

IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH, NEW DELHI

Date of Hearing/ Decision: 21.01.2016

Excise E/Cross /50763/2015

In Appeal No.50531/2015-EX(SM)

[(Arising out of Order-in-Appeal No.250/RPR/2014 dated 18.11.2014 passed by the Commissioner (Appeals) Central Excise, Raipur]

For approval and signature:

Hon ble Shri B. Ravichandran, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities?

**CCE & ST, Raipur ...Appellants**

**Vs.**

**M/s. Mahamaya Steel Industries Ltd. Respondent**

Appearance:

Rep. by Shri Vaibhav Bhatnagar, AR for the appellant.

Rep. by Shri L.P. Asthana and Ms. Shreya Dahiya, Advocates for respondent.

Coram: Hon ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50122/2016 Dated:21.01.2016

Per B. Ravichandran:

This appeal by the Revenue is against Order dated 18.11.2014 of Commissioner (Appeals), Raipur.

2. The respondent herein are engaged in the manufacture of various Iron and Steel products such as Joists, Channel, Angles, Blooms liable to central excise duty. They were availing cenvat credit of duty paid on inputs and capital goods. After audit of the records of the

respondent by the officers, proceedings were initiated to disallow under a cover of cenvat credit amounting to Rs.27,08,116/- availed on cement and structural items. After adjudication, the Original Authority passed order dated 10.09.2014 disallowing the said credit and imposing equal penalty. On appeal, the Commissioner (Appeals) allowed the appeal by setting aside the original order.

3. Aggrieved by this order, the Revenue is in appeal.

4. Ld. AR contested the findings in the impugned order on the ground

(a) Iron and Steel structures on which credit has been availed by the respondent cannot be considered as components of machineries. These structures are mainly for support of capital goods;

(b) The Commissioner (Appeals) accepted the certificate of Chartered Accountant submitted by the respondent without detailed analysis. Many goods purported to have been fabricated were civil structures, platform permanently attached to the earth and hence, not eligible for credit;

(c) If the capital goods were manufactured and used captively by the respondent, the detail should have been mentioned in the ER-I Returns with a claim for exemption under Notification no.67/95-CE;

(d) The cement has been used in the civil work of construction of support structures of storage tank and hence, credit cannot be allowed on such cement.

5. Ld. Counsel for the respondent submitted that the impugned order examined all the issues in detail with supporting case laws and there is nothing in the present appeal filed by the Revenue to contradict the findings in the impugned order. He further submitted that it is incorrect to allege that the Commissioner (Appeals) simply accepted the certificate of Chartered Accountant to allow the credit on various items.

6.Ld. Counsel specifically drew the attention to the contents of the certificate along with the attached annexures and various photographs. He further submitted that the various MS items with the quantity, their end use and the credit on such items were elaborated in the certificate.

7. Ld. Counsel while supporting the findings in the impugned order submitted that they are not contesting the non-eligibility of cenvat credit on cement, which used for making underground storage tank.

8. Heard both the sides and considered the available records.

9. The plea of the Revenue is that the credit taken on structural items amounting to Rs.21,60,362/- and cement Rs.38,122/- is not legal and proper. These structural items are used by the appellant only to support the capital goods. I find that such assertion by the Revenue is without any supporting evidence whereas the Respondent have produced detailed certificate indicating the usage of various steel items in the fabrication of conveyors, cooling bed, overhead tanks, billet, pusher bed, re-heating furnace and heating furnace and ancillary heating furnace. Thus, the usage of various M.S. items in relation to fabrication of various capital goods, components of capital goods has been explained by the respondent before the

lower Appellate Authority. The certificate also states that the various items are fabricated at site and later on, erected and bolted to the concrete footing with the help of nuts and foundation bolts. Here, it is necessary to refer to the Hon'ble Supreme Court's decision in the case of CCE Vs. Rajasthan Spinning Mills 2010 (255) ELT 481 (SC). The Hon'ble Supreme Court while allowing the credit on M.S. items like angles, sheets, etc. evolved a user test to determine whether these items can be considered as components or accessories of capital goods on applying this principle. I find that there is no error in the findings by the Id. Commissioner (Appeals) in as far as eligibility of credit on steel structural items. However, I find that the cement used for constructing under-ground storage tank, which is a civil structure, will not be eligible for cenvat credit.

10. In view of the above discussion and findings, I find that the present appeal is without merit except to the extent of cenvat credit on cement. Accordingly, the appeal is dismissed except to the extent that the credit on cement availed by the respondent is not legally eligible.

[Operative portion already pronounced in open court]

( B. Ravichandran )

Member (Technical)