

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.147 of 2012

(Arising out of Order-in-Original No.CCE/BBSR-I/10/2011 dated 29.12.2012 passed by Commissioner of Central Excise, Service Tax & Customs, Bhubaneswar)

M/s Vedanta Aluminium Limited

Jagannathpur, P.O.-Lanjigarh, Dist.-Kalahandi, Odisha

Appellant

VERSUS

Commissioner of Central Excise & S.Tax, Bhubaneswar

C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Respondent

APPEARANCE :

Shri Deepro Sen, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...75768/2023

DATE OF HEARING : 16 .06.2023

DATE OF DECISION : 16 .06.2023

Per Ashok Jindal :

This appeal is against the denial of cenvat credit on various iron and steel items used for fabrication of capital goods.

2. The facts of the case are that the appellant is engaged in the manufacture of calcined alumina. The appellant entered into various agreements for fabrication of various tanks, which were used for processing of goods. For fabrication of these tanks, the appellant procured iron and steel items, such as, angles, channels, plates, semi-rolled plates, chequered coils & joists, M.S.beams, M.S.Flats H.R.Sheets, M.S.Bars etc. to be used for fabrication of the said tanks. So, the appellant availed credit of duty paid on the iron and steel items,

which were used in fabrication of the above mentioned tanks. The appellant did not avail cenvat credit on TMT Bars, Cement, which were used for foundation of the plant.

2.1 The Revenue is of the view that the tanks fabricated are not goods as they are immovable in nature and are not capital goods as defined in Rule 2A of the Cenvat Credit Rules, 2004. Therefore, the items, which were used in the manufacture of the said tanks do not fall under Explanation to Rule 2 (A) of the Cenvat Credit Rules, 2004, are not entitled for cenvat credit.

2.2 Therefore, the proceedings were initiated and the cenvat credit was denied.

2.3 Against the said order, the appellant is before us.

3. The Id.Counsel for the appellant, submits that the items in question has been utilized to manufacture the tanks and the cenvat credit sought to be denied on the premises that these are immovable property and therefore, these cannot be qualified as capital goods. It is the submission of the Id.Counsel that the Adjudicating Authority has gone beyond the scope of show-cause notice to hold that since the goods in question are not storage tanks and also fall under Chapter 73 of the Central Excise Tariff Act, 1985, therefore, the iron and steel items used for manufacture of such tanks do not fall within Rule 2 (k) of the Cenvat Credit Rules, 2004 as inputs. Therefore, the adjudicating authority have travelled beyond the show-cause notice. Therefore, in these premises itself, the impugned order is to be set aside.

3.1 On merit, he submits that the impugned tanks are not mere containers and are actively included in the manufacturing process of

the appellant. Therefore, these tanks are classified under Chapter 84 as held by this Tribunal in the case of Hindalco Industries Ltd. Vs. Commissioner of Central Excise, Belgaum reported in 2008 (230) ELT 649 (T) affirmed by the Karnataka High Court in 2012 (286) ELT 503 (Kar.). Therefore, these tanks are capital goods and as per Explanation to Rule 2 (A) of the Cenvat Credit Rules, 2004, the tanks are capital goods. He further submitted that the iron and steel items, which are in dispute are inputs used in or in relation to the manufacture of dutiable final products. It is the submission that these steel items are used for fabrication of tanks, which were used and processing of final products, therefore, the items used are eligible for cenvat credit as inputs.

4. On the other hand, the Id.A.R. for the Revenue reiterated the findings of the Id.Commissioner.

5. Heard the parties and considered the submissions.

6. We find that the capital goods have been defined under Rule 2A of Cenvat Credit Rule, 2004 which is reproduced hereunder for reference of convenience.

"In order to answer this question, it is necessary to look into the definition of capital goods as contained in Cenvat Credit Rules, 2004 which reads as under:

(A) The following goods, namely: (i) all goods falling under Chapter 82, Chapter 84, Chapter 86, Chapter 90. (Heading 6805, grinding wheels and the like, and parts thereof falling under Heading 6804) of the First Schedule to the Excise Tariff Act; (ii) Pollution control equipment (iii) components, spares and accessories of the goods specified at (i) and (ii), (iv) moulds and dies, jigs and fixtures; (v) refractories and

refractory materials; (vi) tubes and pipes and fittings thereof; and (vii) storage tank, used

(1) In the factory of the manufacturer of the final products, but does not include any equipment of appliance used in an office; or does not include any equipment of appliance used in an office; or

(2) For providing output service.

A perusal of the aforesaid provision makes it very clear that storage tanks may be immovable property and pollution control equipment are included within the definition of "capital goods", input as defined in Rule 2(k) makes it clear that "input" includes in goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Therefore, the input is not necessarily to be used in the manufacture of final product. By virtue of explanation to goods used in the manufacture of capital goods which are further used in the factory of the manufacturer also falls within the definition of input. In 2009, this explanation has been amended to the following effect:

"but shall not include cement, angles, channels Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated Bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods".

7. From the above, it follows that storage tanks irrespective of immovable or moveable, are considered as capital goods. The tanks used for processing the goods at intermediate stage. We find that only the goods falling under Chapter 82, 84, 95 and 90 are falling under the definition of capital but they are components, spares and accessories falling under definition (i) and (ii) also are termed as capital goods as per the definition of capital goods under Rule 2A of Cenvat Credit Rules,

2004. The Hon'ble High Court of Karnataka in the case of SLR Steels Ltd. (Supra) held as under:

"Therefore, the notification of the Legislature is very clear tht it is only the "inputs" used in the manufacture or construction of capital goods which is construed as input and cenvat credit is available on the duty paid in purchase of such inputs. If the cement, angles channels, Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (T.M.T) and other items are used in the construction of factory shed, building or laying of foundation, the duty paid on such items the assessee is entitled to cenvat credit. Similarly, though the assessee is entitled to cenvat credit of cement and steel used in the manufacture of capital goods viz., storage tank, if any structure for support of capital goods is constructed and steel and cement is used for such support, the assessee is not entitled to the benefit of cenvat credit on the duty paid on such cement and steel. Therefore, there is no ambiguity in any of these provisions. When once a storage tank and pollution control equipment constitutes capital goods and any raw material purchased for construction of those goods, the duty paid could utilized as a cenvat credit by the assessee notwithstanding the fact that the storage tank is an immovable property. Therefore, the appellant authority committed a serious error firstly in holding that the storage tank is an immovable property and secondly, on the ground that it cannot be bought and sold in the marked, the criteria which is totally unwarranted under the circumstances. Therefore, the Tribunal was justified in setting-aside the said order and holding that the assessee is entitled to the benefit."

8. We find that these iron and steel items have been used for manufacturing/processing of final products.

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9. In that circumstances, any iron and steel items used for fabrication of those tanks are entitled for cenvat credit as input in terms of Rule 2 (k) of the Cenvat Credit Rules, 2004.

10. We, therefore, hold that the appellant has correctly taken the cenvat credit on the items in question.

11. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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