(2015) 12 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 983 Of 2010

Commissioner Of Central Excise Raipur — APPELLANT

Vs

M/s. Sunil Sponge Pvt. Ltd. — RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(a)

Citation : (2015) 12 CESTAT CK 0009

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Vaibhav Bhatnagar, Kannu Verma Kumar, Surabhi Sinha

Final Decision : Dismissed

Judgement

1. Revenue is in appeal against the impugned order dated 28.1.10 passed by Commissioner (Appeals) Customs and Central Excise, Raipur, wherein

cenvat credit benefit has been extended to the respondent herein.

2. Ms. Kannu Verma Kumar, learned DR appearing for the appellant submits that the disputed goods are not confirming to either inputs or capital

goods for the purpose of taking cenvat credit. 3. On the other hand, Ms. Surabhi Sinha, learned advocate appearing for the respondent submits that

Commissioner (Appeals) has recorded specific findings that the disputed goods should be considered as capital goods as well as inputs, entitling the

respondent to take the cenvat credit of Central Excise duty paid thereon. To support the stand of the respondent that cenvat credit cannot be denied in

the facts and circumstances of the present case, learned advocate has relied on the following decisions rendered by the Judicial forums :-

1. Ambuja Cements Eastern Ltd. vs. CCE, Raipur [2010 (256) ELT 690 (Chattisgarh)]

2. CCE & ST vs. India Cements Ltd. [2014 (310) ELT 636 (Mad)];

3. CCE, Visakhapatnam vs. M/s. APP Mills Ltd. [2011-TIOL-1378-CESTAT-BANG]

4. I have heard the learned Counsels for both the sides

5. Learned Commissioner (Appeals) while allowing the matter in favour of the respondent herein, has discussed the following:

â??I find that the appellant had first of all disputed that out of total demand of Rs.16,33,998/- amount of Rs.13,55,568/- pertains to capital

goods. In support of the above contention the appellant had submitted invoices and RG 23 C Part II accounts showing that they had taken

credit of Rs.13,55,568/- and 27532/- Education Cess on various capital goods. I have gone through the documents and find that there is

force in the appellantâ??s submission as they have taken credit of Rs.13,55,568/- and 27532/- Education Cess on various capital goods

like electric motors, pumps, electrical goods, switchgear, machine parts, MCB, Castables etc. The above items fall under the â??definition

of capital goods as per the provisions of sub Rule 2(a) of the Cenvat Credit Rules, 2004. Further there is no allegation in the show cause

notice regarding denial of credit on these items. The credit amounting to Rs.13,55,568/- and 27532/- Education Cess on the above capital

goods was denied to the appellant by the lower authority in the guise of structural items like MS plates, beams etc. Such denial of the credit

on the aforementioned capital goods is not justified and accordingly, I set aside the demand of Rs.13,55,568/- and 27532/- Education Cess

confirmed against the appellant vide the impugned order-in-original.

â?¦.

Regarding the credit taken on structural items such as MS channel, MS joist, MS angle, Plates, flates, rounds etc. it is a fact on records that

appellants a holder of Central Excise registration is a manufacturer of MS ingots etc. and has availed credit on various items such as MS

channel, MS joist, MS flats, plates, oxygen gas and welding electrodes used as structural items and used in erection and installation of

various machines and equipments essential for their manufacturing activities. The impugned goods are used in manufacture of structures

which have been used for the purpose of completion of technological structure of capital goods and essential for carrying the manufacturing activities of the appellant. It is also common fact not only known to department officers or experts but even to a common man

that structural items such as angles, channels, beam etc. are always required to make machines junctions smooth and without their help it is

very difficult for any machines to run smoothly giving the desired production or result and thus these items are always linked with

machinery used in the production of final products. Once it is established that these items are essential for production, smooth running,

greater efficiency and better result becoming an essential supplement to plant and machinery for use of manufacturing activities and thus

an integral part of process with which the primary machines are engaged. I do not find any reason to deny the benefit of Cenvat Credit on

these items as held by impugned order-in-original and hold there is no impediment for the goods in question qualifying as inputs / capital

goods of cenvat credit.â??

6. I find from the above observation of the Commissioner (Appeals) that impugned order has been passed based on documents submitted by the

respondent. Since, upon analysis of the factual aspect, the learned Commissioner (Appeals) has held that cenvat credit is available on the disputed

goods, I do not find any reason to deny the cenvat credit on the ground that the same have not been used in or in relation to the manufacture of final

product by the respondent. I find support from the decision cited by the learned advocate for the respondent that the disputed goods should be

considered as capital goods /inputs for taking cenvat credit. In view of the above, I do not find any infirmity in the impugned order. Thus, the appeal

filed by the Revenue is dismissed.

(dictated and pronounced in the open court)

