

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

APPEAL NO: E/612/2011

[Arising out of Order-in-Original No: 15/CSP(15)/COMMR/RGD/10-11 dated 31st January 2011 passed by the Commissioner of Central Excise Customs (Appeals NS-II), Mumbai Nhava Sheva.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
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Commissioner of Customs, Central Excise & Service Tax
Raigad *... Appellant*

versus

Ispat Industries Ltd *... Respondent*

Appearance:

Shri AB Kulgod, Assistant Commissioner (AR) for appellant

Shri A Sheerazi, Advocate for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 31/12/2018
Date of decision: 31/12/2018

ORDER NO: A/88294 / 2018

Per: C J Mathew

M/s Ispat Industries Ltd was issued with notice for denial, and consequent recovery, of CENVAT credit amounting to ₹66,98,504 availed on 'welding electrodes' that were held to be outside the ambit of the definition of 'inputs' used in or in relation to manufacture along with recovery of interest, and for imposition of penalty under rule 15 of CENVAT Credit Rules, 2004 read with section 11AC of Central Excise Act, 1944. Relying upon various decisions that have accorded finality to this controversy over nexus and includibility, Commissioner of Central Excise, Customs & Service Tax, Raigad, *vide* order-in-original no. 15/CSP(15)COMMR/RGD/10-11 dated 31st January 2011, dropped proceedings leading to this appeal by Revenue.

2. Learned Counsel for respondent points out that the impugned order has followed judicial decisions that allowed 'welding electrodes' as inputs entitled for availment of CENVAT credit and that the review of the order has relied upon the decision of the Larger

Bench of the Tribunal in *Jaypee Rewa Plant v. Commissioner of Central Excise, Raipur* [2003 (159) ELT 553 (Tri-LB)] and the definition of 'input' in rule 2 of CENVAT Credit Rules, 2004. He drew attention to the decisions of the Hon'ble High Court of Madras in *National Co-operative Sugar Mills Ltd* [2016 (344) ELT 832 (Mad)] which referred to the decision of the Hon'ble High Court of Chattisgarh in *Ambuja Cements Eastern Ltd v. Commissioner of Central Excise, Raipur* [2010 (256) ELT 690 (Chattisgarh)] and of the Hon'ble High Court of Rajasthan in *Hindustan Zinc Ltd v. Union of India* [2008 (228) ELT 517 (Raj)]. According to him, those did take note of the decision of the Larger Bench of the Tribunal in *re Jaypee Rewa Plant* but did not find approval.

3. Learned Authorized Representative reiterated the content in the grounds of appeal and the approval there to of the Hon'ble Supreme Court implicit in dismissal of the appeal against *SAIL v. Commissioner of Central Excise, Ranchi* [2008 (222) ELT 233 (Tri-Kolkata)] that had followed the decision of the Larger Bench in *re Jaypee Rewa Plant*.

4. The dismissal of the appeal in *re SAIL* by the Hon'ble Supreme Court had also been considered by the three High Courts but not found relevant in deciding the issue. Referring to the decision of the Hon'ble High Court of Rajasthan *supra*, the Hon'ble High Court of

Madras in *re National Co-Operative Sugar Mills Ltd* held that

'15. After considering Commissioner v. Jawahar Mills Ltd. reported in 2001 (132) E.LT 3 (SC), Jaypee Rewa Plant v. CCE reported in 2003 (159) ELT 553 (Tri.-LB), J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer reported in 1997 (91) ELT 34 (S.C.), in Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise, Raipur reported in 2010 (256) ELT 690 (Chhattisgarh), wherein, the High Court of Chhattisgarh held that welding electrodes used for repair and maintenance of plant and machinery, are eligible for Cenvat credits, both as capital goods, as well as inputs. At this juncture, we also deem it fit to consider the judgment of Chhattisgarh High Court, as to how the decision in SAIL case has been distinguished. At Paragraph Nos. 13, 14, 16, 17, 21 and 22 and ultimately, at paragraph 23, relying on the decision of the Rajasthan High Court in Hindustan Zinc Ltd. v. Union of India reported in 2008 (228) ELT 517 (Raj.), Commissioner of Central Excise v. India Cements Limited reported in 2009 (238) ELT 411 (Mad.) and the decision of the Delhi Tribunal in Birla Jute & Industries Limited reported in 2002 (139) ELT A93, and subsequently, confirmed by the Hon'ble Apex Court, the Chhattisgarh High Court, allowed the appeals of the assessee, and answered the substantial question of law, raised therein viz., whether the welding electrodes used in repairs/maintenance of plant and machinery can be construed as input, as defined under Rule 2(g) of the Cenvat Credit Rules, 2002. The Hon'ble Division Bench of the Chhattisgarh High Court further held that welding electrodes used in repairs and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002 and thus, entitled for Cenvat credit....'

before interpreting the scope of 'inputs' defined in rule 2(k) of CENVAT Credit Rules, 2004 to be

'18. As rightly contended by Mr. N. Prasad, learned counsel for the appellant, the term 'inputs', is wide enough to cover all the goods, except the goods specifically mentioned in the definition, inputs used in or in relation to the manufacture of the final product, whether directly or indirectly or whether it contained the final products or not. Judicial pronouncements extracted supra, makes it abundantly clear that welding electrodes used for repair and maintenance of machineries, in relation to manufacture of the final product, namely sugar, is eligible for Cenvat credit.'

5. With this, the two primary contentions in the appeal of Revenue fail the test of law. Accordingly, we find no merit in the appeal which is dismissed.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)