

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76623 of 2018

(Arising out of Order-in-Appeal No.41/DGP-II/CT(Audit-II)/2017-18 dated 21.02.2018 passed by Commissioner of Central Excise(Appeal), Audit-II Commissionerate.)

M/s. Ultra Tech Cement Limited

(Near IPIP Plot, Muchipara, Rajbandh, Durgapur-713212,
Dist.-Burdwan.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Durgapur

.....Respondent

(City Centre, Durgapur-713216.)

APPEARANCE

Shri Kartikey Kulshreshtha, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 76763 / 2019

DATE OF HEARING : 3 December 2019

DATE OF DECISION : 3 December 2019

P.K.CHOUDHARY :

The issue in dispute is regarding denial of Cenvat Credit on Welding Electrodes used for repair and maintenance of machinery in the factory.

2. Briefly stated the facts of the case are that the appellant during the period from July 2007 to December 2011 was engaged in the manufacture of Portland Pozzolarna cement classifiable under chapter 25 of the Central Excise Tariff Act, 1985. It is the case of the appellants that since the machinery in the factory of the appellant was exposed to high temperature during the manufacturing process, the same was

prone to damage and constant wear and tear. The appellant would fix this damage by welding new sheet, bar, plates in respect of machinery. For carrying out such repairs and maintenance, Welding Electrodes are used. The Cenvat credit so availed by the appellant on Welding Electrodes during the impugned period has been objected to by the department and held it as inadmissible on the ground that Welding Electrodes did not qualify as capital goods as defined under Rule 2(a) of Cenvat Credit Rules, 2004. Show cause notice dated 25.07.2012 was issued seeking to recover Cenvat Credit amounting to Rs.87,973/- and ordered for recovery of the same along with interest and for imposition of penalty. Extended period of limitation of five years was also invoked alleging suppression of facts. The adjudicating authority disallowed Cenvat credit of Rs.87,973/- along with interest and imposed a penalty of equal amount in terms of Rule 15(2) of Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944. On appeal, the learned Commissioner(Appeals) upheld the order-in-original and dismissed the appeal filed before him. Hence the present appeal before the Tribunal.

3. Learned Advocate appearing on behalf of the appellant submits that Welding Electrodes is indispensable part of appellant's manufacturing process, as without the Electrodes, the appellant would not have been able to repair the damaged machinery and resultantly, the entire manufacturing process would have come to a halt. Therefore, Welding Electrodes are integral to the manufacture of appellant's final product and fall within the ambit of "inputs" as defined under Rule 2(k) of Cenvat Credit Rules, 2004. Learned Advocate further submits that Cenvat credit on Welding Electrodes used in repair and maintenance of machinery have been decided in appellant's own cases which are as follows:-

- (a) Ultratech Cement Ltd. v. CCE & ST, Ahmedabad-III
[2015 (10) TMI 285-CESTAT Ahmedabad]
- (b) Ultratech Cements Ltd. v.CCE & ST, Trichi
[2018 (7) TMI 677-CESTAT Chennai]

- (c) Ultratech Cement Ltd. v. CCE, Pune
[2015 (10) TMI 1367-CESTAT-Mumbai]
- (d) Ultratech Cements Ltd. v. CCE, Trichy
[2018 (2) TMI 128-CESTAT-Chennai]
- (e) Ultratech Cement Ltd. v. CCE, Jaipur-II
[2016 (12) TMI 989-CESTAT, New Delhi]
- (f) Ultratech Cement Ltd. v. CCE & ST, Guntur
[2019 (2) TMI 405-CESTAT Hyderabad.
- (g) Ultratech Cement Ltd. v. CCE, Pune-III
[2015 (10) TMI 621-CESTAT Mumbai]
- (h) Ultratech Cements Ltd. v. CCE, Guntur
[2016 (10) TMI 1169-CESTAT Hyderabad]

4. Learned Authorized Representative appearing on behalf of the respondent department justifies the impugned orders. He referred to the judgement of Hon'ble High Court of Bombay in the case of Manikgarh Cement v. CC & CE, Nagpur [2018 (360) ELT 86 (Bom.)], wherein it has been held that materials used for repairs and maintenance of capital goods cannot be considered to be an input under Cenvat Credit Rules, 2004 by relying on an earlier decision of the Hon'ble High Court of Bombay in the case of Lloyd Metals & Engineers Ltd. v. UOI [2010 (252) E.L.T. 355 (Bom.)].

