CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

Misc. Application No. 86850 of 2018
(on behalf of Respondent)

IN

EXCISE APPEAL NO: 118 of 2011

[Arising out of Order-in-Original No: 10/COMMR(KAP)/LTU-M/2010 dated 27th October 2010 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Dwarikesh Sugar Industries Ltd … ***Appellant***
511 Maker Chambers V, 221 Nariman Point
Mumbai – 400 021

versus

Commissioner of Central Excise & Service Tax ***…Respondent***
LTU,
29th Floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

WITH

EXCISE APPEAL NO: 119 of 2011

[Arising out of Order-in-Original No: 09/COMMR(KAP)/LTU-M/2010 dated 22nd October 2010 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Dwarikesh Sugar Industries Ltd … ***Appellant***
511 Maker Chambers V, 221 Nariman Point
Mumbai – 400 021

versus

Commissioner of Central Excise & Service Tax ***…Respondent***
LTU,
29th Floor, World Trade Centre, Cuffe Parade,
Mumbai – 400 005

APPEARANCE:

Shri Vinod Awtani Advocate for the appellant

Shri Anil Choudhary, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86796-86797 / 2019

DATE OF HEARING:	02/05/2019
DATE OF DECISION:	02/05/2019

PER: C J MATHEW

Miscellaneous application of Revenue is disposed off.

2. The appellant, M/s Dwarikesh Sugar Industries Ltd challenges the disallowance of CENVAT credit availed on 'TMT bars', 'cement', 'MS angle', 'MS steel' and 'other steel and profile sheets' used in fabrication of structures for machinery, boiler house, generator house and power house all of which comprise equipment for production and storage of sugar. Credit of ₹1,42,14,346/- was availed under rule 3 of CENVAT Credit Rules, 2004, between June 2007 and March 2008, at half of the total duty borne on these goods and show cause notice dated 7th July 2008 was issued for disallowance of this amount. For the other half of eligible credit availed during April 2008, show cause notice dated 27th March 2009 was issued. Both were adjudicated by Commissioner of Central Excise and Service Tax (LTU), Mumbai in order-in-original no. 10/COMMR(KAP)/LTU-M/2010 dated 27th

October 2010 and no. 09/COMMR(KAP)/LTU-M/2010 dated 22nd October 2010.

3. It is seen from the impugned orders that the adjudicating authority has placed reliance on the decision of the Larger Bench of the Tribunal in *Vandana Global Limited v. Commissioner of Central Excise, Raipur [2010 (253) ELT 440 (Tri.-LB)]* as well as circular no. 267/11/2010-Cx8 dated 8th July 2010 of Central Board of Excise and Customs issued consequent to the decision of the Larger Bench.

4. Learned Chartered Accountant appearing for appellant drew attention to *Explanation* in rule 2(k) before the amendment of June 2009 by which certain restrictive qualifications were inserted in the inclusive meaning assigned to ‘input’, *i.e.,* used in the manufacture of capital goods which are further used in the factory of manufacture. It was the contention of Learned Chartered Accountant that the decision of the Larger Bench of the Tribunal according retrospective effect to the said alteration in *Explanation 2* to rule 2(k) of CENVAT Credit Rules, 2004 had been set aside by the Hon’ble High Court of Chhattisgarh in *Vandana Global Limited & Others v. Commissioner of Central Excise & Customs [2018 (5) TMI 305-CHATTISHGARH, HIGH COURT)]*. It is brought to our notice that the Hon’ble High Court of Madras in *Thiru Arooran Sugars v. CESTAT, Chennai [2017 (355) ELT 373 (Mad.)]* had also held that

> *'43.2 Therefore, quite clearly, the two judgments referred to above cannot be read in the manner, as the Revenue is seeking to read them, that is, at cross purposes. In our opinion, the ratio of the two judgments, is that, as long as it is shown that the "component" and/or "accessory" is an integral part of the capital goods, (which, in turn, fall within the scope and ambit of the expression 'capital goods', referred to in Rule 2(a)(A)(i) of the 2004 Rules,) they would also qualify as capital goods.*
>
> *44. In the facts of this case, we have to conclude that MS structurals, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rule 2(a)(A) and 2(k) of the 2004 Rules.'*

which has been followed by the Larger Bench of the Tribunal in *Mangalam Cement Ltd v. Commissioner of Central Excise, Jaipur – I [2018 (360) ELT 737 (Tri.-LB)]*. Moreover, he cites the decision of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Salem v. Madras Aluminium Co Ltd [2017 (349) ELT 133 (Mad)]* holding that

> *'6. From a perusal of the above, it makes clear that such goods which fall under Chapters 82, 84, 85 and 90 and*

Headings No. 90, 68.05, etc., answer the description of capital goods. Similarly pollution control equipment also answers the description of capital goods. But However, the following which is found in the definition has some significance for the question that has engaged our attention. It reads as under;

> *"Components, spares and accessories of the goods specified at (1) above."*

While there is no difficulty for one to understand what constitutes components or spares of certain equipments, but the expression "accessories" is not free from any doubt. The expression "accessories" is normally understood as a thing which could be added to some thing else in order to make the former more useful, versatile or attractive. The show cause notice dated 4-4-2012 had enclosed thereto, an annexure listing out the equipments, for which the Cenvat credit has been initially taken by the respondent together with their usages. When we peruse the tabulated statement, in particular with regard to their usage, we have noticed that steel plates have been used by the respondent for supporting the other essential equipments such as HP/LP Heaters, Grider of cranes, cable trenching covering and also for covering the hot area of the boiler.

7. The claim of the respondent was that it has undertaken construction of the 4th unit of a captive power plant. In that process, it has utilized this material and "construed" them as "accessories". We could also notice that the MS angles have been used as a support structure either for construction of a platform or for ladders. Going by the common understanding of the expression 'accessories', we are of the view that the notion entertained by the respondent that the MS plates and MS angles utilised by it at the first instance for Cenvat credit are only intended to enhance the effective utilisation of the *other equipment which is needed to be put in place for their 4th unit of the captive power plant. Such an impression that MS plates and MS angles can be used as accessories is not a totally absurd view.'*

5. Learned Authorised Representative cites the relevant portions of the impugned order and contends that these have been passed in accordance with the provisions of law.

6. The issue before us is one pertaining to eligibility for CENVAT credit on goods that have, admittedly, been used in construction of supports for capital goods which are within the meaning of rule 2(k) of CENVAT Credit Rules, 2004, as it stood then, to be eligible as input. The grounds adduced in the impugned order for denial of CENVAT credit is not sustainable in the light of the contrary judicial orders since then.

7. In view of the changed circumstances, we find that the denial of CENVAT credit is not correct in law and accordingly we set aside the impugned orders and allow the appeals.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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