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

Appeal No. E/75541/17

(Arising out of the Order-in-Appeal No.123-124/Kol-IV/16-17 dated 04.01.2017 passed by the Commissioner of Central Excise (Appeals-II), Kolkata)

Calcutta Springs Ltd.

Applicant (s)/Appellant (s)

Vs

Commr. of Central Excise, Kolkata-IV

Respondent (s)

Appearance:

Shri S.P.Siddhanta, Consultant for the appellant (s)

Sri S. S.Chattopadhyay, Suptd. (A.R.) for the Respondent (s)

CORAM:

HON'BLE SHRI P.K. CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing 27.02.2018

Date of Pronouncement :03.04.2018

ORDER NO : FO/75787/2018

Per Shri P.K. CHOUDHARY

1. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Cast Manganese, Steel Crossings, Fan Shaped Switches Points and Crossings classifiable under Chapter 73 of the Central Excise Tariff Act, 1985.

A Show Cause Notice dated 02.04.2012 was issued alleging that the appellant availed inadmissible Cenvat Credit on inputs i.e. Steel items used for laying "foundation" and for building "supporting structures" and also for making self-manufactured capital goods such as Hydraulic Press, Crane etc.

The Adjudicating authority disallowed the Cenvat Credit of Rs. 21,23,438.00 along with interest and imposed penalty of equal amount of Cenvat Credit.

By the impugned Order the Commissioner (Appeals) upheld the Adjudication Order.

2. Heard both sides and perused the appeal records.

3. It is seen from the impugned Order that the Cenvat Credit of Rs. 21,23,438.00 on input steel items were used for laying Foundation and/or building "Supporting Structure" for making self manufactured capital goods during the period 2007-08 to 2010-11. The Learned Counsel referred to the decision of the Tribunal in the case of Singhal Engineering Enterprises Private Limited Vs. Commissioner of Customs and Central Excise, Raipur 2016 (341) ELT 372 (Tri-Del). In that case the Tribunal allowed the Cenvat Credit on Iron & Steel items used for fabrication of supporting structures for various capital goods. The relevant portion of the said decision is reproduced below :

> *"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."

4. I find that the Iron & Steel items were used for laying foundation as well as manufacture of supporting structure of capital goods. The Learned Counsel placed the detailed statement of Cenvat Credit. As per the decision of the Tribunal in the case of Singhal Engineering Enterprises Private Limited (Supra) the appellant is entitled to avail the Cenvat Credit on the Iron & Steel items used for supporting structures for making self manufactured Capital Goods but they are not entitled to avail the credit on steel items used for laying foundation.

5. In view of the above discussion, the impugned order is modified in so far as the appellant is not entitled to avail credit on steel items used for laying foundation. As the matter involved is regarding the interpretation of provisions of law, the penalty imposed is liable to be set aside. The Adjudicating authority is directed to re-quantify the demand of Cenvat Credit to disallow the credit on the iron and steel items used for laying foundation.

6. The appeal filed by the appellant is disposed off in the above terms.

(Pronounced in the open court on 03.04.2018)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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