(2019) 03 CHH CK 0175

In the Chhattisgarh High Court

Case No : Tax Case No. 17 Of 2017

Commissioner, Central Excise, Customs & Service Tax, Raipur — APPELLANT

Vs

M/s Topworth Steel & Power Pvt. Ltd. — RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 CHH CK 0175

Hon'ble Judges : Ajay Kumar Tripathi, CJ;Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Vinay Pandey, Smiti Sharma

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, CJ

1. Revenue has preferred this appeal against the order dated 27.07.2016 passed by the Customs, Excise, Service Tax Appellate Tribunal (for short, 'CESTAT'), Principal Bench, New Delhi in Appeal No. E/436/2009, in the matter of Order-in-Original No. COMMISSIONER/RPR/04/2009 dated 14.01.2009.

2. We do not appreciate as to why the appeal should have been filed in the very first place keeping in mind that the order of the Appellate Tribunal has been passed on the basis of the precedents on which reliance has been placed which includes a decision of a Division Bench of this High Court which is still holding the field.

3. The Tribunal has rightly recorded its opinion in following words:

"6. As regards the welding electrodes and Oxygen Gas etc, we find that the issue again is no more res-integra and stand decided by various High Courts. One such reference can be made to Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd. vs. Commissioner of Central Excise, Raipur 2010 (256) ELT 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 vs. Union of India 2008 (228) ELT 517 (Raj.), the Hon'ble High Court allowed the CENVAT Credit on the welding electrodes. By following said decision, we hold that the appellant is entitled to the credit."

4. Learned counsel representing the Assessee has drawn the attention of this Court to the fact that the said Assessee was also a party before the Division Bench of Chhattisgarh High Court in Tax Case No. 119 of 2016 which too was decided alongwith the bunch of Tax cases by the Division Bench holding that CENVAT Credit of welding electrodes would be required to be extended in the facts and circumstances noticed therein for structural items for erection and fabrication. The only difference in the present appeal is that the period in question is different, not the issue, therefore, the case would be covered in similar as Ambuja Cement (supra).

5. The question, therefore, does not arise to interfere with the order of the Tribunal, as there is no infirmity.

6. Appeal is dismissed.

