

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

Appeal No. E/86518/2018

(Arising out of Order-in- Appeal No.
NSK/CEX/000/APPL/133/17-18 dated 17.01.2018
passed by the Commissioner of Central Tax
(Appeals), Nashik)

Saikrupa Sugar & Allied Inds. Ltd. Appellant

Vs.

Commissioner of Central Tax, Nashik Respondent

Appearance:

Shri J.N. Somaiya, Advocate for the appellant
Shri A.B. Kulgod, AC (AR) for the respondent

CORAM:

Hon'ble Dr. Suwendu Kumar Pati, Member (Judicial)

Date of hearing : 07.08.2018

Date of decision : 21.12.2018

O R D E R No: **A/88168/2018**

Inadmissibility of cenvat credit on supporting structures/staging of equipments is challenged in this appeal.

2. Factual backdrop of this appeal is that appellant is a manufacturer of sugar and molasses. During course of audit conducted for the period from October 2011 to Sept.2012. Appellant it was found to have availed ₹99,701- inadmissible credit on various items such as welding

machine, supporting structure constructed for various items and staging falling under chapter heading 84 of the schedule to the Central Excise Tariff Act, 1985. It was put to show-cause vide notice dated 23.05.2014. Upon its reply matter was adjudicated and the duty demand along with interest and penalty of equivalent amount were confirmed by the first appellate authority vide his order dated 31.03.2015 justifying invocation of extended period. Appellant challenged the order before the Commissioner (Appeals), who modified the finding of the adjudicating authority holding purchase of welding machine as eligible for cenvat credit and reducing the demand to ₹95,999/- by way of confirming the adjudication order in respect of structural materials. Interest and proportionate penalty under Rule 15(2) of the Cenvat Credit Rules were also confirmed. The said order is assailed before the Tribunal in this appeal.

3. During the course of hearing of the appeal, Id. Counsel Shri J.N. Somaiya, submitted that the so called structural items were received for specific use as per technical specification of particular equipment for which supplier had classified them under Chapter 84 along with main equipments as part of the said component and the same classification is not disputed by the Central Excise officers at the supplier's end for which the finding of the

Commissioner (Appeals) that capital goods were classified under Chapter 72/73 is erroneous. He submitted relevant case laws reported in Sarvesh Refractories 2007 (218) ELT 488 (SC), CCE vs. India Cements Ltd. 2014 (299) ELT 176 (Mad), UOI vs. Associated Cement co. Ltd. 2015 (317) ELT 44, Final order no. 729/2010 dated 20.04.2010 passed in the case of Athani Farmers Sugar factory, CCE vs. Kanoria Sugar General Manufacturing Co. Ltd. 2010 (256) ELT 594, Toyota Kirloskar Motors Ltd. 2002 (148) ELT 402, Order-in-Appeal no. PII/MMD/196/2012 dated 22.08.2012 in the case of SM Kagal SSK Ltd., PUN-EXCUS-002-APP-042014-15 dated 04.09.2014 and PUN-SVTAX-000-APP-0004-14-15 dated 12.01.2015 in Jawahar SSK Ltd. He further submitted in citing Tribunal's order reported in 2016 (341) ELT 372 in Singhal Enterprises case that assuming the items as supporting structures of machinery, the same are required for proper effective and smooth functioning of the machinery by keeping the same at a particular position at a particular height and the same cannot be kept hanging in mid air and hence the said supporting structure passed the user test laid down by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills 2010 (255) ELT 481 for which credit is admissible to the appellant even on the structural material. He pointed out that show-cause notice does not reveal allegation of suppression of fact etc. that would facilitate invocation of extended period of

limitation and therefore the order passed by the Commissioner (Appeals) is erroneous to the extent of inadmissible credits along with interest and penalty which is required to be set aside.

4. In response to such submissions, Id. AR for the department reiterates the reasoning and rationality of the order passed by the Commissioner (Appeals) and took this court to the finding of the Commissioner (Appeals) on classification issue, which is beyond the scope of this single bench to adjudicate upon. Further, he submitted that in placing reliance on the Hon'ble Supreme Court's judgment passed in *Saraswati Sugar Mills 2011 (270) ELT 465 (SC)* and *CESTAT Larger Bench in the case of Vandana Global Ltd. 2010 (253) ELT 440 (Tri-LB)* the Commissioner had passed his order that needs no interference by this Court. On admissibility of cenvat credit on welding machine used by the appellant for repair and maintenance activities, Id. Counsel for the appellant has not put forth his views as no cross objection or appeal is filed by the respondent department against the same.

5. Heard from both sides at length on the earlier occasion and perused the case records along with decided case laws submitted by the appellant and referred by the Id. Commissioner (Appeals). Show-cause notice reveals at para-2 that inadmissible cenvat credit was availed by the

appellant against supporting structures for various equipments and staging falling under Chapter heading 84 which as per definition of capital goods contained under Rule 2A of the Cenvat Credit Rules is covered. It is in view of several decisions referred by the appellant as above, and in view of settled position of law, such classification cannot be questioned at the receivers end, besides the fact that it is beyond the scope of this single bench to scrutinise the same and beyond the scope of the Commissioner (Appeals) to divert from the bounds of the show-cause notice.

6. Coming to the position of law in respect of staging of equipment/erection of supporting structure, its evolution at different stage is not to be discussed at this juncture in view of the finding of the Larger Bench of the Tribunal made in respect of Mangalam Cement Ltd. 2018 (3) TMI 1547 (Tri-LB) wherein it has been held that cement and steel items used for fabrication of support structure for smooth erection of machines to be considered as accessory of capital goods so as to cover it under the definition and such items are eligible to get benefit of cenvat credit as they fall within the scope and ambit of Rule 2(a)(A) as well as 2k of the Cenvat Credit Rules 2004. As found from the tax invoice copies supply of staging chequr plates, railing pipes along with supply of material for various equipments were being purchased by the appellant against which it availed the

credit. It is not disputed by the department that those were not used by the appellant in the installation and erection of machinery as has been ascertained by it.

7. On the other hand, show-cause notice indicates that those were supporting structures for various equipment and staging (of machinery). Therefore placing of reliance by the Commissioner (Appeals) in the Saraswati Sugar Mills (supra) which wanted to avail exemption on its steel manufactured differently in another unit and used for modernisation of sugar industry claiming it as captive consumption is erroneous. Needless to mention here that position of law, definition of input and evolution of input services has undergone a sea change after Vandana Global Ltd. (supra). Therefore, the cenvat credit availed by the appellant in respect of supporting structure for its equipments was admissible. Hence the order –

8. The appeal is allowed and the order passed by the Commissioner (Appeals) confirming duty demand along with interest and penalty is set aside.

(Pronounced in Court on)

Dr. Suvendu Kumar Pati
Member (Judicial)