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

Ex.Appeal No.75075/18 & CO-75001/18

(Arising out of Order-in-Appeal No.17/HAL/CE/2017-18 dated 22.09.2017 passed by the Commissioner (Appeals) of Central Excise, Kolkata II)

Commr. of Central Excise, Haldia

Applicant (s)/Appellant (s)

Vs.

M/s Rashmi Cement Ltd.

Respondent (s)

Appearance:

Shri A. Roy, Supdt. (A.R.) for the Revenue (s)
Shri S. P. Siddhanta, Consultant for the Respondent (s)

CORAM:

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

Date of Hearing : 03.04.2018
Date of Pronouncement : 22.05.2018

ORDER NO. FO/A/76118/2018

Per Shri P. K. Choudhary :

The present appeal is filed by the Appellant against the Order-in-Appeal No.17/HAL/CE/2017-18 dated 22.09.2017 passed by the Commissioner (Appeals) of Central Excise, Kolkata II.

2. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of Sponge iron, ferro manganese and ferro silico manganese classifiable under chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. It is the case of the department that the assessee had availed and utilised irregular Cenvat credit amounting to Rs.10,03,389/-. During an audit conducted by the department, it was observed that during

the period from 2010-11 to 2011-12 the assessee had availed credit on structural items such as platforms, structures for capital goods and material handling system. Accordingly, a show cause notice dated 27.04.2015 was issued to the appellant proposing recovery of credit amounting to Rs. 10,03,389/- in terms of Rule 14 of the Rules along with interest and penalty. The adjudicating authority confirmed the demand made in the show cause notice and imposed penalty equal to the amount of duty. On appeal, the Commissioner (Appeals) set aside the adjudication order. Aggrieved by the order of the Commissioner (Appeals), the Revenue has preferred this appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. The ld. A.R. for the Revenue submitted that the chain of structural system so erected is permanent in nature and is completely embedded to earth, and is therefore, an immovable property. Consequently, the impugned goods are not covered by the definition of input under Rule 2(k) of the Cenvat Credit Rules, 2004. He further stated that credit was not available to the assessee as the impugned goods had not been used in the manufacture of final products.

5. The ld. Counsel for the assessee submitted that the assessee had purchased parts of boiler in CKD (completely knocked down) condition, which were parts and components of

capital goods. He relied upon the CBEC Circular No. 441/7/99-CX dated 23.02.1999.this case.

1. Bihar Sponge Iron Ltd. v. CCE, Jamshedpur [2009 (233) ELT 243 (Tri.-Kol)]
2. Dhampur Sugar Mills Ltd. v. CCE, Meerut-II [2013 (296) ELT 269 (Tri.-Del.)]
3. OPG Metals Pvt. Ltd. v. CCE, Trichy [2016 (344) ELT 990 (Tri.-Mad)]

The observation of the Commissioner (Appeals) is reproduced:

> "14. The loser authority in his impugned order mentioned the above circular but neither in the impugned notice nor in the impugned order, there is any reflection that the Department has physically made any visit to the factory premises of the appellant to examine the question of facts regarding exact and specific nature & use of the impugned goods. Further, in the instant case, the appellant has not availed credit on the impugned goods, treat6ing them as input under rule 2(K) of the said Rules, they availed credit on the said goods treating them as capital any proof / evidence regarding physical verification of exact and specific nature & use of the impugned goods, the lower authority's contention is not acceptable."

7. Further, I find that the usage of various iron and steels items is to be analysed in light of the decision of the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills

Ltd. reported as 2010 (255) ELT 481 (SC). In this judgment, the Hon'ble Supreme Court has referred to the 'user test' outlined in the case of CCE, Coimbatore v. Jawahar Mills reported as 2001 (132) ELT 3 (SC), which lays down the ratio in determining whether particular goods could be categorised as capital goods or not. I find that the observation of the Tribunal in the case of Dhampur Sugar Mills Ltd. Vs. Commissioner of Central Excise, Meerut [2013 (296) E.L.T. 269 (Tri.-Del)] is applicable to the instant case. The relevant portion is reproduced:-

> "**5.**There is no dispute about the fact that while GI structures though falling under Heading 7308 have been used as part of the turbine, the catenary plate and structural part falling under Heading 7308 have been used with the boiler. While catenary plate is attached to the boiler, the structural part is used as supporting structure for the boiler. There is no dispute that although the boiler as well as turbine fall under Chapter Heading 84 and are covered by the definition of capital goods, and that the definition of capital goods, in addition to the goods falling under Chapters 82, 84, 85, 90 etc., also covers as the component, spares and accessories of these goods. It is settled law that components and accessories of the capital goods can be of any heading not necessary of the tariff headings specified in the definition of capital goods. Therefore, even if the items falling under Chapter 7308 are used as part of the machinery falling under Chapter 84, the same would have to be treated as capital goods. Since in this case, the GI structure is used as part of the turbine, in my view, the denial of credit in respect of this item on the ground that the same is not covered by the definition of capital goods, is not correct. For the above reason, the denial of cenvat credit in respect of catenary plate

which, admittedly, has been used as part of the boiler is also not correct."

8. In view of the above discussion, the appeal filed by the Revenue is rejected. The cross objection is disposed of.

(Pronounced in the open Court on 22.05.18)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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