

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75256 of 2014

WITH

Excise Cross Objection No. 75595 of 2016

(Arising out of Order-in-Appeal No. 61/CE/BBSR-II/2013 dated 18.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

Commissioner of Central Excise, Customs and Service Tax : **Appellant**

Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007 (Orissa)

VERSUS

M/s. Viraj Steel and Energy Limited : **Respondent**

AT: Gurupali, P.O.: Lapanga (Rengali),
District: Sambalpur, PIN – 768 212 (Orissa)

AND

Excise Appeal No. 75317 of 2014

(Arising out of Order-in-Appeal No. 61/CE/BBSR-II/2013 dated 18.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Viraj Steel and Energy Limited : **Appellant**

AT: Gurupali, P.O.: Lapanga (Rengali),
District: Sambalpur, PIN – 768 212 (Orissa)

VERSUS

Commissioner of Central Excise, Customs and Service Tax : **Respondent**

Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007 (Orissa)

APPEARANCE:

Smt. Ritika Kurmy, Advocate for the Assessee
Assisted by Shri Debayan Dutta, Advocate

Shri S. Mukhopadhyay, Authorized Representative for the Revenue

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75784-75785 / 2024

DATE OF HEARING / DECISION: 25.04.2024

Order : [PER SHRI ASHOK JINDAL]

Both the sides are in appeal against the impugned order.

2. The facts of the case are that the assessee is engaged in the manufacture of sponge iron and availing CENVAT Credit on various steel items during the impugned period, namely, Alloy plate, Alloy steel bend, Aluminium Rolled Product, Boiler structure, Boiler component, Cable, Conductor, Control Panel, Conveyor structure, Dileting, Fabricated Steel Structures, Level Switch without controller, MS flange, parts and accessories of motor vehicles, PSC Pole, Seamless Bend, structures, Turbinol-46 and Tower materials, etc., falling under Chapters 26, 27, 68, 71, 73, 76, 85,86, & 87 of the Central Excise Tariff Act (CETA) treating them as 'capital goods' and iron and steel items, namely, M.S. Angle, M.S. Channels, Beams, Joist, M.S. Plates, M.S. Rounds and coils, etc., falling under Chapter 72 of the CETA treating them as 'input'.

3. The Revenue is of the view that these items are neither inputs nor capital goods for manufacture of sponge iron. In that view, it is their allegation that these items do not qualify as 'input' within the meaning of Rule 2(k) or 'capital goods' within the meaning of Rule 2(a) of the CENVAT Credit Rules, 2004.

4. Periodical Show Cause Notices were issued to the assessee to deny CENVAT Credit availed by them on the above said items.

5. The matter was adjudicated and finally, a part of the CENVAT Credit was allowed to the assessee holding that these items have been used by the assessee for the fabrication of their plant to manufacture their final product. A part of the CENVAT Credit was denied to them holding that the assessee was not able to show the application of the said items in their use for manufacture of their final product.

5.1. Therefore, both sides are in appeal before us. The assessee has also filed a cross-objection to the appeal filed by the Revenue.

6. Today, when the matter was called for hearing, the Ld. Authorized Representative appearing for the Revenue submits that in the Revenue's appeal, the amount is less than Rs.50,00,000/- (Rupees Fifty Lakhs only). Thus, we find that the amount involved in the said amount is less than the monetary limit prescribed for litigation before the CESTAT in terms of C.B.E.C. Instruction in F. No. 390/Misc./116/2017-JC dated 22nd August, 2019 regarding the National Litigation Policy.

7. On merits, it is submitted by the Ld. Counsel appearing for the assessee that all the items involved are used in fabrication of their plant and machinery, to manufacture their final product. To that effect, they have produced a certificate issued by the Chartered Engineer with regard to usage of the said items for fabrication of their plant and machinery.

7.1. With regard to a short demand of Rs.96,645/- on which CENVAT Credit has been denied by the Ld. Commissioner (Appeals), the assessee is not pressing for the said amount.

8. The Ld. Authorized Representative appearing for the Revenue reiterated the findings in the impugned order.

9. Heard the parties and considered their submissions.

10. As the assessee is able to prove that all the items in question have been used in fabrication of structures for installation of capital goods which were ultimately used in the manufacture of their final product, in the circumstances, as per the decision of the Hon'ble Chhattisgarh High Court in the case of *M/s. Vandana Global Ltd. v. Commissioner of C.Ex. & Cus., Raipur [2018 (16) G.S.T.L. 462 (Chhattisgarh)]* we allow CENVAT Credit to the assessee.

10.1. Further, the amount of Rs.96,645/- is not pressed by the assessee and therefore, demand of the said amount is confirmed, which is payable along with interest.

11. In the facts and circumstances of the case, we hold that no penalty is imposable on the assessee.

12. In view of above discussion, the appeal filed by the Revenue is dismissed. The cross-objection filed by the assessee against the said appeal filed by the Revenue is disposed of accordingly. The appeal filed by the assessee also stands disposed of in the above terms.

(Dictated and pronounced in the open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)