(2021) 03 CESTAT CK 0023

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20972, 21039 Of 2019

BMM Ispat Ltd @Hash Commissioner Of Central Tax And Central Excise, Belgaum

Date of Decision : 09-03-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(a), 2(k), 11A(15)
Central Excise Tariff Act, 1985 — Chapter 26, 72
Central Excise Rules, 1944 — Rule 57Q

Citation : (2021) 03 CESTAT CK 0023

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Karthik, Swami Associates And Co., P. Rama Holl

Final Decision : Allowed

Judgement

1. These two appeals have been filed against the impugned order dt. 28/06/2019 and dt. 03/09/2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the cenvat credit on various items and upheld the decision of the original authority confirming the demand along with interest and penalties. Since the issue involved in both the appeals is identical, both the appeals are taken up together for discussion and disposal. The details of demand etc. are as under:-

Appeal No.

Period

Duty demanded

Penalty

E/20972/2019

April 2015 to Feb 2016

Rs.9,54,704/-

Rs.95,470/- u/r 11A(15)

E/21039/2019

April 2016 to June 2017

Rs.3,28,117/-

Rs.32,811/- u/r 11A(15)

For the sake of convenience, I take up the facts of appeal No.E/20972/2019.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of Iron Ore Pellets, Sponge Iron Lumps and MA Billets falling under CETH 26 & 72 of CETA, 1985. During the course of verification of ER-1, it was noticed that the appellant has taken cenvat credit of Rs.9,54,704/- on goods which are HR coils, MS plates, HT strappings, HRSS plates, GI flat, Grate Plate, CI Bend, MS Boiler Plates and SS Plates. These items are not eligible to avail cenvat credit. Therefore a show-cause notice dt. 05/05/2019 was issued for the recovery of ineligible cenvat credit of Rs.9,54,704/- along with interest and imposition of penalty. After following the due process, the original authority vide its order dt. 28/09/2018 confirmed the ineligible cenvat credit of Rs.9,54,704/- along with interest and imposed penalty of Rs.95,470/-. Aggrieved by the said order, appellant filed the appeal before the Commissioner(Appeals) who rejected the appeal and hence the present appeal.

3. Heard both sides and perused the records.

4.1. Learned counsel for the appellant submitted that the impugned orders passed by the Commissioner (Appeals) are not sustainable in law as the same have been passed without appreciating the facts and evidence on record and by ignoring the binding judicial precedent on the identical issue. He further submitted that both the authorities have held that the appellant have not produced any evidence to establish that the structural steel was used for laying foundations or for providing structural support to the capital goods whereas the appellant, in reply to the show-cause notice, has given details of the usage of various items used. The appellant has also produced the record of purchase requisition, purchase order, supplier's invoice and goods receipt note. He further submitted that all the documents furnished by the appellant before the authorities clearly establishes that grate plates, wear plates, GI flats, MS plates etc. were used in the fabrication of capital goods or parts, components or accessories thereof. He further submitted that the said goods were used as inputs and/or capital goods such as components, spares and accessories and used for manufacture of capital goods. He also submitted that during the appeal proceedings before the learned Commissioner (Appeals), appellant was asked to furnish the Chartered Engineer certificate to the fact that the said goods were used and the appellant as per the direction of the learned Commissioner(Appeals) produced the certificate of the Chartered Engineer but the same was not given any weightage and was conveniently ignored by the

Commissioner(Appeals) and confirmed the demand. He further submitted that when the Chartered Engineer certificate was produced before the learned Commissioner(Appeals), it was incumbent upon the learned Commissioner (Appeals) to either contradict the Chartered Engineer certificate or accept the same in the absence of any contradiction on the certificate holding otherwise, that the inputs were used for fabrication of machinery and dismissal of certificate issued by Chartered Engineer by the authorities that too summarily are not in consonance with the law. He further submitted that this issue has been considered by the Larger Bench of the Tribunal and the High Court also in number of decisions and it has been consistently held that the assesses are entitled to cenvat credit on these items. He relied upon the following decisions:-

i. The Ugar Sugar Works Ltd. Vs. CCT&CE, Belgaum [2019(5) TMI 654 -CESTAT Bangalore]

ii. The India Sugars and Refineries Ltd. Vs. CCT, Belagavi Commissionerate [2019(2) TMI 845 - CESTAT Bangalore]

iii. Commissioner of Central Excise, Customs and Service Tax, Belgaum Vs. Millenium Starch India Pvt. Ltd. [2018(3) TMI 914 - CESTAT Bangalore]

iv. KMMI Steels Pvt. Limited (Presently M/s. Mineral Steel and Power Pvt. Limited Vs. CCT&CE, Belgaum [2019(2) TMI 939 - CESTAT Bangalore]

v. Hothur Ispat Pvt. Ltd. Vs. CCT&CE, Belgaum [2019(4) TMI 644 - CESTAT Bangalore]

vi. CCE, Lucknow Vs. Mankapur Chini Mills [2019(367) ELT 889 (All.)]

