

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

REGIONAL BENCH – COURT NO.1

Excise Appeal No. 77353 of 2018

(Arising out of Order-in-Appeal No. 140/KA-1/2018 dated 28.03.2018 passed by Commissioner of Central Excise & Service Tax, Bolpur.

M/s Super Smelters Ltd.

(Jamuria Industrial Estate, Ikra, Jamuria-713362, W.B.)

...Appellant

VERSUS

Commr. of CGST & Excise, Bolpur Commissionerate

(Nanoor Chandidas Raod, SAIN, Bolpur-731204, Birbhum, W.B.)

...Respondent

APPEARANCE :

Mr. V. K. Puri, Advocate for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER(JUDICIAL)

FINAL ORDER No.76088/2023

DATE OF HEARING : 27.06.2023

DATE OF DECISION: 27.06.2023

PER R. MURALIDHAR :

The Appellant is manufacturer of M/s Billets and Sponge Iron etc. They have taken Cenvat Credit on various inputs and capital goods during the period of April, 2010 to March, 2011. The Department issued Notice demanding reversal of Cenvat Credit of Rs.23,50,208/- on the ground that the appellants were not eligible to take the Cenvat Credit. The appellant submitted the details of the inputs and capital goods used by them within factory premises for carrying on their manufacturing activities. They prepared a Table giving details of various inputs used to the Adjudicating Authority, who confirmed the demand along with interest and penalty. The Adjudicating Authority in the O.I.O. held that in respect of Capital Goods, the appellant is eligible to take Cenvat Credit of Rs.94,883/- in two installments and refrained from charging

any interest. However, he has imposed a penalty of Rs.94,883/-. The appellant filed an appeal before the Commissioner (Appeals). On Appeal the Commissioner (Appeals) rejected the appeal. Therefore, the appellant is before the Tribunal.

2. The Learned Advocate submits that the appellant has given the details of usage of each every Input/Capital Goods in the factory premises. The appellant also submits a copy of the Certificate issued by Chartered Engineer towards usage of all these items within factory premises for carrying on the manufacturing activities. The appellant relies on the following case law:

- i) **BMM Ispat v. CCE Belgaum-2022 (379) E.L.T. 404 (Tri. Bang.)**
- ii) **CCE Raipur V. Hi-Tech Power & Steel Limited 2015 (315) E.L.T. 428 (Tri. Del.)**
- iii) **Ramsons TMT LT Pvt. Ltd. v. CCE Nagpur-2016 (344) E.L.T. 421 (Tri. Mumbai).**

3. In view of the above, the Ld. Advocate submits that the appeal may be allowed.

4. The Ld. AR reiterates the findings of the lower authorities justifies the confirm demand.

5. Heard both sides and considered all the submissions.

6. Admittedly, the appellant has filed the detail of inputs and capital goods used by them within the factory premises in various areas. The Charter Engineer has certified their usage in the factory premises. It is not the case of the Department that goods in question were not received by the appellant in their factory. It is not also the case of the Department that the appellant is not paying Excise Duty on their finished goods.

7. In the case of BMM Ispat v. CCE, Belgaum, cited supra, the Hon'ble Tribunal has held as under:-

“,,6. After considering the submissions of both sides and perusal of the material on record, I find that the appellant vide their reply dated 10-6-2016 for each item/part, has given the details for consideration by the adjudicating authority vide description of the item/part typical diagram of

the image, detailed write up of the items used and amount of Cenvat credit of such item/part, date of availment of credit, serial number of the item/part etc. From all these descriptions given by the appellant in the reply to the show cause notice, it is clear that these items are part and parcel of various goods and has rightly been classified as inputs for fabrication of various capital goods as per Rule 2(k) of Cenvat Credit Rules, 2004 which in turn are used in the manufacture of finished goods and therefore are eligible for Cenvat credit. Further I find that at the appellate stage also, in order to satisfy the Commissioner (Appeals) regarding the actual usage of these items, the appellant furnished the certificate of Chartered Engineer as required by the appellant authority but unfortunately the Commissioner (Appeals) has not given due weightage to the certificate of the Chartered Engineer where the Chartered Engineer has given usage of each and every item involved in the present case. Further I find that this issue is no more res integra and has been settled by various decisions of the Tribunal relied upon by the appellant cited supra. The various decisions relied upon by the appellant cited supra have held the eligibility of the assessee for Cenvat credit on various goods which have been used for manufacture of the final product. Further I find that the Division Bench of this Bench in the case of Singhal Enterprises Pvt. Ltd. v. CCE [2016 (341) E.L.T. 372] has held as under :-

