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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 30 of 2017

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

---- Petitioner

Versus

- M/s Singhal Enterprises Private Limited Village Taraimal, P.O. Gerwani, District Raigarh, Chhattisgarh

---- Respondent

For Appellant : Shri Vinay Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

19.07.2017

1) This appeal is filed by the Revenue under Section 35G of the Central Excise Act, 1944 (for short, 'the Act'). The following questions are suggested for consideration as substantial questions of law :

> *"i) Whether the Hon'ble CESTAT is legal and correct in holding a view that CENVAT credit is admissible on "Welding Electrode" (falling under Chapter 83) as "Input" in terms of Rule 2 (K) of CENVAT Credit Rules, 2004 when the Respondent has claimed that the same were used for repair and maintenance purpose which is not integrally connected to the manufacture of finished products.*
>
> *(ii) Whether the Hon'ble CESTAT is legal and correct in holding a view that CENVAT credit is admissible on impugned 'structural steel items" used for construction*

> *of the Sponge Iron and Billet Plant which is immovable, being permanently embedded to earth when these structural steel items are not directly related to manufacture of Sponge Iron and Billets."*

2) Insofar as question No. 1 is concerned, the issue stands covered by the findings on facts rendered in paragraph-12 of the impugned decision of CESTAT and also the application of the judgments referred to therein whereby Welding Electrodes used in the manufacturing process are considered as inputs. Hence, question No. 1 does not arise for decision.

3) As regards question No. 2, the Tribunal has applied the "user test" on the activity and inputs of the respondent's establishment to determine whether the assessee is entitled to treat the particular items of goods as capital goods. The Tribunal arrived at the following findings :-

> *"When we apply the "user test" to the case in hand, we find that the structural steel items have been used for the fabrication of support structures for capital goods. The appellants have argued that the various capital goods, such as, kiln, material handling conveyor system, furnace etc. cannot be suspended in mid air. They will need to be suitably supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitably worked upon for this purpose. Accordingly, the goods fabricated, using such structurals, will have to be considered as parts of the relevant machines. The definition of 'Capital Goods' includes, components, spares and accessories of*

> *such capital goods. Accordingly, applying the "User Test" to the facts in hand, we have no hesitation in holding that the structural items used in the fabrication of support structures would fall within the ambit of 'Capital Goods' as contemplated under Rule 2(a) of the Canvat Credit Rules, hence will be entitled to the Cenvat Credit."*

4) The Tribunal has considered the materials in relation to the activity of the establishment and the modality of its manufacturing process and has thus, come to findings of facts based on indisputable materials. That position notwithstanding, the said issue is also covered against the Revenue as per the judgment in *Mundra Ports & Special Economic Zone Ltd. vs. C.C.E. & CUS*[1] *Jayaswal Neco Ltd. vs. Commissioner of Central Excise, Raipur*[2]*, Commr. of C.EX. Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd.*[3] *Maruti suzuki Ltd. vs. Commissioner of Central Excise, Delhi-III*[4] *Commissioner of C.Ex., Coimbatore vs. Jawahar Mills Ltd*.[5], *Commissioner of C.Ex., Tiruchirapalli vs. India Cements Ltd.*[6]*, Commissioner of C.Ex.& Service Tax vs. India Cements Ltd.*[7]*, Commissioner of Central Excise, Tiruchirapalli vs. India Cements Ltd.*[8]*, Commissioner, Central Excise, Customs & Service Tax, Raipur vs. M/s. HEG Limited, Borai Industrial Growth Centre*[9]*, Commissioner, Central Excise, Customs & Service Tax, Bilaspur*

[1] 2015(39) S.T.R. 726 (Guj.)
[2] 2015 (319) E.L.T. 247 (S.C.)
[3] 2010(255) E.L.T. 481 (S.C.)
[4] 2009 (240) E.L.T. 641 (S.C.)
[5] 2001 (132) E.L.T. 3 (S.C.)
[6] 2012 (285) E.L.T. 341 (Mad.)
[7] 2014 (310) E.L.T. 636 (Mad.)
[8] 2014 (305) E.L.T. 558 (Mad.)
[9] Tax Case No. 118 of 2016 decided on 14.12.2016 by this Court

vs. M/s Ambuja Cement Eastern Ltd. Rawan[10]*, Commissioner, Central Excise, Customs & Service Tax, Bilaspur vs. M/s Jindal Steel & Power Ltd.*[11]*, Commissioner of Central Excise, Jaipur vs. M/s Rajasthan Spinning & Weaving Mills Ltd.*[12]*, Saraswati Sumar Mills vs. Commissioner of Central Excise, Delhi-III*[13] *and India Cements Ltd. vs. The Custom, Excise and Service Tax Appellate Tribunal & Ors*.[14] Therefore, we see that no substantial question of law arises for decision on that issue, in the case in hand.

5) For the aforesaid reasons, this appeal fails. This case is accordingly dismissed.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan)	**(Sharad Kumar Gupta)**
Chief Justice	**Judge**

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[10]Tax Case No. 46 of 2016 decided on 14.12.2016 by this Court
[11]Tax Case No. 27 of 2016 decided on 08.11.2016 by this Court
[12]Civil Appeal No. 3760 of 2003 decided on 09.07.2010 Supreme Court
[13]Civil Appeal No.5295 of 2003 decided on 02.08.2011 Supreme Court
[14]Civil Miscl. Appeal No. 347 of 2011 decided on 06.03.2015 Madras High Court