

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

WEST ZONAL BENCH, MUMBAI

**Excise Appeal No. 87998 of 2019**

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/043/19-20/1184 dated 20.06.2019 passed by the Commissioner of Customs, Central Excise & GST (Appeals), Nagpur.)

**M/s Manikgarh Cement**  
**P.O.-Gadchandur, Tehsil-Korpana,**  
**Dist.- Chandrapur, Maharashtra – 442 908**

.....Appellant

*VERSUS*

**Commissioner of Central Excise, Nagpur**  
**GST Bhavan, Civil Lines,**  
**Telanghedi Road,**  
**Nagpur, Maharashtra – 440 001**

.....Respondent

**APPEARANCE:**

Ms. Shamita Patel, Advocate for the Appellant  
Shri P.K. Acharya, Supdt. Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85915 / 2022**

Date of Hearing: 11.08.2022

Date of Decision: 28.09.2022

Denial of CENVAT Credit of Rs.10,28,852/- on Welding Electrodes and Dissolved Acetylene Gas (D.A. Gas) as inputs in the Cement manufacturing process for the period from April, 2013 to June, 2017 availed by the Appellant that resulted in confirmation of recovery of the credit amount including interest and penalties by the Commissioner (Appeals) is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a manufacturer of Cement and Clinker having Central Excise registration. For the process of manufacture of Cement and Clinker, due to grinding and heating, components of coal mill as well as kiln and cement mills get damaged on account of abrasion and to repair the same, Appellant had used Welding Electrodes and D.A. Gas and also availed credit on tax paid for such purchase of Welding Electrodes and D.A. Gas. The said credit was denied by the Department on the ground that those cannot be treated as inputs as they have no relationship with the manufacture of final product namely cement and clinker. Accordingly, a show-cause-cum demand notice was served on the Appellant, matter was adjudicated upon and Appellant was asked to refund CENVAT Credit of Rs.10,28,852/- availed against those two components alongwith interest and penalties on various provisions of the CA Act and CENVAT Credit Rules. Appellant's appeal before the Commissioner of Customs, Central Excise & GST (Appeals), Nagpur yielded no fruitful result apart from waiver of penalty. Hence, the appeal before this Tribunal.

3. Appellant challenged the legality of the said order primarily on two grounds. The stand taken by the Appellant is that both Welding Electrodes and D.A. Gas qualify as inputs within the amended definition of Rule 2(k)(i) of the CENVAT Credit Rules, 2004 amended w.e.f. 01.04.2011 and alternatively they also qualify as capital goods under Clause (iii) of 2(a) of the said Rules for the purpose of availing

CENVAT Credit on duty paid on those 2 items. Learned Counsel for the Appellant Ms. Shamita Patel, in placing reliance on the case laws of *Nelcast Ltd. Vs. Commissioner [2019 (6) TMI 317]*, *Hindustan National Glass Vs. CC [2019 (4) TMI 429]*, *M/s. Ponni Sugars (Erode) Ltd. Vs. Commissioner [2019 (3) TMI 365]*, *The Andhra Sugars Ltd. Vs. Commissioner [2018 (9) TMI 736]*, argued that definition of "inputs" has been widened by way of amendment w.e.f. 01.04.2011 to include Welding Electrodes and D.A. Gas in view of its inclusion in Rule 2(k)(i) which reads that all goods used in the factory by manufacturer of final products are inputs and Respondent-Department's contention that these goods have no relationship with the manufacture of final product, for which it has categorized the items under the Rule 2(k)(F) of the definition is unfounded for the reasoning that clarificatory Circular No. 943/4/2011-CX dated 29.04.2011 has made it explicitly clear that only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product like furniture and stationary used in the office of the factory are to be disallowed and therefore, the expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely would mean that indirect use of any goods would be considered as inputs for the purpose of availing of CENVAT Credit. She further submitted that the sole ground of rejection of their appeal by the Commissioner (Appeals) is based on the judgment of the Hon'ble Bombay High Court (Nagpur Bench) reported in *2018 (360) ELT 86 (Bom.) Manikgarh Cement Vs. Commissioner of Customs and Central*

