

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

**Appeal No. E/75739/2018**

(Arising out of Order-in-Appeal No.73/HAL/CE/2017-2018 dated 12.12.2017 passed by the Commissioner of CGST & Central Excise, Kolkata)

Commissioner of Central Excise, Haldia

Applicant (s)/Appellant (s)

**Vs.**

M/s. Rashmi Metaliks Pvt. Ltd.

Respondent (s)

Appearance:

Shri A.K.Biswas, Suptd.(AR) for the Appellant (s)

None for the Respondent (s)

**CORAM:**

**Hon'ble Shri P.K.Choudhary, Member (Judicial)**

Date of Hearing/Decision:- 07.12.2018

ORDER NO.FO/77070/2018

**Per Shri P.K.Choudhary**

The facts of the case in brief are that the respondent assessee is engaged in the manufacture of Pig Iron, M.S.Ingots and Billets, Granulated Slag etc. Seven show cause notices were issued alleging irregular availment of cenvat credit on welding electrodes as inputs and used in making of supporting structures of plant & machineries, repair and maintenance etc. It is the case of the Revenue that the welding electrodes, so used by the assessee, do neither qualify as capital goods as defined under Rule 2(a), nor as inputs, as defined under Rule 2(k) of the Cenvat Credit Rules. The adjudicating authority adjudicated all the seven show cause notices vide a common Order-in-Original No.20-26/Rashmi Metaliks/CE/MDP/2015 dated 30.12.2015 and disallowed the credit and ordered for recovery alongwith interest and also imposed penalty of equal amount in terms of Rule 15(1) of Cenvat Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002.

Assessee filed appeal before the Lower Appellate Authority. By the impugned order he allowed the appeal filed by the assessee holding that cenvat credit on welding electrodes is available to them. Being aggrieved Revenue is in appeal before the Tribunal.

2. Revenue is represented by Shri A.K.Biswas, Suptd. (AR). None appeared on behalf of the respondent assessee.

3. Heard the Id. DR and perused the appeal records.

4. I find that the issue is no more resintegra in view of the various decisions of the Tribunal and the Hon'ble High Courts. The decision of the Tribunal in the case of Singhal Enterprise [2016(341) ELT (372) (Tri.-Del.)] is squarely applicable to the facts of the present case. Relevant portion of the order is reproduced below:

**"9.** We proceed to decide the appeal on the two following issues :

(i) Entitlement of Cenvat credit on welding electrodes; and

(ii) Availability of Cenvat credit on various structural items, such as, MS Angles, Channels, CTD bar, TMT bar, etc. which have been used in support structure of the capital goods.

**10.** As regards the credit of duty on welding electrodes, the appellants have cited the following judicial pronouncements to support the contention that the said credit will be allowable :

(i) [2006 \(194\) E.L.T. 3](#) (S.C.);

(ii) [2002 \(140\) E.L.T. 372](#) (P&H)

(iii) [2004 \(173\) E.L.T. 117](#) (Guj.).

**12.** We have gone through the judgment of the Hon'ble High Court of Allahabad cited by the Revenue. We find that the Hon'ble High Court has considered the claim of Welding Electrodes under the definition of 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 and have come to the conclusion that the credit will not be allowable under this Rule. However, we find that the credit of duty paid on Welding Electrodes has been held allowable by several decisions of this Tribunal and hence the issue is no more res integra. We also find that several High Courts have also allowed such credit considering the same as allowable within the definition of "Input" under the Cenvat Credit Rules. One such reference can be made to the decision of the Hon'ble High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise, Raipur, [2010 \(256\) E.L.T. 690](#) (Chhattisgarh), wherein welding electrodes used for repair and maintenance purpose were also held to be cenvatable. Similarly, in the case of Hindustan Zinc Limited v.

*Union of India, [2008 \(228\) E.L.T. 517 \(Raj.\)](#), the Hon'ble High Court of Rajasthan allowed the Cenvat credit on the welding electrodes. By following said decision, we hold that the appellants are entitled to the credit on welding electrodes considering them as "Inputs".*

5. It is also observed that the above decision has been affirmed by the Hon'ble High Court of Chattisgarh as reported in [2018(359) ELT (313) Chattisgarh). In view of the above discussions, I do not find any reason to interfere with the impugned order and accordingly the same is sustained.

6. Appeal filed by the revenue is dismissed.

(Dictated and Pronounced in the Open Court)

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

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