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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76213 of 2016

(Arising out of Order-in-Original No.46/51/CCE/CEX/RKL/2015-16 dated 28.03.2016 passed by Commissioner, Central Excise, Customs & Service Tax, Rourkela.)

Commissioner of Central Excise, Customs & Service Tax, Rourkela
(C.R. Building, KK-42, Civil Township, Rourkala, Odisha.)

...Appellant

VERSUS

M/s. Steel Authority of India Limited

.....Respondent

(Rourkela Steel Plant, Rourkela, Dist-Sundargarh, Odisha.)

<u>APPEARANCE</u>

Shri P.K.Ghosh, Authorized Representative for the Revenue
Ms. Payal Bharwani, Advocate for the Respondent (s)

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 77512/2024</u>

DATE OF HEARING : 17.09.2024
DATE OF DECISION : 17.09.2024

Per : R. MURALIDHAR :

The Respondent has taken Cenvat Credit of Rs.12,54,71,859/- on various items in respect of Railway materials and some safety items used by their workmen. On the ground that they are not eligible to take the Cenvat Credit, a Show Cause Notice was issued. The Adjudicating authority vide the impugned Order-in-Original dated 28.03.2016 has gone into detailed verification of the items involved and their usage by the Appellant in the course of their manufacturing activity. He has made the following observation in his Adjudication order. :-

"4.7 I find from the definition of "Input" under Rule 2(k) of Cenvat Credit Rules 2004 both pre and post 01.07.2012 that the impugned goods on which cenvat credit has been proposed to be denied has not been in the exclusion list of the definition.

4.8 Therefore, I agree with the contention of the Noticee that it is not disputed that the goods will be used for transportation of raw material, semi-finished goods, intermediate products, slag, final products etc. within the factory of production in or in relation to manufacture of finished goods. In view of the undisputed fact regarding the use within the factory of production in connection with transportation of various items, even if the credit availed by them on these items under capital goods is not available/admissible but cannot be denied as inputs. The use of these items clearly shows the use in or in relation to the manufacture of the final products, whether directly or indirectly, as per the definition of inputs."

2. The Ld.Adjudicating authority has relied on the following judgements :

a) Aditya Cement Ltd. v. UOI
[2008 (221) ELT 362 (Raj.)]
b) CCE v. Bhusan Steel Ltd.
[2012 (286) ELT 745 (Tri-Kol)]
c) Jayaswal Neco Ltd. v. CCE, Raipur
[2015 (319) ELT 247 (SC)]
d) Tata Steel and SAIL
[Final Order No.75016-75022/2016 dt. 05.01.2016]

3. The Ld.Adjudicating authority vide the impugned order has dropped the proceedings initiated against the Respondent. Revenue has filed Appeal before the Tribunal against the dropping of proceedings against the Respondents.

4. The Ld.AR for the Department reiterates the grounds taken by the Revenue in their Appeal and prays that the impugned order may be set aside and the Appeal may be allowed.

5. Ld.Advocate appearing on behalf of the Respondent submits that the Ld.Commissioner has rightly dropped the proceedings initiated

against the Respondent in his Adjudication order and prays that the Appeal filed by the Revenue may be dismissed.

6. After hearing both sides we find that there is no dispute that the goods in question have been used by the Respondent in the course of their manufacturing activity on which Excise Duty has been paid. The Tribunals/High Courts/Supreme Court have been consistently holding that the Cenvat Credit cannot be denied in respect of these items. In the case of **Aditya Cement Ltd. vs. UOI**, cited supra, the Hon'ble Rajasthan High Court has as under :

> ***"19.*** *We are of the opinion that the principle emerging from decisions of the Hon'ble Supreme Court and of this Court applies to the present case also. In the light of the aforesaid principle, if we take into account the use of iron and steel ingot as parts and components of its machinery used in manufacturing Cement, <u>Railway Track materials needed for transporting fuel as essential for manufacturing in the plant, it is clear that so far as the items of iron and steel are concerned, they are used as providing parts and components of the plant and machinery and becomes essential elements of the machine itself without which the machinery would not be functioning smoothly and properly. Therefore, the direct involvement of those parts and components which are essential to hold the machine become part and parcel of the machine itself. Such components and parts of the machine become eligible for availing Modvat credit of duties paid thereon</u>. In view thereof the appellants must be held entitled to avail Modvat credit of duties paid on 5% of the total value of iron and steel purchased by manufacturer used as components and parts of the machines. It is not in dispute and no claim is laid to other 95% of the steel and iron.*
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> ***20.*** *<u>So far as the claim to Railway Track material is concerned, it is common ground that the same has been used for transporting of coal and product of cement. Apparently, though the coal is not end product of the appellant but used as essential adjunct of plant for feeding it with fuel, the essential element of production process for manufacture of cement. Without supply of fuel the plant does not function.</u>*

