IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 82 OF 2015

The Commissioner of Central Excise Thane-I	}	**Appellant**
versus		
M/s. JSW Steel Ltd.	}	**Respondent**

Ms. P. S. Cardozo with Mr. Joel J. Carlos for the appellant.

Ms. Padmavati Patil i/b. M/s. Aparna Hirandagi for the respondent.

CORAM :- S. C. DHARMADHIKARI & B. P. COLABAWALLA, JJ.

DATED :- MARCH 20, 2017

P.C. :-

1 On 11th July, 2014, the tribunal allowed the respondent-assessee's appeal. The assessee's appeal, allowed by the tribunal, arose out of the order-in-original dated 16th January, 2012 of the Commissioner of Central Excise, Thane-I. The issue pertains to availment of certain input services and whether the manufacturer of excisable goods can avail the input service credit in course of his/her business activity pertaining to the specific services set out in para 2 of the tribunal's impugned order. The tribunal initially thought that this was a matter requiring detailed consideration. Suddenly, it took it up and without indicating in

any manner whether both sides concede that it is covered by a judgment of this court in the case of *Commissioner of Central Excise, Nagpur vs. Ultratech Cement Ltd.*[1] allowed it. If it allowed it contrary to the argument of the Revenue in opposition, then, which of the services and indicated in para 2 are identical to the services which were rendered in the *Ultratech Cement Ltd.* (supra) has not been clarified by the tribunal. All that the tribunal holds is that it is not disputed that the assessee being the manufacturer has availed of the services in the course of its business. Therefore, it is entitled to input service credit of all the services.

2 Ms. Cardozo would submit that there was no concession that the matter has been covered by the judgment in *Ultratech Cement Ltd.* (supra) and that judgment dealt with a specific service, namely outdoor catering service.

3 The manner in which the tribunal has decided the appeal by a cryptic order, the present appeal deserves to be admitted. It is admitted on the following substantial questions of law:-

> (a) Whether in facts and circumstances of the case, the CESTAT was justified in law in applying the ratio in the case of M/s. Ultratech Cement Ltd. wherein the issue was Cenvat Credit availed on the service tax paid on canteen services/outdoor catering services was considered as input service under Rule 2(1) of the Cenvat Credit Rules, 2004 was not applicable to the present case where the services of (i) clearing charges-(export) CHA; (ii) commission on

1 **2010 (20) STR 577**

export sale; (iii) material handling charges; (iv) terminal handling charges (export); (v) bank commission charges; (vi) aviation charges and (vii) courier services availed by the respondent were after the clearance of goods from its factory?

(b) Whether in the facts and circumstances of the case, the CESTAT was justified in law in setting aside the order-in-original bearing No. 84/BR/84-Thane-I/2011 dated 16-01-2012 passed by the Commissioner, Central Excise, Thane-I and allowing the appeal of the respondent?

4 We are of the opinion that instead of this court rendering any final decision, interest of justice would be served if we quash and set aside the unreasoned order of the tribunal. We restore the appeal back to the file of the tribunal for a decision afresh in accordance with law uninfluenced by any earlier conclusion. We also clarify that we have not expressed any opinion on the rival contentions. The appeal is allowed accordingly.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)