CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAl
KOLKATA

REGIONAL BENCH – COURT NO.II

Excise Appeal No. 543 of 2011

(Arising out of Order-in-Original No. CCE/BBSR-I/45/2011 dated 27.03.2011 passed by the Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar-I, C.R. Building, RajaswaVihar, Bhubaneswar – 751 007, Orissa)

M/s. JSL Limited, **: Appellant**
Kalinga Nagar Industrial Complex,
P.O. – Danagadi, Jajpur Road,
Dist. – Jajpur – 755 026

VERSUS

The Commissioner of C. Ex., Cus. & Service Tax, **: Respondent**
Bhubaneswar-I, RajaswaVihar,
Bhubaneswar – 751 007

APPEARANCE:

Shri. D. Sen,Advocatefor the Appellant

Shri. ShreyashAgrawal, C.A. for the Appellant

Shri.,Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO.76616/ 2019

DATE OF HEARING: 29.08.2019

DATE OF DECISION:29.08.2019

PER P. DINESHA :

By this appeal, the assessee is challenging the demand of duty raised against it on the allegations of availing irregular and ineligible CENVAT Credit of Rs. 70,50,341/- on (a) P.S.C. Railway Sleepers, (b) Rails and (c) Electrical items as ' capital goods' contrary to the CENVAT Credit Rules, 2004.

1.2 A Show Cause Notice dated 14.07.2010 was issued on the allegations *inter alia* on the grounds that when the Officers of Balasore Division visited the appellants' factory premises, it was discovered that the appellants were availing CENVAT Credit on the above items; that a statement of the Associate Manager (Excise) was recorded wherein he admitted to the fact that the railway network laid inside the factory premises was used for inward transportation of raw materials, outward transportation of finished products and also for movement of cranes for carrying raw materials and finished goods; that the impugned items were being utilized by the appellant in the construction of such railway tracks; that the above items did not qualify as capital goods as defined under Rule 2 (a) (A) of the CENVAT Credit Rules, 2004 nor did they appear to be inputs for the manufacture of 'capital goods' as contemplated in Explanation-2 to Rule 2 (k) of the CENVAT Credit Rules, 2004.

1.3 The appellant filed its detailed reply, but however, the Adjudicating Authority/Commissioner being not satisfied, disallowed the CENVAT Credit availed by the appellant on all the above items vide impugned Order-in-Original dated 27.03.2011, also ordering the recovery of duty along with applicable interest and penalty. Aggrieved, the appellant is before this forum.

2. Heard Shri. D. Sen, Ld. Advocate, and Shri. ShreyashAgrawal, Ld. Consultant, appearing for the assessee-appellant and Shri. D. Halder, Ld. Departmental Representative appearing for the Revenue.

3.1 Ld. Advocate for the appellant submitted at the outset that the issue of CENVAT Credit on P.S.C. Railway Sleepers, Rails, etc., used within the factory premises for transportation of raw materials, finished goods, etc., is no more *res integra* as the same has been laid to rest by the Hon'ble Supreme Court in its decision in the case of ***M/s. JayaswalNeco Ltd. Vs. Commissioner of Central Excise Raipur*** reported in***2015 (319) E.L.T. 247 (S.C.)***

and further referred to paragraphs 7, 8, 9 and 13 and finally, paragraphs 14 to 17, which read as under :

> ***"14.*** *Applying the aforesaid test to the facts of this case, it is apparent that the use of railway tracks is related to the actual production of goods and without the use of the said railway track, commercial production would be inexpedient.*
>
> ***15.*** *In the instant case, the manner in which railway track materials have been used by the appellant was explained by the appellant before the Commissioner and veracity thereof was accepted by the Commissioner. Therefore, without any fear of contradiction, we may note the exact process that is involved :*
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>> *"These railway tracks used in transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron. Secondly the system also helps in taking hot pigs from pig casting machine to pigs storage yard by the big wagon where hot pig iron are dumped for cooling and making ready for dispatchers. This Railway tracks are also used in handling of raw materials at wagon tippler to stacker reclaimer where stacking and reclaiming of raw material is taken place and required quantity is conveyed for further processing at stock house."*
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> ***16.*** *It reflects that the appellant has installed railway tracks within the plant which is a handling system for raw material and processed material.*
>
> ***17.*** *The aforesaid process squarely meets the test laid down by this court in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.'s case. It is clear that the railway tracks are installed not only within the plant, but the main objective and purpose for which the capital expenditure on laying these railway tracks is incurred by the appellant is for transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron. It is clear from the above that the use of railway tracks inside the plant not only form the process of manufacturing, but it is inseparable and integral part of the said process inasmuch as without the aforesaid activity for which railway tracks are used, there cannot be manufacturing of pig iron."*

3.2 Ld. Advocate further referred to the decision of this very Bench of the Tribunal in the case of ***M/s. Steel Authority of India Ltd. (Unit-Bokaro Steel Plant) Vs.***

Commissioner of Central Excise, Ranchi reported in ***2019 (2) T.M.I. 1027 – CESTAT Kolkata*** wherein the above decision of the Hon'ble Supreme Court has been followed.

4. *Per contra*, Ld. Departmental Representative for the Revenue supported the findings of the lower authority, but however, was unable to distinguish the ratio of the Hon'ble Supreme Court in the case of *M/s. JayaswalNeco Ltd. (supra).*

5. After going through the Show Cause Notice in the case on hand and the decision of the Hon'ble Supreme Court in the case of *M/s. JayaswalNeco Ltd. (supra)*, we find the assertion of the Ld. Advocate for the appellant to be correct as the Hon'ble Supreme Court has settled the issue as regards the availment of CENVAT Credit on rails and railway materials is concerned. The ratio of the Hon'ble Supreme Court in the above case, which is extracted hereinabove, squarely applies to the case on hand as well since the CENVAT Credit alleged to have been wrongly availed are on the very same items.

6. In view thereof, we are of the considered opinion that the impugned order and the demand thereunder cannot sustain and hence, the same are set aside.

7. The appeal is allowed with consequential benefits, if any, as per law.

(Operative part of the order pronounced in open court)

SD/

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

SD/

(P. DINESHA)
MEMBER (JUDICICAL)

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