<u>Therefore, the Railway Track used for one of the essential activity of running the plant itself cannot be kept out of consideration for availing Modvat credit though which is not being used directly for the purpose of manufacture of cement. But if as an integral part of manufacturing cement bringing of coal directly to the machine from site, railway track is used, it becomes part of plant and of manufacturing process</u>. Similarly, until the end product reaches in deliverable state, it remains part of the manufacturing process. In view of this matter the claim of the assessee in respect of Modvat credit of duty paid on railway track material deserves to be sustained."

7. In the case of **CCE vs. Bhusan Steel Ltd.**, cited supra, the Kolkata Bench of the Tribunal has held as under:

5.1 *We have carefully considered the submissions and perused the record. The ld. Commissioner (Appeals) in the impugned order has found as under :-*

………

"8. The appellant have also asserted that the use of diesel locomotive in carrying molten metal from blast furnace to conarc furnace and then to pig casting machine is part of the chain of manufacturing processes. There can be no doubt that this is so the case. <u>So also bringing raw materials, like coal and iron ore, to the furnace and to carry empty wagon in the factory is also part of the manufacturing activity. When that is so, any goods used in relation to the manufacturing activity become</u> an input. This finds support from the Tribunal decision in Banco Products (India) Ltd. (supra) and the Supreme Court decisions in Rajasthan State Chemical Works (supra) and Telco Ltd. (supra). In that view of the matter, diesel locomotive can as well be an input so as to come within its definition in the Cenvat Credit Rules, 2004."

5.2 *……….. we find that Diesel Locomotive torpedo ladle car carrying molten metal up to 300-350 MT not only enhances the effectiveness, but without it the handling, and in turn production of finished goods* *would not be possible. Thus we uphold the view of ld. Commr. (A) holding diesel locomotive as accessory of capital goods……..."*

8. In the case of **Jayasal Neco Ltd. vs. CCE, Raipur**, cited supra, the Hon'ble Supreme Court has held as under :

> *"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."*

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.*

…………………..

> ***20.*** *<u>Resultantly, we set aside the order of the Commissioner as well as of CEGAT insofar as it pertains to item "railway track material used for handling raw materials, process goods" and hold that the appellant has rightfully claimed for Modvat credit in respect of this item which credit is wrongly reversed by the authorities</u> below. To that extent, order of the Commissioner as well CEGAT is set aside and the present appeal is allowed in the aforesaid terms. No order as to costs."*

9. Following the Apex Court Judgement, Kolkata Bench of the Tribunal in the case of **Tata Steel and SAIL**, cited supra, has observed the following :

> *<u>The issue involved in the present case centers around eligibility to CENVAT Credit on the items, namely, rails, sleepers, joints, crossings etc. used inside the factory in the railway net work for transportation of raw materials, semi-finished, finished goods and also in the overhead cranes</u>. While claiming CENVAT Credit on these items, in the case of Appeal filed by M/s. Tata Steel Ltd., Rs.1,05,28,426/- was claimed as inputs and Rs.3,13,309/- as capital goods; whereas in the case of M/s. SAIL a total amount of Rs.3,43,55,640 was claimed as inputs and Rs.12,20,798/- as capital goods (in all the six Appeals)*
>
> *<u>Since the department has already accepted the admissibility of CENVAT Credit on rails and railway track materials involving the same assessee i.e. M/s. SAIL, for subsequent period under the CCR, 2004 and identical issue is also involved in M/s. Tata Steel's case, therefore, adopting the principle of certainty & consistency in tax matters, in our view, the Appellants are eligible to credit on rails and railway track materials</u>. The discussion on the applicability of the said judgment to the present CENVAT Credit Rules, 2004 and other contentions raised in these Appeals would become more of academic in nature rather than resolving the dispute, hence not resorted to. In the result, the impugned Orders passed in respect of the Appeals filed by M/s. Tata Steel Ltd. & M/s. SAIL are set aside and the Appeals are allowed, with consequential relief, if any, as per law."*

10. In view of the factual matrix and the case law discussed above, we do not find any merits in the Appeal filed by the Revenue. Accordingly, we dismiss the same.

(Operative part of the order was pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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