

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 75458 of 2016

(Arising out of the Order-in-Original No. 35/Commr./BOL/16 dated 20.01.2016 passed by Commissioner of Central Excise, Bolpur.)

M/s Steel Authority of India Limited,

IISCO Steel Plant, Burnpur, Asansol , Dist.-Bardhaman, West Bengal-713325.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bolpur,

Nanoor Chandidas Road, Sian, Bolpur, Dist. Birbhum-731204 West Bengal,

...Respondent(s)

APPEARANCE :

Ms. Payal Bharwani, C. A. & Mr. Deepro Sen, Advocate for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No.....77734/2023

DATE OF HEARING : 21.12.2023

DATE OF DECISION : 21.12.2023

PER K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Original No.35/Commr/Bol/16 dated 20.01.2016, passed by Commissioner of Central Excise, Bolpur, wherein the Ld. Commissioner has confirmed the demand of ineligible Cenvat credit amounting to Rs. 1,54,11,925/-, along with interest and penalty.

2. M/s Steel Authority of India Ltd. ('**Appellant**') is engaged in the business of manufacturing iron and steel products. During the underlying period, the Appellant cleared excisable goods manufactured by it on payment of excise duty leviable thereon, by utilizing CENVAT Credit of inputs, capital goods and input services in accordance with the

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CENVAT Credit Rules, 2004 (**CCR, 2004**). During this period, the Appellant procured various structural steel items (plates falling under Chapters 69, 72, 73, 84 and 85) as part of modernization of the plant as well as their existing unit. These 'plates' were used for fabrication of capital goods (mills, conveyors, belts, pipelines, storage tanks, coke oven, continuous casting plant, coke oven gas plant, pollution control equipment, storage tank, etc.) or parts, components, accessories thereof, to be used inside the plant premise for manufacturing excisable goods. Accordingly, the Appellant availed CENVAT Credit on such plates.

3. The Appellant was issued a SCN proposing to deny credit of Rs. 154,11,925/- availed on such plates during the underlying period by alleging that such plates are neither capital goods nor inputs. On adjudication, the Ld. Commissioner has confirmed the demand of ineligible Cenvat credit amounting to Rs. 1,54,11,925/-, along with interest and penalty. Aggrieved against the impugned order, the Appellant has filed this appeal.

4. In their grounds of appeal, the Appellant submits that that not all 'plates' fall under Chapter 72 and various items on which credit has been denied in the impugned order fall under Chapters 69, 84 and 85 and are directly covered under the definition of 'capital goods' under Rule 2(a) of the CCR, 2004. Plates' classifiable under Chapters 84 and 85 directly fall under sub-clause (i) of clause (A) of the term 'capital goods' as defined under Rule 2(a) of the CCR, 2004. Further, 'plates' falling under Chapter 69, being refractory material fall under sub-clause (v) of clause (A) of the said Rule 2(a). The impugned order has denied the entire credit without going into the detailed submissions made by

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them in the reply to the SCN wherein it was categorically indicated that the SCN was issued without taking into account the supplier invoices evidencing the Chapter Headings under which the plates are classifiable and received by the Appellant. Accordingly, credit of Rs. 1,28,90,681 ought to have been held as eligible and to such extent the impugned order ought to be set aside.

5. As regards the remaining credit availed on goods falling under Chapters 72, 73 and 74, the Appellant has furnished a certificate from the Chartered Engineer certifying the end use of certain plates. As per such certificate, the plates falling under Chapter 72 and 73 were used for the following purposes:

- a. Part of equipment of motor and gear box, coke oven gas, milling machine, tundish pre-heater, chute/ hopper.
- b. Fabricating storage tank
- c. As earth conductor
- d. In tray cables, pipes and kiln structure.

The impugned order has erroneously held that the 'plates' are used in factory shed, construction of building foundation etc. summarily dismissing the CE certificate furnished by the Appellant. The Appellant submits that the CE Certificate ought to have been accepted as conclusive evidence to establish the end use of the remaining goods. In the absence of any contradictory evidence in the impugned order, such certificate ought not have brushed aside. In this regard, reliance is placed on **BMM Ispat Ltd. v. Commr. CT & CE, Belgaum, 2021 (3) TMI 660 - CESTAT Bangalore**. It is further evident that the plates

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were not used as building materials for constructing factory shed, etc. Therefore, the credit on such plates ought not to have been denied.