He further submits that the issue is now pending before the Hon'ble Apex Court in the case of Monnet Cement Ltd. v. Commissioner [2018 (19) G.S.T.L. J 118 (SC)].

5. Heard both sides and perused the appeal records.

6. I find that the issue is no more *res integra*. The Tribunal in appellant's own case in Ultratech Cement Ltd. v. CCE & ST, Guntur and CCE & ST, Tirupati (Vice Versa) as reported in 2019 (2) TMI 405 (Tri.Hyd.) has allowed the assessee's appeal by relying upon the decision of the Hon'ble Apex Court in the case of Ramala Sahkari Chini Mills Ltd. v. CCE, Meerut-I [2016 (334) E.L.T. 3 (SC)]. The relevant paragraphs of the order of the Tribunal are reproduced:-

*"5. On careful consideration of the submission made, we find that in the appellant's own case on similar and identical issue of denial of CENVAT credit on welding electrodes was decided by this Bench as reported at **2016 (10) TMI 1169 (CESTAT-HYD)** which holds a view that*

appellant are eligible for CENVAT credit. We also find that the Supreme Court in the case of *Ramala Sahkari Chini Mills Ltd.* [2016 (334) ELT 3 (SC)] has held that welding electrodes used in the maintenance of machines are eligible for CENVAT credit. Further, we find that the Apex Court in the case of *Ramala Sahkari Chini Mills Ltd.* [2016 (334) ELT 3 (SC)] has held as under.

“We have heard the learned counsels for the parties. We have also read and considered the order dated 29th November, 2010 [[2010 \(260\) E.L.T. 321](#) (S.C.)] of this Court referring the matters to a larger bench for a decision on the question as to whether the definition of the term “input” in Rule 2(g) of the Cenvat Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g). The answer to the question referred, according to us, is self-contained in the order of reference which has referred, inter alia, to a three Judge Bench decision of this Court in *Regional Director, Employees’ State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr.* [(1991) 3 SCC 617]. There are other decisions of this Court by Coordinate Benches (three judge) on the issue which need not be adverted to specifically inasmuch as it has been clearly held in *Regional Director, Employees’ State Insurance Corporation* (supra) that the word “include” in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. We answer the question referred to us in the above manner leaving it for the appropriate bench of this Court to decide on the factual parameters of the case(s) and the entitlement of the assessee(s) to Cenvat credit in the facts of each case.”

6. The interpretation given by the Apex Court in the case of word ‘inputs include’ would fully apply in the case in hand and accordingly, we hold that the impugned order to the extent contested by the appellant is liable to be set aside and the order tentested by the revenue needs to be upheld.

7. As regards reliance placed by the learned departmental representative on the judgment of *Manikgarh Cement* (supra) and *Lloyd Metals and Engineers Ltd.* (supra), we find from the copy of judgment which has been produced before us that their Lordships were not apprised of the judgment of the Larger Bench of Supreme Court in the case of *Ramala Sahkar Chini Mills Ltd.* (2016 (334) ELT 3). As regards Hon’ble High Court of Allahabad, we find that their Lordships though having referred to *Ramala Sahkari Chini Mills Ltd.* (supra) did not state anything on this issue. We find that the Larger Bench

decision of the Ramala Sahkari Chini Mills Ltd. (supra) was not before their Lordships during proceeding.

8. In view of the foregoing and in the facts and circumstances of this case, we hold that the appeal of the assessee needs to be allowed and we do so and the appeal of the revenue needs to be rejected and we do so."

I find that the facts of the present appeal are squarely covered by the above-mentioned decision of the Tribunal.

7. In view of the above discussion, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefits.

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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