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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 46 of 2016

- Commissioner, Central Excise, Customs & Service Tax, Bilaspur

---- Appellant

Versus

- M/s Ambuja Cement Eastern Ltd. Rawan, Baloda Bazar, Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vinay Pandey, Advocate.
For Respondent	:	Shri M.P. Devnath and Shri Raja Sharma, Advocates

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order On Board

14/12/2016

Per Deepak Gupta, CJ.

This appeal by the Revenue (Appellant – Commissioner, Central Excise, Customs & Service Tax) arises out of the order dated 30.11.2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, whereby the appeal filed by the Revenue was rejected and the assessee was held entitled to claim MODVAT Credit on the inputs used for making capital goods in the nature of M.S.Plates, M.S.Channels, M.S. Joists, etc.

2. The assessee is engaged in the manufacture of cement. The assessee is availing MODVAT credit on various inputs used in making capital goods in terms of Rule 57Q, now re-numbered as Rule 2(b) of the CENVAT Credit Rules, 2002 (hereinafter referred to as 'the Rules of 2002' in short). The respondent was

using inputs in the nature of M.S.Plates, M.S.Channels, Joists, etc. for erection of Coal Hoppers, Ducting for Bag Filter, Conveyor Belt, Duct for Colling, Venting & Exhaust Charge air for D.G. set for Coal Bunker, Coal Feeding to boiler – TPP, Chute etc. It is not disputed that the items such as Coal Hoppers, Ducting for Bag Filter, Conveyor Belt, Duct for Colling, Venting & Exhaust Charge air for D.G. set are essential parts of the factory where cement is manufactured.

3. The Assessing Authority issued notices to the assessee for different periods asking the assessee to show cause why the CENVAT credit obtained by the assessee in respect of these items be not reversed. Reply to these notices was filed. The Assessing Authority held that the assessee had wrongly claimed CENVAT credit facility.

4. Aggrieved by this order of this Assessing Authority, the assessee filed an appeal before Commissioner (Appeals), Raipur-I. The Commissioner (Appeals), after dealing with the entire law on the subject, held as follows:

> "9. I have carefully gone through the facts of the case and the submissions as well as the case laws and the previous decisions on record. The issue to be decided in this Appeal is whether the impugned items referred to at para 4(i) *supra* used as inputs would be eligible for Cenvat Credit. In the submissions at para 4(iii) *supra*, the Appellant had in respect of all the disputed inputs had submitted in their written submission complete details of usage of the inputs on which credit had been availed, including copies of issue slips etc. as evidence thereof, and in response to the directions during the course of personal hearing before the Original Authority, some more documents / details relating to "Thermal Power Plant" and some other equipments were filed in complete sets including project report, drawings, purchase orders etc. of various impugned equipments/capital goods and other machineries under cover of their letters dated 13.09.2006 and 25.09.2006 which were duly acknowledged on 13.09.2006 and 25.09.2006 respectively. The Appellants have contended that the Original Authority ignored all the submissions / records / documents / evidence while arriving at the impugned decision. Para 4 of the impugned show cause notice dated 27.04.2005 have recorded the claim of the Appellant that they had used as input the plates, Angles, Chanels, Joists, Flats etc. referred to at Annexure A of the show cause notice for manufacturing of final product. However, while discarding the usage, it has been alleged that such items cannot be considered as input for capital

goods under Rule 2 (g) of Cenvant Credit Rules, 2002 and the said items cannot be considered as capital goods under Rule 2 (b) of the Cenvant Credit Rules as the same are not machines, machinery, equipment, spare parts, components or accessores of capital good used for manufacture of final product. In other words, there is no dispute about the usage of the impugned items. The only dispute relates to admissibility of Cenvant Credit on impugned items. While taking note of the submissions of the Appellant referred to at para 5(ii)(a) *supra,* I have also perused the following decisions of my learned predecessors on the subject, which have been relied upon by a couple of Appellants in similar sets of Appeal :

