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

Ex.Appeal No.75480/16

Arising out of Order-in-Appeal No.75-76/JSR/2015-16 dated 18.01.16 passed by Commr. of Central Excise (Appeals) & S.Tax, Ranchi

Commr. of Central Excise, Jsr.

…APPELLANT(S)

VERSUS

M/s Balaji Industrial Engineering Ltd.

RESPONDENT (S)

APPEARANCE

Shri H. S. Abedin, Asstt. Commr. (A.R.) for the Revenue
Shri Manish Rastogi, Adv. for the Respondent (s)

CORAM:

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

DATE OF HEARING /PRONOUNCEMENT : 05.04. 2018

ORDER No. FO/A/76112/2018

Per Shri P. K. Choudhary :

This appeal has been filed by the Revenue against the impugned Order-in-Appeal No.75-76/JSR/2015-16 dated 18.01.16 passed by Commr. of Central Excise (Appeals) & S.Tax, Ranchi.

2. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of Sponge Iron classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. During scrutiny of records of the assessee, it had been observed that the assessee had availed Cenvat credit amounting to Rs.32,65,420/- on goods such as Angles, channels, HR Plate, HR Coils, Beam, Joist, etc. during the period from 2008-09 to 2010-11. It is the case of the

department that such goods had not been used in the manufacture of the final product of the assessee and therefore, the Cenvat credit availed on such input goods cannot be permitted. A show cause notice dated 03.05.2013 was issued proposing reversal of credit amounting to Rs.32,65,420/- along with interest and penalty. The assessee had reversed credit amounting to Rs.6,86,147/- along with interest of Rs.97,186/-. The adjudicating authority confirmed the demand of Rs.6,70,723/- along with equal penalty. However, he appropriated the amount already paid by the assessee and allowed the availment of the remaining credit amount. The Commissioner (Appeals) set aside the penalty of Rs.6,70,723/- imposed on the assessee. Hence, the Revenue has preferred the present appeal.

3. Heard both sides and perused the appeal records.

4. On perusal of records, I find that the assessee had submitted a Chartered Engineer's certificate that was supported by statements of purchase and consumption of steel material for the relevant period, kiln wise purchase and consumption of steel material and consumption statement of iron and steel for in-house manufacturing of capital goods. I also find that nowhere has it been disputed by the department that the impugned goods had not been received in the factory premise of the assessee or that the goods were not accounted for in the statutory registers.

5. 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.

6. In view of the above discussion, I find no reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is dismissed.

(Operative part of the Order was pronounced in Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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