IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Central Excise Appeal No.907 of 2011
(Arising out of Order-in-Original No.CCE/BBSR-II/NO-21-23/Commissioner/2011, dated 04.08.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Bhubaneshwar-II)

SMC Power Generation Limited .. **APPELLANT**
Village Hirma,
District Jharsiguda,
ORISSA – 768 202.

Vs.

Commissioner of Central Excise, Customs Central Excise & Service Tax, .. **RESPONDENT**
Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar,
BHUBANESHWAR – 751 007.
Orissa.

APPERANCE :
Shri Alok Arora, Advocate for the Appellant

Shri A. Roy, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 77053/2019

DATE OF HEARING : 25.11.2019
DATE OF DECISION : 25.11.2019

ORDER PER [P.VENKATA SUBBA RAO] :

1. This appeal is filed against Order-in-Original No. CCE/BBSR-II/NO-21-23/Commissioner/2011, dated 04.08.2011.

2. The appellant is a manufacturer of sponge iron and billets falling under Chapter heading 72 of the First schedule to the Central Excise Tariff Act, 1985. They have installed an integrated steel plant along with auxiliary units for manufacture of the aforesaid goods. During the period April 2006 to September 2008, the appellant availed CENVAT Credit of various items viz; M.S. angles, channels, plates, defective plates, M.S. Rounds/Rods, Chequered coil, Liquid Oxygen/Oxygen Gas, Paints, pipes & tubes of steel, spare for control valve Aluminium sheet, Casting materials, Coupling, HR coil/plate, joist, cement etc. which were used in their factory for fabrication of support structures and installation of the machinery. Revenue was of the opinion that the supporting structures, having been permanently embedded to earth, are immovable and hence not excisable goods. They were, therefore, not eligible as either inputs or as capital goods under Rule 2(k) or under Rule 2(a)(A) of CCR 2004.

3. The second defect pointed out by the Revenue is that the appellant had taken 100% capital goods CENVAT credit on steel pipes and steel tubes. As per the relevant provisions during the period, the appellant could only take 50% of the credit during the year and another 50% in the subsequent year. Therefore, it was felt that by taking 100% credit in the same year, the appellant had contravened the provisions of Rule 4 of CCR 2004. Accordingly, three show cause notices were issued to the appellant as follows:

S.No	SCN No. & Date	Period covered	Amount of duty	Inputs on which credit availed.
1.	V(72)/15/SCNMC/SBP-I/18/2007/4588A, dated 16.03.2007	04/06 to 08/06	1,27,10,280	M.S. angles, Beams Channels, Plates, M.S. Rounds/RODs, Liquid Oxygen/ Oxygen Gas, Paints, Pipes & Tubes of steel, spare for control valve Alluminium sheet, casting materials, Coupling, Cement
2.	V(72)15/ADJN/B-II/48/2008/18504 A, dated 30.09.2008	09/06 to 03/08	5,27,64,857	M.S. angles, Beams channels, plates, M.S. Rounds/RODs, Flat Aluminium Wire, CR Steel Strip Coil, H.R. Plate, Nut, Bolt & washer, Rail & safety shoes
3.	V(72)15/ADJN/B-II/21/2009/6706A, dated 20.04.2009	04/08 to 09/08	81,25,946	M.S. angles, Beams channels, plates, Rail, M S Rounds/ RODs, M.S. Flat, Aluminium Sheet, HR Plate, joist.

4. In the show cause notices, it was proposed to disallow the CENVAT Credit availed by the appellant and recover the same. It was also proposed to impose penalties upon the appellant.

5. After following due process, the adjudicating authority has allowed the CENVAT Credit of Rs. 1,30,54,502/- on goods used as inputs but he disallowed CENVAT Credit of Rs. 6,05,46,581/- and appropriated the amount of Rs. 61,77,637/- already reversed by the appellant towards his amount. He further demanded interest on the entire amount of CENVAT Credit which disallowed and ordered its recovery under Rule 14 of CCR 2004, read with Section 11AB of Central Excise Act, 1944. He also imposed a penalty equal to the amount of

CENVAT Credit disallowed under Rule 15 of CCR 2004 read with Section 11 AC of Central Excise Act, 1944.

