IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/1951/2010

[Arising out of Order-in-Appeal No: RT/7-8/LTU/MUM/2010 dated 27.08.2010 passed by the Commissioner (Appeals) Central Excise & Service Tax, Mumbai]

Dwarikesh Sugar Industries Ltd. ***Appellant***

versus

Commissioner of Central Excise & Service Tax (LTU) Mumbai ***Respondent***

Appearance:

Shri Mehul Jevani, CA for appellant

Shri Anil Chaudhary, assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)

Date of hearing: 24/12/2018
Date of decision: 24/12/2018

ORDER NO: A/88178 / 2018

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in manufacture of VP Sugar and Molasses in its factory, located in the district of Bijnor. The appellant avails Cenvat Credit of Central Excise duty paid on inputs and capital goods used in, or in relation to

manufacture of the said final products. During the disputed period April 2006 to December 2007, the appellant had availed Cenvat credit of Central Excise duty paid on TMT Steel and PP Cement, considering those goods as capital goods. The Cenvat Credit availed by the appellant was denied by the department on the ground that those disputed items were used in the fabrication of structure of capital goods, which cannot be considered for Cenvat benefit either under the definition of 'capital goods' or 'inputs'. On pointing out such discrepancy regarding availment of wrongful credit, the appellant had reversed the Cenvat Credit under protest. Thereafter, show cause proceedings were initiated against the appellant, seeking for disallowance of Cenvat Credit, payment of interest for delayed reversal of credit and imposition of penalty. The matter was adjudicated against the appellant vide order dated 14.07.2009, wherein the proposals made in the show cause notice were confirmed. On appeal, Learned Commissioner (Appeals) vide impugned order dated 27.08.2010 has upheld the adjudged demand confirmed on the appellant. Feeling aggrieved with the impugned order dated 27.08.2010, the appellant has preferred this appeal before the Tribunal.

2. The Learned Consultant appearing for the appellant submits that the period of dispute involved in this case is prior to amendment of the definition of input contained in Rule 2 (k) of the Cenvat Credit

Rules, 2004, under which there was no stipulation or prohibition for taking Cenvat Credit on TMT Steel and PP Cement as Cenvat Credit. He further submits that since the disputed goods were used in the factory, facilitating manufacture of the excisable final product, Cenvat benefit cannot be denied to the appellant. With regard to applicability of the decision of Larger Bench of this Tribunal in the case of Vandana Global Ltd. 2010 (253) ELT 440 (Tri.-LB), he submits that the said decision has already been overruled by Hon'ble Chhattisgarh High Court reported in 2018 (5) TMI 305 – Chhattisgarh High Court. He further submits that the issue arising out of the present dispute is no more res integra in view of recent Larger Bench decision of the Tribunal in the case of Manglam Cement Ltd. Vs. Commissioner of Central Excise, Jaipur-I 2018 (360) E.L.T. 737 (Tri.-LB).

3. On the other hand, the Learned DR appearing for Revenue has reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. The appellant had availed Cenvat Credit of Central Excise duty paid on the disputed goods namely, TMT Steel and PP Cement, considering the same as capital goods. The fact is not under dispute that the disputed goods were used by the appellant in the fabrication of structure of capital goods namely sugar mill machinery, boiler house, power generation and power house, which are essential plants

for ultimate manufacture of the final product. The period in dispute is from April 2006 to December 2007, which was covered under the un-amended definition of input (effective up to 7th July 2009). Under such un-amended provisions of Rule 2 (k) of the rules, there were restrictions for not allowing the Cenvat benefit on those structural items. Since specific restrictions were brought into the definition clause only with effect from 7th July 2009, Cenvat benefit on such disputed goods cannot be denied for the period prior to such effective date. With reference to retrospective applicability of the definition of input contained in Rule 2 (k) of the Rules, though the Larger Bench of this Tribunal, in the case of Vandana Global Limited (supra), has upheld the views expressed by Revenue, but the Hon'ble Chhattisgarh High Court in the case of said appellant (supra) by relying on the Gujarat High Court judgment in the case of Mundra Ports & Special Economic Zone Ltd. 2015 (39) S.T.R. 726 (Guj.), has held that in absence of any specific mention about the retrospective application of the definition of input, the same should be considered as prospective in effect. Further I also find that the Larger Bench of this Tribunal in the case of Mangalam Cement Ltd. (supra) has allowed Cenvat benefit on cement and steel items used for fabrication of structure for smooth functioning of machinery, considering the same as "accessories of capital goods".

6. In view of the settled position of law, I do not find any merits in

the impugned order, so far as it denied the Cenvat benefit and confirmed the adjudged demand on the appellant. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Pronounced & Dictated in court)

(S.K. Mohanty)
Member (Judicial)

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