15. We find that the controversy can be laid to rest by making a reference to the decision of the Apex Court in the case of CCE, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., [2010 \(255\) E.L.T. 481](#) (S.C.), wherein the Hon'ble Supreme Court has considered an identical issue of steel plates and MS channels used in the fabrication of chimney for diesel generating set. The credit stands allowed in the light of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the said judgment, the Apex Court has referred to the "user test" evolved by the Apex Court in the case of CCE, Coimbatore v. Jawahar Mills Ltd., [2001 \(132\) E.L.T. 3](#) (S.C.), which is required to be satisfied to find out whether or not particular goods could be said to be capital goods. When we apply the "user test" to the case in hand, we find that the structural steel items have been used for the fabrication of support structures for capital goods. The appellants have argued that the various capital goods, such as, kiln, material handling conveyor system, furnace, etc. cannot be suspended in mid-air. They will need to be suitably supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitably worked upon for this purpose. Accordingly, the goods fabricated, using such structurals, will have to be considered as parts of the relevant machines. The definition of 'Capital Goods' includes, components, spares and accessories of such capital goods. Accordingly, applying the "User Test" to the facts in hand, we have no hesitation in holding that the structural items used in the fabrication of support structures would fall within the ambit of 'Capital Goods' as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat credit.

7. This decision of the Tribunal has been affirmed by the Hon'ble High Court as reported in [2018 \(359\) E.L.T. 313](#). The Larger Bench of the Tribunal in the case of Mangalam Cements Ltd. cited supra has also held that the cement and steel items used for fabrication of support structure for smooth erection of the machines has to be considered as accessories of

capital goods and Cenvat credit cannot be denied. Therefore in view of my discussion above and keeping in view the ratio of various decisions and the Chartered Engineer certificate produced by the appellant, I am of the considered view that the impugned orders are not sustainable in law and therefore I set aside the impugned orders by allowing the appeals with consequential relief, if any.” [Emphasis Supplied]

8. In the case of CCE Raipur v. Hi-Tech Power & Steel Ltd, cited supra the Hon'ble Tribunal has held as under :-

“,,6. According to the respondent, the steel items, in question, have been used in fabrication of the Coal Ground Hopper, Iron Ore Ground Hopper, Coal Crusher House, Conveyor System, Stock House, After Burning Chamber, Kiln Coller Transformer House etc., which according to the findings of the Commissioner (Appeals), are parts of the machinery and hence, are covered by the definition of capital goods. The grounds of appeal do not dispute the above uses of the steel items and in the grounds of appeal it is simply stated that the items fabricated are supporting structures. I do not accept this plea of the department, as from the nature of the items fabricated, it is clear that the same are component of the various machinery and hence, have to be treated as components of capital goods and accordingly, the steel items used in fabrication of the same would be eligible for Cenvat credit in terms of Rule 2(k) of the Cenvat Credit Rules, 2004. [Emphasis Supplied]

9. In the case of Ramsons TMT Pvt. Ltd. v. Commr. of C.Ex & Cus, Nagpur, cited supra, the Hon'ble Tribunal has held as under :-

“From the above judgments, it can be seen that the credit in respect of steel items used for fabrication of Cooling bed, Crane Gantry is allowable. On the similar line steel used for fabrication of other capital goods are also allowed. The Vandana Global judgment is not directly applicable in this case. On the issue of whether the amendment in Cenvat Credit Rules of 7-7-2009 is retrospective or prospective the same has been distinguished by the judgment of Hon'ble Chhattisgarh High Court in case [Scania Steels and Powers Ltd. v. Commissioner - [2011 \(274\) E.L.T. A78](#) (Chhattisgarh)] wherein it was held that amendment made on 7-7-2009 in the definition of 'input' cannot be applied retrospectively.” [Emphasis Supplied]

As per the factual matrix observed above, the issue is squarely covered by the cited decisions. Therefore, I hold that the appellant is entitled for the Cenvat Credit for all items.

10. Appeal is allowed, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

**(R. Muralidhar)
Member (Judicial)**

Pinaki

