IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.961/11

(Arising out of Order-in-Original No.CCE/BBSR II/No-25-30/Commissioner/2011 dated 16.08.11 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR II)

M/s MSP Metallics Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Customs & S.Tax, BBSR II

Respondent (s)

Appearance:

Shri K. K. Anand, Adv. for the Appellant (s)
Shri S. Guha, Asstt. Commr. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

Date of Hearing : 21.03.2018
Date of Decision : 21.03.2018

ORDER NO.F/O/75565/2018

Per Dr. Satish Chandra.

The present appeal has been filed by the appellant against the impugned Order-in-Original No. CCE/BBSR II/No-25-30/Commissioner/2011 dated 16.08.11 passed by the Commissioner of Central Excise, Customs & Service Tax, BBSR II.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of pig iron, sponge iron and steel billets. The raw materials were used by the appellant, on which, the CENVAT

credit was claimed. The Department has denied the same. Being aggrieved, the appellant has filed the present appeal.

3. Heard Shri K. K. Anand, ld.Counsel for the appellant and Shri S. Guha, ld. D.R. for the Revenue.

4. After hearing both sides and on perusal of record, it appears that for the earlier period, the issue has come up before the Tribunal in the assessee's own case (Final Order No.78327/2017 dated 30.11.2017), where the Tribunal has followed the decision of the Tribunal in the case of **Singhal Enterprises Pvt. Ltd. vs Commissioner of Customs & Central Excise, Raipur,** 2016 (341) ELT 372 (Tri.-Del), wherein it was held that :

> ***"12.*** *We have gone through the judgment of the Hon'ble High Court of Allahabad cited by the Revenue. We find that the Hon'ble High Court has considered the claim of Welding Electrodes under the definition of 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 and have come to the conclusion that the credit will not be allowable under this Rule. However, we find that the credit of duty paid on Welding Electrodes has been held allowable by several decisions of this Tribunal and hence the issue is no more res integra. We also find that several High Courts have also allowed such credit considering the same as allowable within the definition of "Input" under the Cenvat Credit Rules. One such reference can be made to the decision of the Hon'ble High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise, Raipur, 2010 (256) E.L.T. 690 (Chhattisgarh), wherein welding electrodes used for repair and maintenance purpose were also held to be*

cenvatable. Similarly, in the case of Hindustan Zinc Limited v. Union of India, 2008 (228) E.L.T. 517 (Raj.), the Hon'ble High Court of Rajasthan allowed the Cenvat credit on the welding electrodes. By following said decision, we hold that the appellants are entitled to the credit on welding electrodes considering them as "Inputs".

13. *Now we turn to the question, whether credit is admissible on various structural steel items, such as, MS Angles, Sections, Channels, TMT Bar, etc., which have been used by the appellants in the fabrication of support structures on which various capital goods are placed? The same stands denied by the lower authority. The learned DR has sought disallowance of the same by citing the decision of the Larger Bench in the case of Vandana Global Ltd. (supra) and other judgments. Further, he has brought to our notice and emphasized the amendment carried out in Explanation-II to Rule 2(a) which defines the term "Input" w.e.f. 7-7-2009. It has further been pleaded that the Cenvat credit claimed for the period prior to this will be covered within the decision of the Larger Bench in the case of Vandana Global Ltd. (supra).*

14. *The Larger Bench decision in Vandana Global Ltd.'s case (supra) laid down that even if the iron and articles were used as supporting structures, they would not be eligible for the credit. Considering the amendment made w.e.f. 7-7-2009 as a clarification amendment and hence to be considered retrospectively. However, we find that the said decision of the Larger Bench was considered by the Hon'ble Gujarat High Court in the case of Mundra Ports & Special Economic Zone Ltd., 2015 (04) LCX0197 = 2015 (39) S.T.R. 726 (Guj.), wherein it was observed* *that the amendment made on 7-7-2009 cannot be held to be clarificatory and as such would be applicable only prospectively.*

15. *We find that the controversy can be laid to rest by making a reference to the decision of the Apex Court in the case of CCE, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., 2010 (255) E.L.T. 481 (S.C.), wherein the Hon'ble Supreme Court has considered an identical issue of steel plates and MS channels used in the fabrication of chimney for diesel generating set. The credit stands allowed in the light of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the said judgment, the Apex Court has referred to the "user test" evolved by the Apex Court in the case of CCE, Coimbatore v. Jawahar Mills Ltd., 2001 (132) E.L.T. 3 (S.C.), which is required to be satisfied to find out whether or not particular goods could be said to be capital goods. When we apply the "user test" to the case in hand, we find that the structural steel items have been used for the fabrication of support structures for capital goods. The appellants have argued that the various capital goods, such as, kiln, material handling conveyor system, furnace, etc. cannot be suspended in mid-air. They will need to be suitably supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitably worked upon for this purpose. Accordingly, the goods fabricated, using such structurals, will have to be considered as parts of the relevant machines. The definition of 'Capital Goods' includes, components, spares and accessories of such capital goods. Accordingly, applying the "User Test" to the facts in hand, we have no hesitation in holding that the structural items used in the fabrication of support* *structures would fall within the ambit of 'Capital Goods' as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat credit."*

5. By following the earlier decision of the Tribunal (sura), we set aside the impugned order and allow the appeal.

6. In the result, the appeal filed by the appellant is allowed.

(Dictated and pronounced in the open court.)

Sd/ Sd/

(C.J.Mathew)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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