IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Central Excise Appeal No. 2 of 2004

(Commissioner of Central Excise, Nagpur vs. M/s. Ballarpur Industries Ltd. and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr.S.N.Bhattad, Advocate with Mr.K.K.Nalamwar, Advocate for the Appellant.

CORAM : M.S.SANKLECHA & MANISH PITALE, JJ.

DATE : 3.8.2017.

1. This appeal under Section 35-G(1) of the Central Excise Act, 1944 ("the Act") challenges the order dated 3rd July, 2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai ("the Tribunal").

2. This appeal was admitted on 31st August, 2017 on the following substantial questions of law :

> 1. Whether in the facts and circumstances of the case and in law, the capital goods which were brought within the factory by Respondent No.2, on 12.12.96, 7.2.97, 13.2.97 (i.e. before 1.4.2000) and on 15.12.2000 and which have not been installed and used till date in the manufacture of excisable goods, are eligible for CENVAT Credit in terms of Sub-Rule 2(a) of Rule 57AC of the

erstwhile Central Excise Rules, 1944 especially when there was no facility to manufacture excisable goods using these Capital goods on which CENVAT Credit has been availed of 11.4.2000 and 22.12.2000 ?

3. On 23.1.2015, this appeal was on Board. It appears that, at that point of time, reliance was placed upon the decision of this Court in **Commissioner of Central Excise and Customs, Aurangabad .vs. Rishi Steels and Alloys Pvt. Ltd., 224 E.L.T. 222,** wherein, in identical circumstances, the relief extended by the Tribunal to the respondent/assessee therein was upheld. Further, it appears that, at that time, the parties were under the impression that the decision of this Court in Rishi Steels and Alloys Pvt. Ltd. (supra) was subject matter of challenge before the Supreme Court. The aforesaid understanding on the part of the Revenue led this Court to adjourn hearing of this appeal sine die with liberty granted to the parties to move this Court after decision of the Supreme Court.

4. Mr.Bhattad, learned Counsel for the Revenue very fairly states on instructions that the Revenue has accepted the decision of this Court in Rishi Steels and Alloys Pvt. Ltd. (supra) and no appeal therefrom is pending before the Supreme Court.

5. Mr.Bhattad, learned Counsel very fairly states that the substantial question of law as raised herein would stand concluded against the Revenue by decision of this

Court in Rishi Steels and Alloys Pvt. Ltd. (supra).

6. In the above view, the Tribunal was correct in extending benefit of CENVAT Credit on capital goods to respondent no.1/assessee. Accordingly, the substantial question of law is answered in favour of respondent no.1/assessee and against the appellant/Revenue.

7. The appeal is, therefore, dismissed. No order as to costs.

JUDGE **JUDGE**

jaiswal