(1) Order-In-Appeal No.431-433/RPR-I/2003 dated 12.09.2003
(2) Order-In-Appeal No.532-533/RPR-I/2003 dated 19.11.2003
(3) Order-In-Appeal No.87/RPR-I/2005 dated 11.08.2005

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13. If one reckons the functional usage as submitted by the Appellant and referred to at para 4(i) *supra,* The Appellant have used the inputs for manufacture of Capital Goods including Captive Thermal Power Plant, which were in turn used in the factory for the manufacture of dutiable final products within the definition of capital goods under Rule 2 of the Cenvat Credit Rules, 2002 on the analogy that such capital goods including parts thereof (collectively referred to as Capital Goods) installed within the factory of production and their use in the manufacture of dutiable final products become an integral part of the machine / machinery classifiable under the respective headings of machinery items.

14. From the nature of the goods and their contribution to the various processes leading to the manufacture of Clinker and Cement, I find that they are part and parcel of the plant. Plants are combinations of a large number of machineries, which are interconnected, and act in unison. Big plants have different varieties of machineries, incidental or ancillary implemtns, functional areas, supporting structures which contribute to the productive process, which individually find mention at different places in the Tariff. Then there are networks of pipes and tubes for movement/ storage of various materials for use in the process of production. The impugned goods used by the Appellant as components of various machines are in the larger context classifiable as parts of plant / machineries with which they work. Even in the narrower sense, they are accessories to the machineries helpting in their own ways in the manufacture of excisable goods.

15. The Original Authority while observing the usage of the impugned items has not substantiated the grounds for disallowance of Cenvant credit on the disputed items which, according to the Appellant, are covered under the definition of Capital Goods as defined in Rule 2 of Cenvant Credit Rules, 2002, which reads as components, spares and accessories of goods specified. I find that CBEC Circular no. 276/110/96 TRU dated 02.12.1996 stipulates that spares parts of capital goods, for which credit is to be availed, do not have to fall under heads 82,84,85 and 90. The CBEC Circular No.

> B-4/7/2000 TRU dated 03.04.2000 clarifies that "the revised definition is comprehensive enough to specifically include components, spares and accessories as also other capital goods. The components, spares and accessories may fall under any chapter but they should be components of the goods specified in clause (a)(i) of Rule 57 AA...". In the case of CCE Vs Jawahar Mills Ltd. Reported in 2001(132) ELT-3 (SC), the Apex Court have held thus ".... the aforesaid definition of capital goods is very wide. Capital goods can be machines, machinery, plant equipment, apparatus, tools or bringing about any change in any substance for the manufacture of final product would be a capital goods and therefore, qualify for availing Modvant Credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purpose enumerated therein would also be capital goods and qualify for Modvat Credit entitlement....".""

5. Therefore, what the Appellate Authority, i.e., the Commissioner (Appeals) has held is that these M.S. Plates, M.S.Angles, M.S. Channels, M.S. Joists, etc. were used for the erection of certain parts of the factory which were essential for the manufacturing of cement. They are integral part of the cement factory and cement could not be manufactured without these parts being constructed. Therefore, the inputs used in the manufacture of these parts of the capital goods qualify for CENVAT credit.

6. The main argument raised is that the user test as laid down in the case of ***Maruti Suzuki Ltd.* vs. *Commissioner of Central Excise, Delhi-III,* 2009 (240) E.L.T. 641** has not been dealt with. We do not agree with the submission made by the appellant in this behalf. In para – 13, the Commissioner has specifically dealt with the functional usage of the various parts. User test as laid down in the **Maruti Suzuki Ltd. vs. Commissioner of Central Excise, Delhi-III** (supra) only provides that the authority should be satisfied that the use of these inputs is necessary for erection of the whole or part of the plant and machinery, which is essential for manufacture of the end product.

