NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Tax Case No. 118 of 2016

Commissioner, Central Excise, Customs & Service Tax, Raipur

---- Appellant

Versus

M/s. HEG Limited, Borai Industrial Growth Centre, Village-Rasmada, Durg, Chhattisgarh

---- Respondents

For Appellant : Shri Vinay Pandey, Advocate.
For Respondent : None.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Order on Board

Per Deepak Gupta, Chief Justice

14/12/2016

1. The appeal is admitted for hearing. With the consent of learned counsel for the Appellant, the case is being heard and disposed of finally.

2. This appeal is directed against the order dated 02.11.2015 passed by the Customs, Excise, & Service Tax Appellate Tribunal, Principal Bench, New Delhi, (hereinafter called 'the Tribunal') in Appeal No. E/1942/2010 whereby the appeal filed by the Respondent-Assessee was allowed permitting it to take Cenvat credit for the inputs in the nature of Cement, MS CTD Bars, MS Rounds, TMT, Plates MS Angles, MS Channels, Beams and Rails etc. used by the Assessee for manufacture of machines/machineries installed in the factory.

3. We, vide a separate judgment dated 14.12.2016 delivered in Tax Case No. 46 of 2016, have dealt with this question in detail and have held that the Assessee is entitled to get the benefit of Cenvat credit in respect of the aforesaid items, holding as follows:

> "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."

4. In view of the above, we find no merit in this appeal. It is dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE

Amit