6. The Appellant submits that the impugned order has heavily relied upon the decision of the CESTAT, Larger Bench in case of **Vandana Global Ltd. v. CCE, Raipur, 2010 (253) E.L.T. 440 (Tri. - LB)** to hold that the Cenvat Credit on plates should not be denied where such plates are used for fabrication of structures for support of capital goods since they become immovable property and thus, such support structures are neither parts nor accessories of capital goods. However, the said decision has been reversed by the Hon'ble Chhattisgarh High Court in **Vandana Global Ltd. v. CCE, Raipur, 2018 (16) G.S.T.L. 462 (Chhattisgarh)**. In this decision it was held that goods used in fabrication of structures embedded to earth should be treated as inputs for capital goods and Cenvat Credit ought not be denied . In this regard, reliance is also placed on the following decisions:

a. CCE v. Mangalam Cement Ltd. 2017-VIL-927-CESTAT-DEL-CE [Pg. 18-23 of the Compilation]

b. Mundra Ports & Special Economic Zone Ltd. v. CCE & Cus., 2015 (39) S.T.R. 726 (Guj.)[Pg. 52-54 of the Compilation]

Surya Alloys v. UoI, 2014 (305) E.L.T. 47 (Cal.)[Pg. 55-56 of the Compilation]

7. The Appellant further submits that the term 'inputs' is defined under Rule 2(k) of the CCR, 2004. The said term has a wide coverage and practically includes all goods used in the manufacture of final products. Reliance is placed on the decision of the Hon'ble High Court in the case of **Hindustan Zinc v. UoI, 2008 (228) ELT 517 (Raj.)** wherein it has been categorically stated that where any particular process is integrally connected without which manufacturing is not viable, then the goods which are used therein will be eligible for availment of credit. The

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impugned order has relied upon Notification No. 16/2009-CE (NT) dated 7.7.2009 which amended explanation 2 to Rule 2(k) of the CCR, 2004 to specifically exclude angles, channels, TMT bards used for construction of factory and laying of foundation or making of structures for support of capital goods. In this regard, the Appellant submitted that the plates in question were not used for foundation, construction of factory or support structure. Hence, denial of credit on such basis is an erroneous assumption and is thus, unsustainable.

8. In support of their contention, the Appellant placed their reliance on the following judgments wherein it has been held that goods used for manufacturing any part, component, accessory or support structure of capital goods also falls within the definition of capital goods as per the user test, since it becomes an integral part of capital goods, which facilitates its functioning and thus credit thereon is eligible:

- a. **Singhal Enterprises Pvt. Ltd. v. CCE, Raipur, 2016 (341) E.L.T. 372 (Tri. - Del.) as affirmed in 2018 (359) ELT 313 (Chhattisgarh High Court)**[Pg. 5-10 of the Compilation]
- b. **CCE, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., 2010 (255) ELT 481 (SC)**[Pg. 11-13 of the Compilation]
- c. **CCE, Coimbatore v. Jawahar Mills Ltd. - 2001 (7) TMI 118 – SC**[Pg. 14-17 of the Compilation]
- d. **CCE v. Mangalam Cement Ltd. 2017-VIL-927-CESTAT-DEL-CE** [Pg. 18-23 of the Compilation]
- e. **Corporate Ispat Alloys Ltd. v. CCE, Bolpur, 2023 (11) TMI 674 - CESTAT Kolkata** [Pg. 24-27 of the Compilation]
- f. **Commr. of CE, Cus& ST, Rourkela v. Singhal Enterprises (P) Ltd., 2018 (1) TMI 620 - CESTAT Kolkata**[Pg. 28-30 of the Compilation]
- g. **Thiru Arooran Sugars & Ors. v. CCE&Ors., 2017 (7) TMI 524 - Madras High Court**[Pg. 31-49 of the Compilation]
- h. **India Cements Ltd. v. CCE, 2015 (3) TMI 661 - Madras High Court**
- i. **Saraswati Sugar Mills v. CCE, Delhi, 2011 (270) ELT 465 (SC)**

j. Lafarge India Pvt. Ltd. v. CCE, Raipur, 2016 (10) TMI 615 - CESTAT New Delhi

k. Hindustan Zinc Ltd. v. COMMR. OF CGST, Excise & Customs, 2020 (4) TMI 273 - CESTAT New Delhi

9. Therefore, the Appellant submits that the issue of eligibility of credit on such plates is no longer res-integra and hence, the impugned order ought to be set aside on this ground alone.