7. We, at this stage, may refer to Rule 2 (g) of the Rules of 2002, which reads as follows:

> "2(g) "input" means all goods, except [light diesel oil] high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as a paint, or as packing material, or as fuel, or for generation of electricity or stream used for manufacture of final products or for any other purpose, within the factory of production.
>
> *Explanation 1.* - [The light diesel oil, high speed diesel oil] or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.
>
> *Explanation 2.* - Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;"

The word 'input' has been defined in a manner which is admittedly very wide. Other than excluding fuels, like diesel high speed diesel oil and motor spirit etc. almost everything else is included in the manufacture of input. The Explanation – 2 is very important for our purposes and it clearly provides that inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacture.

8. It is not disputed that the inputs like M.S. Angles, M.S. Plates, M.S. Joists and Channels were used for manufacturing of certain essential parts of the factory which are capital goods and since they are essential parts of the factory, they satisfy the twin tests of being capital goods as well as the user test. In fact, this question is no longer *res integra.* In ***Jayaswal NECO Ltd.*** vs. ***Commissioner of Central Excise, Raipur,*** **2015 (319) E.L.T. 247 (S.C.),** the Apex Court dealing with the Rule 57Q of the Central Excise Rules, 1944, held as follows:

> "12. In the process, the court also explained that there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. In the opinion of the court, the expression " in the manufacture" takes within its compass, all processes which are directly related to the actual production. It noted that goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for

specification. The court further marked that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

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17. The aforesaid process squarely meets the test laid down by this court in *M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.'s* case. It is clear that the railway tracks are installed not only within the plant, but the main objective and purpose for which the capital expenditure on laying these railway tracks is incurred by the appellant is for transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is pured into pig casting machine for manufacture of pig iron. It is clear from the above that the use of railway tracks inside the plant not only form the process of manufacturing, but it is inseparable and integral part of the said process inasmuch as without the aforesaid activity for which railway tracks are used, there cannot be manufacturing of pig iron."

9. In the above case, the issue before the Supreme Court was whether a railway track constructed to carry coal from the coal mines to the thermal plant would fall within the definition of input or not. The Apex Court held that the items used for construction of the railway track were inputs because carriage of coal to the plant was an essential part of the process of manufacture. If the input used in construction of a railway track is input, we fail to understand the argument of the Appellant as to how the M.S.Plates, Angles, Channels and Joists etc. which are used for erection of essential parts of the factory, in which, cement is manufacturing, cannot be treated as inputs.

10. Reliance placed by Shri Vinay Pandey on the judgment of Supreme Court rendered in ***Saraswati Sugar Mills*** vs. ***Commissioner of Central Excise, Delhi-III,*** **2011 (270) ELT 465 (S.C.)** is totally misplaced. The Supreme Court was dealing with an exemption notification and not with Rule 57Q or Rule 2(g) of the Rules of 2002. The judgment has been delivered in the context of the factual situation and the notification which was being interpreted in the said

judgment. As far as the Rule 57Q or Rule 2(g) of the Rules of 2002 is concerned, that has been interpreted by the Supreme Court in ***Commissioner of C. EX., Jaipur*** vs. ***Rajasthan Spinning & Weaving Mills Ltd.,*** **2010 (255) E.L.T. 481 (S.C.)** and **Jayaswal NECO Ltd.** vs. **Commissioner of Central Excise, Raipur** (supra) as well as in **Maruti Suzuki Ltd.** (supra). In all these cases, it has been held by the Supreme Court that the word 'input' has to be given a very wide meaning and the intention of the Legislature is to grant CENVAT credit for all inputs which are directly or indirectly related to the manufacture of the end product. Further, as per explanation – 2 of Rule 2 (g) of the Cenvat Credit Rules, 2002, goods used for manufacturing of those capital goods which are further used in the factory of the manufacturer for production of the final product, (in this case cement) are inputs. Therefore, the Tribunal rightly decided the matter in favour of the assessee.

11. In view of the above discussion, we find no merit in this appeal, which is accordingly dismissed.

Sd/-

(**Deepak Gupta**)
Chief Justice

Sd/-

(**Sanjay Agrawal)**
Judge