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

Appeal No. E/978/2011

(Arising out of Order-in-Original No. 64/Commr./BOL/11 dated 30.08.2011 passed by the Commissioner of Central Excise, Bolpur.

M/s. Sova Ispat Ltd.

Appellant (s)

Vs.

CCE, Bolpur Respondent (s)

Appearance:
Shri Arvind Baheti, CA for the Appellant (s)
Shri D. Haldar, A. C. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)
Date of Hearing: -17.09.2018
Order No. FO/76448/2018

PER SHRI BIJAY KUMAR

The appellant has filed the present appeal against the impugned order, wherein the Adjudicating Authority has confirmed the demand as per the Show Cause Notice issued to the appellant under the provisions of various Sections of the Customs Act and imposed penalty of equal amount. It is against this order, the appellant is before us in this appeal.

2. The fact of the case in brief are that the appellant is a manufacturer of Sponge Iron falling under Chapter 72 of the Central Excise Tariff Act, having manufacturing facility at Mejia, Bankura holding Central Excise Registration No. AAHCS4673HXM001. The appellant had taken the diversification of their plant. In order to install and commissioning of the various capital goods, comprising of various steel items, namely Angles, Channels, Joists (collectively referred as

'structural steel items') falling under chapter 72 of the CETA by declaring them as inputs within Rule 2 (k) of the Cenvat Credit Rules during the period April 2006 to March 2009. These steel items were used either for fabricating capital goods or for laying of foundation of making structures for supporting various capital goods. The amount of Cenvat Credit availed by the appellant is duly satisfied by the Charterd Engineer covering each of the projects.

3. Against this background, we have heard both sides and perused the appeal records.

4. The issue involved in this case is regarding the availment of Cenvat Credit on structural steel items used for fabricating and/or laying foundation to support the capital goods given under the Provisions of Cenvat Credit Rule 2 (k) of the Cenvat Credit Rules within the relevant period being prior to the amendment introduced to the said definition vide Notification No. 16/2009-CE dated 07/07/2009.

5. The Ld. Counsel appearing on behalf of the appellant have relied upon the various judgments, namely (i) Rajasthan Spinning & Weaving Mills Ltd. -2010 (255) ELT 481 (S.C), (ii) S.L.R. Steels Ltd. – 2012 (280) ELT 176 (Kar.); (iii) Monnet Ispat & Energy Ltd.- 2015 (330) ELT 711 (iv) M/s. Jindal Stainless Ltd. vide Final Order No. FO/78432-78437/2017 dated 30 November 2017; (v) M/s. Neo Metaliks vide Final Order No. 76225-76226/2018 dated 17 May 2018. Relying on the judgments, it is the contention of the Ld. Counsel that the appeal is to be allowed with consequential benefits.

6. On the other hand, the Ld. DR has stated that the issue is decided in the favour of the Revenue considering the decision of

Hon'ble Tribunal in the case of Vandana Global Ltd. Vs. CCE, Raipur [2010 (253) E.L.T. 440 (Tri.-LB] which has been relied upon by the Ld. Adjudicating Authority.

7. We find that the similar case has been decided by this Bench in the case of Neo Metaliks Ltd. Vs. CCE, Bolpur vide Final Order No. 76225-76226/2018 dated 17.05.2018 wherein it is held as under:

> ***5. The only allegation against the assessee is that they claimed cenvat credit irregularly with reference to cement and iron & steel items such as Angles, Channels, Joist, Beam, MS Plate Tor Rod, TMT Bars etc. used for fabricating structures or laying of foundation for supporting the various sub-plant and machineries comprising in pig iron manufacturing facility. We find that the Adjudicating Authority has not disputed that the iron and steel items and cement were used in bringing the pig iron manufacturing facility into existence, but denied the credit on the ground that the items used cannot be considered as capital goods/inputs within the meaning of explanation to Rule 2(k) (i) of Cenvat Credit Rules, 2004. We find that the Supreme Court in the case of Commissioner of Central Excise, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. [2010(255) ELT 481 (SC)] had applied the user test by following the Jawahar Mill's case and held that the steel plates and M.S. Channels falls within the ambit of capital goods. It is not in dispute that the impugned goods were used for fabrication of structurals to support various machines and that without these structurals, the machineries could not be erected and could not function. This fact has further been certified by the Chartered Engineer. The relevant paragraphs of judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Jaipur vs. Rajasthan Spining & Weaving Mills Ltd. [2010 (255) ELT 481 (S.C.)] are reproduced for appreciation of the law as laid down by the Hon'ble Supreme Court.***
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> > ***"12. Inter alia observing that capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances if any of these goods is used for producing or processing of any goods or for bringing about any change in the substance for the manufacture of final product, although this view was expressed in the light of the afore-noted definition of "capital goods" in the said Rule, which is not there in Rule 57Q, as applicable in the instant case, yet the "user test" evolved in the judgment, which is required to be satisfied to find out whether or not particular***

> ***goods could be said to be capital goods, would apply on all fours to the facts of the present case, in fact, in para 6 of the said judgment, the court noted the stand of the learned Additional Solicitor General, appearing for the Revenue, to the effect that the question whether an item falls within the purview of "capital goods" would depend upon the user it is put to.***
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> ***13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. it is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of Serial No. 5 of the goods described in column (2) of the Table below Rule 57Q."***

8. Accordingly following the judgments as passed by the Superior Courts and including the decision of the Bench in case of Neometalic (Supra), holding that the structurals such as M.S. Channel and Joints etc. are eligible for Cenvat Credit as capital goods under Rule 2 (K) ibid, we allow the appeal with consequential benefit, if any.

Sd/-	**Sd/-**
(Bijay Kumar)	**(P.K. Choudhary)**
Member (Technical)	**Member (Judicial)**

Pooja