NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 150 of 2018

The Principal Commissioner Central Tax And Cetral Excise Central Excise Building Dhamtari Road, Tikrapara, Raipur, Chhattisgarh.

---- Appellant

Versus

M/s Jindal Steel And Power Limited P B No. 16, Kharsia Road, Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Maneesh Sharma, Advocate.
For Respondent	:	Shri Romir S. Goyal, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

07/02/2019

Per Ajay Kumar Tripathi, Chief Justice

1. Heard counsel for the Revenue.

2. The tax case has been preferred by the Revenue against the order dated 09.04.2018 passed in Excise Appeal No.50436 of 2018 by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, West Block No.2, R.K.Puram, New Delhi (hereinafter referred to as 'CESTAT').

3. Cenvat credit on duty paid LPG gas was availed by the Respondent-company, namely, M/s. Jindal Steel and Power Limited. The same was disallowed by the Department. However, on appeal, the Commissioner (Appeals) allowed the credit and aggrieved by the said order, the matter travelled to the Principal Bench of CESTAT.

4. The CESTAT dismissed the appeal for the following reasons:-

> “After hearing both the parties and on perusal of the material available on record, it appears that the issue has came up before the Tribunal in the case of ***Singhal Enterprises Pvt. Ltd. vs. CC&CE, Raipur [2016 (341) ELT 372 (Tri-Del)]*** where it was observed that -

> ***12. We have gone through the judgment of the Hon'ble High Court of Allahabad cited by the Revenue. We find that the Hon'ble High Court has considered the claim of Welding Electrodes under the definition of 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 and have come to the conclusion that the credit will not be allowable under this Rule. However, we find that the credit of duty paid on Welding Electrodes has been held allowable by several decisions of this Tribunal and hence the issue is no more res integra. We also find that several High Courts have also allowed such credit considering the same as allowable within the definition of "Input" under the Cenvat Credit Rules. Once such reference can be made to the decision of the Hon'ble High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise, Raipur, 2010 (256) E.L.T. 690 (Chhattisgarh), wherein welding electrodes used for repair and maintenance purpose were also held to be cenvatable. Similarly, in the case of Hindustan Zinc Limited v. Union of India, 2008 (228) E.L.T. (Raj.), the Hon'ble High Court of Rajasthan allowed the Cenvat credit on the welding electrodes. By following the said decision, we hold that the appellants are entitled to the credit on welding electrodes considering them as "Inputs".***

5. Since the decision of the CESTAT is based on series of precedents of various Courts where input credit has been provided in matter of repairs and maintenance, therefore, we are not satisfied that the CESTAT has committed any error which is required to be corrected in appeal.

6. As a last measure, learned counsel for the Revenue submits that the cases on which the appeal has been dismissed are awaiting some kind of consideration by the Hon'ble Apex Court.

7. That cannot become a ground for either keeping the appeal pending or to interfere with the decision, unless a contrary view emerges from the Hon'ble Apex Court.

8. The appeal stands dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE

Anu