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

Appeal No. E/87172/2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/SSP/APPL/ 009/18-19 dated 19.04.2018 passed by Commissioner of CGST & Central Excise (Appeals), Nasik)

MITC Rolling Mills Pvt. Ltd. **Appellant**
Vs.

Commissioner of CGST & Central Excise Nashik **Respondent**

Appearance:

Shri R.V. Shetty, Advocate for appellant
Shri A.S. Parabh, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 12.09.2018

FINAL ORDER NO. **A/88204 / 2018**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in manufacture of M.S. Angles, Bars, Sheets, Beams etc., falling under Chapter 72 and 73 of CETA, 1985. The appellant avails CENVAT Credit of Central Excise duty paid on the inputs and capital goods used in, or in relation to manufacture of the said final products. During the disputed period, the appellant had availed CENVAT Credit on the goods namely, M.S. Angles, Bars, Sheets, Beams etc., considering as 'inputs'. Further, the appellant also availed CENVAT Credit on M.S. Beams for erecting electric poles for transmission of electricity to outside the factory premises. Taking of CENVAT Credit by the appellant on the disputed goods were objected to by the department on the ground that those goods are not conforming to the definition of 'input', contained in Rule 2 (kl) of the Cenvat Credit Rules, 2004. The show-cause notice issued in this regard was adjudicated vide order dated 30.10.2015, wherein CENVAT Credit amounting to Rs.4,19,762/- was denied and the appellant was directed to pay interest at appropriate rate. Besides, the adjudication order also imposed penalty under Rule 15(2) of the rules read with Section 11AC of the Central Excise Act, 1944. On appeal, the learned Commissioner (Appeals) vide impugned order dated 19.04.2018 has upheld the adjudged demand confirmed in the original order, holding that the disputed goods were used in laying foundation and making supporting structure to the capital goods and thus, as per the decision of the Larger Bench of this Tribunal in the case of *Tower Vision India Pvt. Ltd. v. Commissioner of Central Excise - 2016 (42) STR 249 (Tri.) and Vandana Global Ltd. v. CCE – 2010 (253) ELT 440 (Tri. LB),* Cenvat benefit will not available on the disputed goods. It has further been held in the impugned order that since M.S. Beams were used for erection of poles for carrying out the activity of transmission of electricity and not used for generation of electricity, Cenvat benefit of M.S. Beams cannot be extended to the appellant. Feeling aggrieved with the impugned order dated 19.04.2018, passed by the learned Commissioner (Appeals), CGST & Central Excise, Nasik, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submits that the disputed goods viz. M.S. Angles, Bars, Beams were not used by the appellant for laying of foundation or for making structural support to the capital goods and the same were used for periodic repairs and maintenance of the machines / machineries installed in the factory. In respect of M.S. Beams, he submits that the poles erected by the appellant were used for generation of electricity and the generated electricity is capitvely used in the manufacture of dutiable final product. Thus, he submits that the disputed goods are conforming to the definition of input provided in Rule 2(k) of the rules for the purpose of availment of Cenvat benefit.

3. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. On perusal of the adjudication order dated 30.10.2015 , I find that vide paragraph 6 therein the adjudicating authority has recorded the submissions made by the appellant pursuant to the show cause notice issued to it. The submissions made by the appellant, as recorded in the adjudication order, are relevant for

consideration of the present appeal. Therefore, the submissions are extracted herein below:-

> *"6. In response to above show-cause notice, the assessee filed replies which were received by this office on 15.07.2015 and 03.08.2015. The defence taken by assessee in above replies are summarized as under:-*
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> *(i) They have not used MS Angles, Bars, Sheets, Beams for laying foundation or for making structural support to capital goods. The machineries already installed are demanding repairs and maintenance periodically. The above inputs are being used when certain part or assembly gets damaged on account of regular use. For example, 'repeator' is a part of rolling mills which needs frequent repairs and maintenance. Similarly hot billets when passes through rolling mill, it damages conveyor. When it gets damaged, it needs regular repairs and maintenance.*
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> *(ii) In respect of beams which are used as electrical poles outside the factory, they say and submit that the definition of input under Rule 2(k) includes all goods used for generation of electricity which is used captively. The word generation includes distribution / transmission also."*

6. On conjoint reading of both the submissions made by the appellant and the findings recorded in the adjudication/impugned orders, I find that the learned Commissioner (Appeals) has discussed the issue entirely in a different manner inasmuch as

the appellant had categorically denied that the disputed goods were not used for laying foundation or making structural support of the capital goods. Therefore, in the circumstances of the case, I am of the considered view that the matter should go back to the original adjudicating authority for proper fact finding regarding nature of use of the disputed goods by the appellant in its factory premises. While considering the issue on merits, the adjudicating authority should also record specific findings, whether extended period of limitation can be invoked under the circumstances of the case, for confirmation of the adjudged demand. The appellant is directed to produce relevant documents/evidences before the original authority to support its stand that the disputed goods were in-fact used for repair and maintenance of the capital goods installed in the factory and for generation of electricity for captive use.

8. In the result, the appeal is allowed by way of remand to the original authority for a fresh fact finding, in line with the above observations.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk