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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 11 Of 2017

Commissioner, Central Excise, Customs & Service Tax, Bilaspur at Central Excise Bhawan Tikrapara Dhamtari Road Raipur Chhattisgarh

---- Appellant

Versus

M/s Maruti Clean Coal & Power Ltd. Nawagaon Khurd Korba Chhattisgarh

---- Respondent

For Appellant : Shri Vinay Pandey, Advocate.

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

Judgment on Board

Per Deepak Gupta, Chief Justice

31/01/2017

1. The issue involved in this case is whether structural items such as M.S. Flats, Channels, Plates, Beams etc. which are used to fabricate structures to house the coal washing plant are covered within the definition of input given in Rule 2(k) of the CENVAT Credit Rules, 2004.

2. This issue is no longer *res integra.* This Court in Tax Case No.46 of 2016 has held as follows:-

> "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.
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> 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:
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> > "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."

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."

3. In the present case, these inputs have been used to fabricate coal washing plant. In our view, the coal washery is an integral part of the unit. There can be no coal washery without the coal washing plant. The Tribunal was justified in deciding the case in favour of the assessee.

4. We find no merit in the appeal. It is dismissed accordingly.

Sd/-	Sd/-
(Deepak Gupta)	(Sanjay Agrawal)
CHIEF JUSTICE	**Judge**

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