THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CENTRAL EXCISE APPEAL No.58 of 2017

JUDGMENT: (*Per* Hon'ble Sri Justice Sanjay Kumar)

This appeal by the Revenue under Section 35-G of the Central Excise Act, 1944 raises the following substantial questions of law.

(i) "In the facts and circumstances of the case, whether the orders of the Hon'ble Tribunal (CESTAT) in upholding the credit on MS items/steel items used for repair and maintenance of storage tanks, when the said items do not come within the definition of input, vide Rule 2(k) of Cenvat Credit Rules, 2004 is correct and legal and hence liable to be set aside?

(ii) In the facts and circumstances of the case, whether HR Sheet Plates, HR Sheet and Plates used for repair and maintenance activity of the storage tanks can be termed as inputs as per Rule 2(k) of Cenvat Credit Rules, 2004 even though there is a contrary Board's Circular on the same?

(iii) Can Cenvat credit be availed on the inputs like HR Sheet Plates, HR Sheet and Plates which has no relation whatsoever with the manufacture of the final product?"

2. The aforestated questions of law are sought to be raised in connection with the Order-in-Appeal dated 28.03.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad, in Appeal No.E/22737/2014. The issue is whether the respondent company is entitled to input credit on MS items (HR plates / sheets) used for repair and maintenance of storage tanks wherein petroleum products are stored.

3. The Commissioner of Customs and Central Excise, Visakhapatnam-I Commissionerate, vide his Order-in-Original No.VIZ-CEX-001-ADC-137-12 dated 25.10.2012, dismissed the claim of the respondent company in this regard. In appeal, the

Commissioner, Customs, Central Excise and Service Tax (Appeals), vide order dated 05.06.2014, held in favour of the respondent company relying upon a catena of judgments. The Commissioner (Appeals) held that the steel plates/sheets used by the respondent company in the repair and maintenance of storage tanks were eligible to claim input credit. The demand for recovery of the amount so claimed along with the attendant demands for interest and penalty were accordingly set aside. In appeal by the Revenue, the Tribunal found that in terms of the definition of input in Section 2(k) of the Cenvat Credit Rules, 2004, the use of steel plates/sheets in the storage tanks would not amount to a civil structure. On the other hand, the Tribunal opined that as the product manufactured has to be stored in metallic tanks kept under the earth and such tanks have to be periodically repaired and maintained to prevent seepage, repair and maintenance thereof can be said to be an integral part of the manufacturing process carried out by the respondent company. The Tribunal accordingly upheld the finding of the Commissioner (Appeals) that input credit on steel items used for repair and maintenance storage tanks was admissible.

4. Given the aforestated findings of the Tribunal, we are of the opinion that the decision rendered turned entirely on facts and no question of law, much less a substantial one, arises for consideration in this appeal. All the more so, when the Tribunal, being the final fact finding authority, opined that repair and

maintenance of storage tanks formed an integral part of the manufacturing process of the respondent company.

5. The appeal is accordingly dismissed. No order as to costs.

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SANJAY KUMAR, J

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GUDISEVA SHYAM PRASAD, J

Date: 22.06.2017.
TJMR