*Excise, Nagpur* in which the definition of input service that was available in CENVAT Credit Rules, 2001 has been taken into consideration since the period of dispute in that case was prior to 01.04.2011 and therefore, the Order-in-Appeal is required to be set aside since amended provision of the CENVAT Credit Rules had not been taken into consideration by the Commissioner (Appeals). In citing several decisions of this Tribunal including those reported in *2019 (2) TMI 307 in the case of CC vs. Ispat Industries Ltd.* and *[2013 (296) ELT 209]* in the case of *Maihar Cement Vs. CCE*, she submitted that both Welding Electrodes and D.A. Gas were held to be eligible inputs respectively for availment of CENVAT Credits and the alternate plea taken by them that use of those two items can also be considered as capital goods since are used for repair and maintenance of machinery that qualified for input credits in view of plethora of decisions including that of *Jawahar Mills Ltd. Vs. CCE 1999 (108) ELT 47* that was upheld by Hon'ble Supreme Court as reported in *2001 (132) ELT 3 (SC)*. In concluding her argument learned Counsel for the Appellant submitted that show-cause notice had been issued in 2018 for the disputed period between April, 2013 to June, 2017 without any allegation of wilful misstatement or suppression of facts etc. with intent to evade duty, for which learned Commissioner (Appeals) himself had set aside the penalties including penalty imposed under Rule 15(1) of the CENVAT Credit Rules, 2004 and on this score alone, the order confirming recovery of CENVAT Credit on extended period would have been set aside.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. P.K. Acharya, while justifying the reasoning and rationality of the order passed by the Commissioner (Appeals), argued with reference to the judgment of the Hon'ble Andhra Pradesh High Court reported in *2011-TIOL—1054-HC-AP-CX in the case of Sree Rayalaseema Hi-strength Hypo Ltd. Vs. Commissioner of Customs and Central Excise, Tirupati* that it has been clearly held that manufacture and repair, maintenance are not the same process having link with the final product for which CENVAT Credit cannot be claimed under Rule 2(k) of the CENVAT Credit Rules, 2004, for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. I have gone through the written submissions of both the parties, relied upon case laws and perused the case record. As could be noticed from para 24 of the Order-in-Original, the adjudicating authority had observed that Welding Electrodes and D.A. Gas were used in the cement manufacturing plant of the Appellant for the purpose of repair and maintenance of its plant and machinery. This being observation of the adjudicating authority there is no denial of the fact that plant and machinery which were being used for manufacturing of final product were being kept in usable with condition periodic repair and maintenance, in which these two components were being used. Hence, both Welding Electrodes and D.A. Gas are required for smooth process of manufacturing, for which definition of input provided under Rule 2(k)(i) is squarely

applicable as the clarificatory Circular of the Board issued on 29.04.2011 clearly mentions that goods used in relation to manufacture of final product in indirect way also excludes the definition contained in the said Rule 2(k)(F) that deals with goods having no relationship with manufacture of final product. Relied upon case laws namely *Sree Rayalaseema Hi-strength Hypo Ltd.* decision, *cited supra* pronounced on November 16, 2011, that was relied upon in the Order-in-Appeal, was pronounced with reference to pre-amended CENVAT Credit Rules which cannot be applied as a judicial precedent to the post amended definition which has broadened the meaning to have high amplitude. I am, therefore, of the considered view that the credits availed by the Appellant on Welding Electrodes and D.A. Gas are eligible credits and Appellant had rightly availed the same. Hence the order.

ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs, Central Excise & GST (Appeals), Nagpur vide Order-in-Appeal No. NGP/EXCUS/000/APPL/043/19-20/1184 dated 20.06.2019 to the extent of denial of CENVAT Credits of Rs.10,28,852/- is hereby modified with a finding that those are eligible credits and rightly availed by the Appellant manufacturer.

(Order pronounced in the open court on 28.09.2022)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**