

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

Regional Bench - Court No. – I

Excise Appeal No. 934 of 2012

(Arising out of Order-in-Original No.07/2012-C.Ex. (Commr) dt.31.01.2012 passed by
Commissioner of Customs, Central Excise & Service Tax, Guntur)

KCP Limited

Muktyala Village, Jaggayyapet,
Krishna District, Andhra Pradesh – 521 457

.....Appellant

VERSUS

**Commissioner of Central Tax
Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

Appearance:-

None for the Appellant.

Shri K. Sreenivasa Reddy, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30025/2025

Date of Hearing: 21.01.2025

Date of Decision: 21.01.2025

[Order per: A.K. JYOTISHI]

M/s KCP Ltd (hereinafter referred to as the appellant) are manufacturer of cement and clinker falling under Chapter Sub Heading No. 2523.29.10/30/100 of the First Schedule to the Central Excise Tariff Act, 1985. They had, inter alia, taken Cenvat Credit on cement, steel and TMT bars/coils in the manufacture/fabrication of cement silo/blending silo/clinker silo, which they claimed as "storage tanks". However, the department felt that in terms of explanation 2 to Rule 2(k) in the Notification No.16/2009-CE dt.07.07.2009, the definition of input has undergone change, whereby, certain items like cement, angles, channels, Centrally Twisted Deform bar (CRD) or Thermo Mechanically Treated bar (TMT) and other items, used for construction of factory shed, building or laying of foundation or making of structure for support of capital goods have been clearly included and therefore could not be considered as inputs.

2. Since nobody appeared on behalf of the appellant today, despite giving chance, we intend to take up this matter on merit itself based on materials available on record.

3. Learned AR reiterates the order passed by the Adjudicating Authority, wherein, the reasons for denying the said credit have been explained by the Adjudicating Authority. He also fairly concedes that the issue of storage tank being immovable goods or otherwise was not discussed by the Adjudicating Authority even though the same point was mentioned in the SCN.

4. Heard learned AR for Revenue and perused the records.

5. The short question for determination is whether, in the facts of the case, as per the notification cited and relied upon by the Adjudicating Authority, the impugned items are eligible for Cenvat credit for the period June, 2010 to August, 2010. We find that it is an admitted fact that they have used these items for manufacture/fabrication of cement silo/blending silo/ clinker silo, which they have also claimed as storage tank. According to the appellants, since these were storage tanks, therefore, they would merit classification as capital goods and on this count itself, the credit in respect of the said inputs used for manufacture of capital goods is admissible. While the Revenue has also tried to raise the issue that these storage tanks cannot be goods as they are immovable and therefore, they cannot be brought under the category of capital goods.

6. On going through the impugned order, we find that nowhere the issue of immovability of storage tank, per se, has been taken up or discussed by the Adjudicating Authority and the sole ground taken by him is that in terms of amendment vide Notification No. 16/2009 dt.07.07.2009, whereby, the definition of input has undergone change, excluding certain items used for certain specific purposes from the purview of definition of input, the appellants are not eligible for credit. We have perused the notification and find that while the items mentioned in exclusion are clearly the items in respect of which credit has been denied in present appeal, however, their use is restricted only in relation to factory shed, building or laying of foundation or making structures for support of capital goods and we do not find any ground as to why the storage tank would fall under any of these categories. The silo is a fabrication/construction, which may be movable or

immovable depending on manner in which it is constructed in the factory and the purpose for which it is constructed, which is essentially meant for storage of raw material, finished goods, etc., and it is very clearly identifiable and therefore cannot be clubbed under the category of these four excluded end uses. Therefore, when the reliance has been placed only on this notification for confirming the demand, we do not find any merit in the order of the Adjudicating Authority and therefore, we set aside the impugned order dt.31.01.2012.

7. In essence, appeal is allowed.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)