CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.E/88302/2018

[Arising out of Order-in-Appeal No.NGP/EXCUS/000/APPL/85/17-18/1037, dt.27.03.2018, passed by Commissioner (Appeals), CE & GST, Nagpur.]

M/s Western Coal Field Ltd **......Appellant**
Coal Estate, Seminary Hills, Civil Lines,
Nagpur 440 001

VERSUS

Commissioner of Central Excise & GST, **......Respondent**
Central Excise & GST, 2nd Floor, Room No.221, Telangkhedi Road, Civil Lines, Nagpur 440 001

Appearance:
Shri H.G. Dharmadhikari, Advocate for the Appellant
Shri N.N. Prabhudesai, Supdtt. (AR) for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86079 / 2019

Date of Hearing: 06.06.2019
Date of Decision: 06.06.2019

PER: D.M. MISRA

This appeal is filed against OIA No.NGP/EXCUS/000/APPL/85/17-18/1037, dt.27.03.2018, passed by Commissioner (Appeals), CE & GST, Nagpur.

2. Briefly stated the facts of the case are that the Appellants, inter alia, are engaged in the production of 'Coals' falling under the Chapter 27 of Central Excise Tariff Act 1985. During the relevant

period, they had availed CENVAT Credit amounting to Rs.1,19,95,161/- on various input services viz. construction, repairs, extension works etc in the mining area. Alleging that the credit is not admissible as the services on which credit availed do not conform to the definition of 'input service' as prescribed under Rule 2(*l*) of CENVAT Credit Rules, 2004, a demand notice was issued to them for recovery of the said credit with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the Appellant filed an appeal before the learned Commissioner (Appeals), who has partly allowed their appeal to the extent of setting aside the demand of Rs.60,72,549/- and Rs.48,01,345/-, but confirmed the denial of CENVAT Credit of Rs.4,21,267/-, hence, the present appeal.

3. Learned Advocate Shri D.H. Dharmadhikari for the Appellant has submitted that the credit of Rs.4,21,267/- was availed with reference to items viz. isolation stopping area and ventilation area within the mines, which is mandatory to be maintained as per Mines Act. It is his contention that in the amended definition of 'input service', credit was inadmissible when the services are used for construction of a building or civil structure or part thereof or laying of foundation or making of structure for support of capital goods. In the present case, the construction cannot be construed as a civil structure or part thereof as interpreted in their own case by this Tribunal vide Order No.A/854/2019, dt.22.04.2019. Therefore, credit on this count cannot be denied.

4. The learned A.R. for the Revenue for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. I find that this Tribunal in their own case, while considering the admissibility of CENVAT Credit availed on support structures of roof holding the mines, interpreted the scope of civil structures and observed that the roofing in mine offers protection from the possibility of mud shifting in the area. Therefore, it hardly conforms to the expression of 'civil structure'. Applying the same analogy, I am of the view that 'ventilation stopping area and isolation stopping area' cannot be called as civil structure, accordingly, CENVAT Credit availed by the Appellant on the input/input services cannot be denied.

5. Impugned order is modified to that extent and appeal is allowed to the said extent.

(Operative part of the order pronounced in the open court)

(D.M. Misra)
Member (Judicial)

Bahalkar