relates to the period December 2009 to August 2010 and August 2011 to March 2012.

Particulars	E/2759/2012	E/27347/2013
SCN No & Date	V/48/15/14/2007-Adjn dated 03.12.2010	101/2012-HYD-III Adjn dated 07.09.2012
OIO No & Date	03/2012-CE dated 01.03.2012	09/2013-CE-HYD-III-Adjn(Commr) dated 31.03.2013
OIA No & date	54/2012(H-III)CE dated 06.07.2012	NA
Period of dispute	December 2009 to August 2010	August 2011 to March 2012
Amount involved	Amount of Rs 98,035/- along with penalty of Rs 5000/- and interest	Amount of Rs 87,25,265/- along with equivalent penalty and interest

3. The showcase notices were adjudicated. On contest the proposed demands were confirmed by way of disallowance of CENVAT credit. For the

period December 2009 to August 2010, appellant have preferred appeal before Commissioner (Appeals) and on being unsuccessful there, are in appeal before the Tribunal. In Appeal No. 27347/2013 as the adjudication order was passed by the Commissioner, the appellant is in appeal before this Tribunal. The details are evident from the following chart:

4. Assailing the impugned order, learned counsel for the appellant urges that the issue is no longer *resintegra.* Similar issues have been considered by this Tribunal earlier also in the appellant's own case with respect to similar disallowance of CENVAT credit wherein this Tribunal has allowed the appeal in favour of the appellant assessee, the details of which are as follows:

Period	**Amount (In Rs.)**	**Appeal No.**	**Final Order No.**
September 2010 to July 2011	1,71,68,062 along with interest and Rs.1,70,00,000 penalty	E/25474/2013	Entire demand set aside vide A/31139/2016 dated 08.11.2016 (enclosed herewith)
April 2012 to November 2012	16,90,732 along with interest and equivalent penalty	E/20390/2014	Entire demand set aside vide A/30873/2016 dated 19.09.2016 (enclosed herewith)
December 2012 to October 2013	17,89,019 along with interest and Rs.10,000 as penalty	07/2016 (H-III) CE	Set aside vide Order-In-Appeal No. HYD-EXCUS-003-APP-43,44 and 45-16-17 Dated 23.01.2017
November 2013 to October 2014	12,34,941 along with interest and Rs.10,000 as penalty	08/2016 (H-III) CE	
November 2014 to August 2015	20,96,333 along with interest and Rs.2,00,000 as penalty	55/2016 (H-III) CE	

5. Learned Council also mentions that they have not taken credit to the tune of Rs 74,58,589/- in respect of iron and steel items used in the civil structures. Further, they also reversed CENVAT credit to the tune of Rs

1,85,135/- in respect of civil items and items not used in the factory and used in fabrication of supporting equipment. Accordingly, the learned counsel prays for allowing the appeal with consequential benefits.

6. Learned AR for the Revenue relied on the impugned order.

7. In both the appeals the denial of credit either as inputs or as capital goods is the crux of the issue. While in impugned Order-in-Appeal, the Commissioner (Appeals) has not denied the fact that credit was admissible if the said structural steel items were used in the fabrication of any capital goods/parts/accessories/components and used in the factory, but he doubted the veracity of Chartered Engineer's certificate and therefore did not consider that evidence acceptable and held that in Order-in-Original, the credit is denied correctly due to non-acceptance of Chartered Engineer's Certificate, in view of lack of other evidence to prove that they were used in fabrication of capital goods

8. Having considered the rival contentions, we are satisfied that the issue is no longer *resintegra* as the same has been decided in favour of the appellant by this Tribunal in the aforementioned precedent orders, particularly order of the Coordinate Bench wide Final Order No. A/31139/2016 dated 8th November 2016 for the period September 2010 to July 2011 which was reported at 2017-TIOL-635-CESTAT-Hyd wherein this Tribunal has held as follows:

> "5. Heard both sides. On perusal of the records as well as the Chartered Engineer certificate, we find that the subject items are used for fabrication of tubes, pipes and fittings, storage tanks, accessories of boiler, accessories of paper machines, cable trays, pulp mill etc. The appellant has also used subject items for fabrication of supporting for equipment & machinery. Ld. Counsel has explained that these platforms are not civil structures and they are of such nature that they can be dismantled, transported and re-assembled at any other site. The same issue was considered by the Tribunal (SM) in the Final Order No. A/30873/2016 dated 19.09.2016 wherein the Tribunal has allowed the credit of such items used for fabrication of operating and maintenance of

> platforms. In the said case the Tribunal had allowed the credit on subject items used for fabrication of components/spares/accessories of the capital goods as explained in the Chartered Engineer certificate produced by the appellant. We are also able to see that the appellant has reversed the credit of Rs. 1,75,793/- which was availed by them in respect of MS items used for civil construction and items used outside the factory. In view of the above discussions, we hold that the appellant is eligible to the tune of Rs. 1,69,92,269/- (Rs. 1,71,68,062/- less Rs. 1,75,793/-).
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> 6. For the above reasons, we find that the imposition of penalty is also not sustainable and the same is set aside. The appeal is allowed to the extent of allowing the credit to the tune of Rs. 1,69,92,269/- and also setting aside the penalty imposed. Appeal allowed on above terms. Miscellaneous application for Early Hearing by department is also disposed accordingly."

9. It is thus clear that Coordinate Bench, in their own case, has accepted the veracity of Chartered Engineer's Certificate to come to conclusion that such items were used for fabrication of components/spares/accessories of capital goods and not for civil construction.

10. Following the precedent order of the Tribunal, we set aside the impugned orders and allow these appeals. Appellant is entitled for consequential benefits in accordance with law.

(order pronounced and dictated in the open Court)

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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