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

Excise Appeal No.442 of 2010

(Arising out of Order-in-Original No.18/Commr./Bol./10 dated 11.03.2010 passed by Commr. of Central Excise, Bolpur)

M/s Jai Balaji Industries Ltd. (Unit IV)
Vill.-Banskopa, P.O.-Rajbandh,
Durgapur-713212

Applicant

VERSUS

CCEx., Bolpur
Adjudication Cell, SIAN, Bolpur, Birbhum

Respondent

Appearance:

Shri S. Mahapatra, General Manager (Taxation) for the Appellant
Shri T.Mondal, A.R. for the Respondent

CORAM:

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

FINAL ORDER NO.76182/2019

DATE OF HEARING : 30.08.2019
DATE OF DECISION : 30.08.2019

PER P.DINESHA :

By this appeal, the Appellant-Assessee is challenging the Order-in-Original No.18/Commr./Bol./10 dated 11.03.2010 passed by Commissioner of Central Excise, wherein the Ld.Commissioner has denied the cenvat credit on steel structural fabrication, supports of plant and machinery, maintenance of plant and machineries, structural supports etc., which are falling under "capital goods"".

2. Heard the Ld.Counsel for the Appellant. At the outset, the Ld.Counsel, submits that the present issue has been settled by this Bench in favour of the appellant in the appellant's own case for the

period 2003-2004 to 2007-2008 vide Final Order No.FO/76655/2018 dated 05.07.2018 wherein the Tribunal has held as under :

> *"9. We also note that emphasis was made by Revenue on the immovability of the capital goods, the fabrication of which was done using the duty paid items. We note that the capital goods as defined under Rule 2 (a) if CCR, 2004 includes apart from all goods falling under Chapter 82, 84, 85, 90, etc. Pollution Control Equipment, moulds, dies, jigs and fixtures, refractory and refractory materials, tubes and pipes and fittings thereof, storage tank, etc. For instance, it cannot be said that the credit on storage tank and other large capital goods will be allowed only if they are brought into the premises of the manufacturer as such in a movable condition. Storage tanks and pollution control equipments, etc are fabricated and integrated to the other machines of the plant in a factory. When a storage tank is linked to the other processing machine, the pipe and other fittings including their accessories, which hold such linkage will necessarily form part of the machinery and cannot be denied credit on the ground that they are fixed permanently. In any case, except for a summary assertion in the impugned order, it is not categorically established in the present case that all the steel items are used in creation of immovable assets only. On the contrary, the appellants submitted detailed certificate by a Chartered Engineer. We have perused the same. The said certificate records that upon physical examination, it was certified that the steel items have been used for fabrication of various equipments/accessories in various locations of the plant. A detailed list of the description of location and nature of use has also been provided. We have noted that the impugned order summarily concluded that the usage as mentioned in the chart submitted by the appellant clearly suggest that these items, which fabricated are only civil structures unique to civil plant. We are not able to accept such summary conclusion by the Original*

Authority. A perusal of the usage of the detailed summary as well as supporting photographs submitted by the appellant will show that the various steel items have been used in different manner in capital machinery or associated structure and can rightly be considered as accessories closely inter-connected to the capital goods for their function. The categorical assertion of facts by the appellant as supported by the Chartered Engineer Certificate should have been rebutted with evidences of such nature before making summary conclusion on the basis of the presumption. We find the original order is not legally sustainable.

10. As examined earlier, the various High Courts and Honble Supreme Court have been taking consistent view regarding these steel structures and their eligibility to cenvat credit, which is also being followed by the Tribunal in various decisions. As discussed above, we find that the impugned order cannot be sustained and the same is set aside. The appeal is allowed."

3. On the other hand, the Ld.D.R. for the Department, supports the findings of the lower authorities and he is unable to distinguish the above judgement relied upon by the Ld.Counsel for the appellant.

4. After hearing both sides, we see that the very same case has been decided by this Bench in the appellant's own case. In the absence of any change in fact and law, we set aside the impugned order and allow the appeal with consequential relief to the appellant, if any, as per law.

(Dictated and pronounced in the open court)

Sd/

(P. Anjani Kumar)
Member (Technical)

Sd/

(P. Dinesha)
Member (Judicial)

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