4.2. The learned counsel also referred to the decision of the Hon'ble Apex court in the case of CCE, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. [2010(255) ELT 481 (SC)] wherein it has been held that any equipment used for getting rid of effluents to be treated as accessory to specified capital goods and credit thereon admissible. He also relied upon the Larger Bench decision of the Tribunal in the case of Mangalam Cement Ltd. Vs. CCE, Jaipur-I [2018(360) ELT 737 (Tri. LB)] wherein it was held that cement and steel items used for fabrication of support structure for smooth erection of the machines, to be considered as accessories of capital goods. Further items also merit consideration as input for the purpose of cenvat benefit being used in the manufacture of capital goods and the benefit of cenvat credit is eligible.

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both sides and perusal of the material on record, I find that the appellant vide their reply dt. 10/06/2016 for each item/ part, has given the details for consideration by the adjudicating authority vide description of the item/part typical diagram of the image, detailed write up of the items used and amount of cenvat credit of such item/part, date of availment of

credit, serial number of the item/part etc. From all these descriptions given by the appellant in the reply to the show-cause notice, it is clear that these items are part and parcel of various goods and has rightly been classified as inputs for fabrication of various capital goods as per Rule 2(k) of CENVAT Credit Rules, 2004 which in turn are used in the manufacture of finished goods and therefore are eligible for cenvat credit. Further I find that at the appellate stage also, in order to satisfy the Commissioner(Appeals) regarding the actual usage of these items, the appellant furnished the certificate of Chartered Engineer as required by the appellant authority but unfortunately the Commissioner(Appeals) has not given due weightage to the certificate of the Chartered Engineer where the Chartered Engineer has given usage of each and every item involved in the present case. Further I find that this issue is no more res integra and has been settled by various decisions of the Tribunal relied upon by the appellant cited supra. The various decisions relied upon by the appellant cited supra have held the eligibility of the assessee for cenvat credit on various goods which have been used for manufacture of the final product. Further I find that the Division Bench of this Bench in the case of Singhal Enterprises Pvt. Ltd. Vs. CCE [2016(341) ELT 372] has held as under:-

15. We find that the controversy can be laid to rest by making a reference to the decision of the Apex Court in the case of CCE, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd., 2010 (255) E.L.T. 481 (S.C.), wherein the Hon'ble Supreme Court has considered an identical issue of steel plates and MS channels used in the fabrication of chimney for diesel generating set. The credit stands allowed in the light of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the said judgment, the Apex Court has referred to the "user test" evolved by the Apex Court in the case of CCE, Coimbatore v. Jawahar Mills Ltd., 2001 (132) E.L.T. 3 (S.C.), which is required to be satisfied to find out whether or not particular goods could be said to be capital goods. When we apply the "user test" to the case in hand, we find that the structural steel items have been used for the fabrication of support structures for capital goods. The appellants have argued that the various capital goods, such as, kiln, material handling conveyor system, furnace, etc. cannot be suspended in mid-air. They will need to be suitably supported to facilitate smooth functioning of such machines. It is obvious that the structural items have been suitably worked upon for this purpose. Accordingly, the goods fabricated, using such structurals, will have to be considered as parts of the relevant machines. The definition of 'Capital Goods' includes, components, spares and accessories of such capital goods. Accordingly, applying the "User Test" to the facts in hand, we have no hesitation in holding that the structural items used in the fabrication of support structures would fall within the ambit of 'Capital Goods' as contemplated under Rule 2(a) of the Cenvat Credit Rules, hence will be entitled to the Cenvat credit.

7. This decision of the Tribunal has been affirmed by the Hon'ble High Court as reported in 2018(359) ELT 313. The Larger Bench of the Tribunal in the case of Mangalam Cements Ltd. cited supra has also held that the cement and steel

items used for fabrication of support structure for smooth erection of the machines has to be considered as accessories of capital goods and cenvat credit cannot be denied. Therefore in view of my discussion above and keeping in view the ratio of various decisions and the Chartered Engineer certificate produced by the appellant, I am of the considered view that the impugned orders are not sustainable in law and therefore I set aside the impugned orders by allowing the appeals with consequential relief, if any.

(Operative portion of the Order was pronounced in Open Court on 09/03/2021)