CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 2045 of 2012

(Arising out of Order-in-Original No. 18/2012 (C.Ex) dt.30.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Zuari Cements Ltd
Krishna Nagar, Yerraguntla, Kadapa,
Andhra Pradesh – 516 311
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati
9/86-A, Behind West Church Compound,
Amaravati Nagar, Tirupati, AP – 517 502
......Respondent

with

Excise Appeal No. 2046 of 2012

(Arising out of Order-in-Original No. 19/2012 (C.Ex) dt.30.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Zuari Cements Ltd
Krishna Nagar, Yerraguntla, Kadapa,
Andhra Pradesh – 516 311
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati
9/86-A, Behind West Church Compound,
Amaravati Nagar, Tirupati, AP – 517 502
......Respondent

and

Excise Appeal No. 2047 of 2012

(Arising out of Order-in-Original No. 20/2012 (C.Ex) dt.30.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Zuari Cements Ltd
Krishna Nagar, Yerraguntla, Kadapa,
Andhra Pradesh – 516 311
......Appellant

VERSUS

Commissioner of Central Tax
Tirupati
9/86-A, Behind West Church Compound,
Amaravati Nagar, Tirupati, AP – 517 502
......Respondent

Appearance
Shri Ch. Sumanth, Advocate for the Appellant.
Shri A.V.L.N. Chary, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30446-30448/2023

Date of Hearing: 01.11.2023
Date of Decision: 01.11.2023

[Order per: ANIL CHOUDHARY]

As common issue is involved in all these Appeals by the same Appellant, they are taken up for hearing and disposal together. The issue involved in these Appeals is whether the Appellant has rightly taken Cenvat credit on MS items such as pipes, chains, jackets, hollow pipes, plates, flats, angles, channels, sheets, rods, beams, cable trays and hand rail pipes, etc., used for fabrication and for structural support. The amount in dispute in the three Appeals is as follows:

Appeal No.	E/2045/2017	E/2046/2017	E/2047/2017
OIO No. & date	18/2012 (C.Ex) dt.30.03.2012	19/2012 (C.Ex) dt.30.03.2012	20/2012 (C.Ex) dt.30.03.2012
SCN No. & date	25/TCCE/2010-Adjn. (CE) dt.13.05.2010	39/TCCE/2011-Adjn. (CE) dt.28.04.2011	172/TCCE/2011-Adjn. (CE) dt.10.01.2012
Period of dispute	Dec 2007 to Feb 2010	April 2010 to Dec 2010	Jan 2011 to Aug 2011
Amount involved	Cenvat of Rs.1,92,71,254/- on credit availed on MS items along with interest and penalty of Rs.1,92,71,254/- Section 11AC read with Rule 15(2) of CCR	Cenvat of Rs.20,13,167/- on credit availed on MS items along with interest and penalty of Rs.25,000/- under Rule 15 of CCR	Cenvat of Rs.16,65,132/- on credit availed on MS items along with interest and penalty of Rs.15,000/- under Rule 15 of CCR
Amount within Limitation	May 2009 to Feb 2010	Entire demand within normal period	Entire demand within normal period
Demand barred by Limitation	Dec 2007 to April 2009	NA	NA

2. The brief facts are that the Appellant is involved in the manufacture of cement and cement clinkers falling under Chapter 25 of CETA 1985. The Appellant is registered with the Central Excise Department and was clearing the

finished goods on payment of appropriate excise duty. The Appellant received various inputs and input services and availed Cenvat credit including Cenvat credit on capital goods in accordance with Cenvat Credit Rules 2004 (CCR). The Appellant had also undertaken construciton of 'new cement plant' in the existing factory premises, for which construction/fabrication started from 2010. The Appellant installed heavy plant and machinery, equipments and for this purpose, they received various MS items used for fabrication of capital goods.

3. It appeared to Revenue that the Appellant has availed Cenvat credit on some ineligible MS items used in construction of structures for raw mill/fly ash silo/kiln, which are further used in the manufacture of dutiable finished goods. It also appeared that various MS steel items (movable goods) cannot be considered as components, spares or accessories of capital goods as defined in Rule 2(a) of CCR or as inputs under Rule 2(k) of CCR. Revenue relied on the ruling of the Larger Bench of this Tribunal in the case of Vandana Global Ltd vs CCE, Raipur, to state that credit on MS items, which are used in fabrication of support structures is ineligible. After 07.07.2009, the Appellant had not availed Cenvat credit on steel items used in laying foundation and structures on which the plant and machinery was installed or erected. Accordingly, periodical SCNs were issued as aforementioned, proposing to disallow Cenvat credit. The SCNs were adjudicated on contest vide common OIO No.18, 19 & 20/2012 (C.Ex) dt.30.03.2012 and the Cenvat credit was disallowed along with imposition of penalty under Rule 15(2) read with Sec 11AC of the Act, as aforementioned. Being aggrieved, the Appellant is before this Tribunal against the disallowance of Cenvat credit.

4. Heard the parties.

5. We find that the SCNs were issued on the basis of ruling of the Larger Bench of this Tribunal in the case of Vandana Globla Ltd vs CCE, Raipur. This ruling has been reversed by the Hon'ble Chattisgarh High Court as reported at [2018 (16) GSTL 462], wherein it has been held that the amendment to explanation 2 to Rule 2(k) of CCR vide Notification No. 16/2009-CE(NT) is not clarificatory and only have prospective operation. Following the ruling of Hon'ble Madras High Court in the case of Thiru Arooran Sugars vs CESTAT, Chennai [2017 (355) ELT 373 (Mad)] and also the ratio in the ruling of Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd vs Commissioner [2015 (39) STR 726 (Guj)], it has been held that Cenvat credit is available on all inputs, which are used in the factory of production either as

inputs or capital goods for fabrication of capital goods, which are further used for manufacture of dutiable finished goods.

6. We also find that Hon'ble Madras High Court in the case of India Cements Ltd vs CCE, Chennai [2015-TIOL-650-HC-MAD], in respect of availability of Cenvat credit on MS sheets, channels and plates etc., used for fabrication of fly ash, hopper, fly ash bin and handling system, have held that Cenvat credit is available. Futher, this Tribunal also, in the case of Bhavya Cements Ltd vs CC, CE & ST, Guntur [2018 (10) TMI 525 (CESTAT-Hyderabad)], under similar facts and circumstances, held that Cenvat credit is available on MS items used for fabrication of machineries and for use in the factory of production.

7. We find that there is no dispute by Revenue as to receipt of the MS items in the factory of production and its further use in the fabrication of capital goods or supporting structures, without which no manufacture of dutiable finished goods can be done.

8. In view of the aforementioned findings and observations, we allow these Appeals and set aside the Impugned Orders. The Appellant shall be entitled to consequential benefits, in accordance with law.

(Operative Part of the Order was pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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