10. The Ld. D.R. reiterated the findings of the adjudicating authority in the impugned order.

11. Heard both sides and perused the appeal documents.

12. We observe that the issue to be decided in this appeal is whether the Appellant is eligible to avail CENVAT Credit on 'Plates' falling under Chapter 72 of the Central Excise Tariff Act, 1985 either as inputs or capital goods?. We observe that in the impugned order the Ld. Commissioner has denied the credit on the 'plates' mainly on the ground that they fall under Chapter 72 of the Central Excise Tariff, which are excluded from the definition of 'Capital goods'. The Appellant submits that that not all plates fall under Chapter 72 and various items on which credit has been denied in the impugned order fall under Chapters 69, 84 and 85 and are directly covered under the definition of 'capital goods' under Rule 2(a) of the CCR, 2004. Plates' classifiable under Chapters 84 and 85 directly fall under sub-clause (i) of clause (A) of the term 'capital goods' as defined under Rule 2(a) of the CCR, 2004. We agree with the submission of the Appellant. In the impugned order credit has been denied on many items which are classifiable under Chapter 84 and 85 also. They fall under the definition of 'capital goods' under Rule 2(a) of the CCR, 2004 and hence they are entitled for the credit as 'Capital goods'

13. As regards the remaining credit availed on goods falling under Chapters 72, 73 and 74, we observe that the Appellant has furnished a certificate from the Chartered Engineer certifying the end use of certain plates. We observe that the impugned order has erroneously held that the 'plates' are used in factory shed, construction of building foundation etc. and dismissed the CE certificate furnished by the Appellant. The CE certificate certifies the end use of such plates by the Appellant viz.

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plates were used as components, parts or accessories of Kiln, Milling Machine, Coke Oven Gas, Pollution Control Equipment, Storage Tank, Kiln, etc. We observe that the adjudicating authority has not given any valid reason for rejecting the CE certificate. Further, we observe that in this case the plates were not used as building materials for constructing factory shed, etc. They are used in construction of machinery, which are capital goods. Therefore, we hold that the credit on such plates cannot be denied.

14. We observe that the impugned order has heavily relied upon the decision of the CESTAT, Larger Bench in case of **Vandana Global Ltd. v. CCE, Raipur, 2010 (253) E.L.T. 440 (Tri. - LB)** to hold that the Cenvat Credit not available on the plates which are used for fabrication of structures for support of capital goods since they become immovable property and thus, such support structures are neither parts nor accessories of capital goods. However, we observe that the said decision has been reversed by the Hon'ble Chhattisgarh High Court in **Vandana Global Ltd. v. CCE, Raipur, 2018 (16) G.S.T.L. 462 (Chhattisgarh)**. In this decision it was held that goods used in fabrication of structures embedded to earth should be treated as 'inputs' for capital goods and Cenvat Credit cannot be denied. The term 'inputs' is defined under Rule 2(k) of the CCR, 2004. The said term has a wide coverage and practically includes all goods used in the manufacture of final products. Reliance is placed on the decision of the Hon'ble High Court in the case of **Hindustan Zinc v. UoI, 2008 (228) ELT 517 (Raj.)** wherein it has been categorically stated that where any particular process is integrally connected without which manufacturing is not viable, then the goods which are used therein will be eligible for availment of credit. The impugned order has relied upon Notification No. 16/2009-CE (NT) dated 7.7.2009 which amended explanation 2 to Rule 2(k) of the CCR, 2004 to specifically exclude angles, channels, TMT bards used for construction of factory and laying of foundation or making of structures for support of capital goods. In this regard, we find that the plates in question were not used for foundation, construction of factory or support structure. Following the decision of the Hon'ble Chattisgarh High Court, we hold that the 'plates'

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are inputs for the capital goods and hence they are eligible for the credit availed on the 'plates' as 'inputs'. Accordingly, we hold that the demand confirmed in the impugned order is not sustainable. Since the demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise.

15. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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