IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/547/2012

(Arising out of Order-in-Original No.25/Commr./Bol/12 dated 30.05.2012 passed by the Commissioner of Customs & Central Excise, Bolpur)

SAIL Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur

Respondent (s)

Appearance:

Shri Deepro Sen, Advocate the Appellant (s)
Shri S.S.Chattopadhayay, Suptd.(AR) for the Respondent (s)

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

Date of Hearing/Decision:-23.03.2018

ORDER NO.FO/75676/2018

Per Dr. Satish Chandra,

1. The present appeal is filed against Order-in-Original No.25/Commr./Bol/12 dated 30.05.2012. The Department has denied the cenvat credit on "Sleepers" and "Rail Tracks" as capital goods utilized in the railway factory. Being aggrieved the appellant has filed this appeal before this Tribunal.

2. Heard both sides and perused the appeal record.

3. It appears that identical issue has come in the assessee's case in M/s. Steel Authority of India vs. CCE & Customs, Raipur [2016(12) TMI 840-CESTAT New Delhi], where the disputes pertains to cenvat credit available on the Sleepers, railway construction materials like fish plates, elastic rail

clips, fish plates, fish bolts, nuts, lighting structures etc. In that case the Tribunal has observed as under:

> " 6.*On the first issue regarding eligibility of the cenvat credit on railway tract materials used and installed inside the factory premises, we note that these railway lines created by using these materials were exclusively used by the appellants for movement of the raw materials, processed materials, etc. in the course of manufacture of dutiable final products. The railway track is part and parcel of material handling system integrally connected with the production on movement of dutiable goods. We note that the Hon'ble Supreme Court in Jayaswal Neco Ltd. (Supra) examined similar sets of facts and allowed credit under the erstwhile Central Excise Rules, 1944. The Hon'ble Supreme Court examined in detail the expression in the manufacture of goods and held that the expression shall include all processes, which are directly related to the actual production. The goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The Hon'ble Supreme Court applied user criteria to hold that the use of railway tracks is related to the actual production of goods and without the use of railway tracks, commercial production would be inexpedient. Railway tracks used in transporting raw materials and manufacture metals was considered as a handling system for raw materials and processed materials. Considering the principle and the final finding of the Hon'ble Supreme Court in the above case, we find that the denial of credit to the appellant is not justifiable. In fact, the Tribunal applied the above principle laid down by the Hon'ble Supreme Court in the appellants own case in a bunch of matters reported as Tata Steels Ltd. (supra) and allowed the credit. It is also noted that after the decision of the Hon'ble Supreme Court in Jayaswal Neco Ltd. (supra) the jurisdictional Commissioner vide his order dated 7.8.15 has dropped the demand against the appellant for latter period. The Tribunal has allowed the credit on railway track materials as integral handling equipments in various other*

cases also.Reference can be made to Aditya Cement 2016 TIOL-2582 (CESTAT-DELHI) and Ultra Tech Cement Ltd. 2016 – TIOL-1967 (CESTAT-Hyderabad)"

4. By following the Tribunal's earlier decision we set aside the impugned order and allow the appeal.

5. In the result, the appeal is allowed.

(Dictated and Pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(C. J. MATHEW)
MEMBER (Technical)

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