CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

E/1140/2011-DB, E/1141/2011-DB, E/1142/2011-DB, E/1143/2011-DB

(Arising out of Order-in-Original No. 25-2010 dated 21/12/2010 passed by Commissioner of Customs Central Excise & Service Tax, Hyderabad)

ITC LTD Appellant(s)

Versus

Commissioner of Central Excise, Customs And Service Tax HYDERABAD-III Respondent(s)

Appearance:

Ms Swetha, Adv for the Appellant.

Mr Arun Kumar, A.R. for the Respondent.

CORAM:

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

सीमाशुल्क, उत्पादशुल्क और सेवा कर अपील अधिकरण Customs Excise And Service Tax Appellate Tribunal ★ Hyderabad ★ हैदराबाद

Date of Hearing: 28/01/2019
Date of Decision: 28/01/2019

Final Order No. A/ 30130-30133 / 2019

[Order per: M.V.Ravindran.]

All these appeals are directed against order-in-original No. 25-2010 dated 21/12/2010.

2. The adjudicating authority has disposed of by a common order various show-cause notices vide which demands are raised on the appellant

directing him to show cause as to why CENVAT credit availed on MS plates, angles, sheets; HR plates, sheets and angles be not denied to them as also on the various capital goods which are received in the factory premises on the ground that these items are not inputs as well as capital goods. The appellant contested the show-cause notice on merits before the adjudicating authority and also filed a Chartered Engineer's certificate vide which it was certified that these items were used for fabrication of capital goods and installed within the factory premises.

3. Learned counsel after drawing our attention to the Chartered Engineer's certificate submits that the demand raised on various inputs like HR plates, coils, sheets etc. are prior to 07.07.2009 and the adjudicating authority has relied upon the larger Bench decision of the Tribunal in the case of Vandana Global Ltd [2010(253) ELT 440 (Tri-LB)] to deny them CENVAT credit. It is her submission that Hon'ble High Court of Chhattisgarh in the case of CCE Vs Singhal Enterprises [2018(359)ELT313 (Chhattisgarh)] has upheld the order of the Tribunal which considered the case of Vandana Global Ltd and held that CENVAT credit can be availed. It is her submission that in respect of capital goods, they were clearly available as CENVAT credit. She relies upon the decisions of the Hon'ble High Court of Madras in the case of CCE Vs India Cements Ltd [2014 (310)ELT 636(Mad)]and Tiru Arooran Sugars Vs CESTAT Chennai [2017)355)ELT 373 (Mad)]on the same issue. She also relies upon the decision of the Larger bench of the Tribunal in the case of Mangalam Cement Ltd Vs CCE Jaipur [2018(360)ELT 737()Tri-LB).

4. Learned A.R. reiterates the findings of the lower authorities.

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5. On a careful consideration of the submissions made by both sides and on perusal of records, we find that the adjudicating authority has come to a conclusion that CENVAT credit availed on HR plates, MS plates, beams, MS channels and angles joists etc are ineligible as these are not capital goods and are used as inputs for fabrication of capital goods, hence covered by the decision of the Larger bench of the Tribunal in the case of Vandana Global Ltd. We find that the adjudicating authority has also denied CENVAT credit on the capital goods which were used in the factory premises on the same ground. The period involved in this case is prior to 07.07.2009.

6. We do find that the judgment of the Larger Bench of the Tribunal in the case of Vandana Global Ltd on which reliance is placed by adjudicating authority has been overruled by the Hon'ble High Court of Chhattisgarh in Tax Appeal No. 59/2011 dated 13.09.2017 In the facts of this case since there is no dispute that the various items and capital goods were used in the factory premises for expansion of projects, (as per the certificate of Chartered Engineer) we hold that the ratio of the various decisions cited by the learned counsel squarely covers the issue in favour of the appellant. The impugned order is unsustainable and liable to be set aside and we do so. The impugned order is set aside and the appeals are allowed.

(Order pronounced and dictated in open court)

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P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy

प्रमाणित प्रति / CERTIFIED COPY
15-02-19
सहायक पंजीकार / Asst. Registrar
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Customs Excise And Service Tax Appellate Tribunal
हैदराबाद / Hyderabad