6. Ld. Counsel for the appellant submits that the Ld. Adjudicating authority had relied on the case law of Vandana Global Limited [2010(253)ELT 440 (Tri.-LB)] in which Hon'ble Tribunal has held that CENVAT Credit on steel and cement items used for foundation for building support structures of capital goods have no nexus with the manufacture and hence they are not eligible for CENVAT Credit either as capital goods under Rule 2(a) or as inputs under Rule 2(k) of CENVAT Credit Rules, 2004. He would submit that this decision of the Hon'ble Larger Bench of CESTAT was reversed by Hon'ble High Court of Chattisgarh in the case of Vandana Global Limited vs. Commissioner of Central Excise & Customs, Raipur [2018(16)GSTL 462 (Chattisgarh)]. It is now well settled that CENVAT Credit is admissible on steel and cement used for installation of capital goods, in view of the above judgment of Hon'ble High Court of Chattisgarh. He would further submit that identical decisions were also taken in the following cases:

a) CCE, Salem vs. Madras Aluminium Co. Ltd. [2017(349)ELT 133 (Mad) and upheld by Hon'ble Supreme Court {2017(354)E.L.T. A 192 (S.C.)].

b) CCE, Tiruchirapalli vs. India Cements Limited [2012(285)ELT 341 (Mad.)].

c) CCE, Tiruchirapalli vs. India Cements Limited [2014(305)ELT 558 (Mad.)].

d) CCE Visakhapatnam vs. Sai Sahmita Storages Pvt. Ltd. [2011(270)ELT 33 (A.P)].

7. He would, therefore, submit that three different Hon'ble High Courts have decided that CENVAT Credit is admissible on the steel and cement used in installation of the capital goods. Therefore, their appeal may be allowed.

8. Ld. DR supports the impugned order.

9. We have considered the arguments on both sides and perused the records. The short point to be decided is whether various items of steel such as M.S. Angles, Channels, Plates etc. used by the appellant in installation of the machinery are eligible for CENVAT Credit or otherwise. The Revenue's argument was that since the Steel and Cement etc. are embedded to the earth at the time of installation, they ceased to be treated as goods and therefore no CENVAT Credit is admissible on these items either under the category of inputs or under the category of capital goods. Similar view was taken by Hon'ble Larger Bench of the Tribunal in the case of Vandana Global Limited (supra). This view was reversed by the Hon'ble High Court of Chattisgarh in the case of Vandana Global Limited (supra). We find that identical view was taken by the Hon'ble High Court of Andhra Pradesh in the case of Sai Sahmita Storages Pvt. Ltd. (supra) and by the Hon'ble High Court of Madras in the case of Madras Aluminium Co. Ltd., India Cements Limited (supra). In view of the above, we find the issue is no longer res

integra and the appellant is entitled to CENVAT Credit on the disputed items. The demand, therefore, needs to be set aside.

10. The second contention in the show cause notice is that the appellant could have taken only 50% of the CENVAT Credit during that year and another 50% has to be taken in the following year. We find that this issue is no longer relevant at this stage since several years have passed. It is never the law that the appellant was entitled to only 50% CENVAT Credit only that he can take 50% in one year and 50% in the following year. Since the following year has also passed long ago, we find that this issue is infructuous at this stage.

11. In view of the above, we find that the impugned order needs to be set aside and we do so.

12. The appeal is allowed and the impugned order is set aside, with consequential reliefs if any.

(Operative part of the order was pronounced in the open court)

Sd/-

(P. K. CHOUDHARY)
Member (Judicial)

Sd/-
(P.V.SUBBA RAO)
Member (Technical)

Mm/vrg