(2020) 12 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise appeal No. 1360 Of 2012

M/s KPR Fertilizers Ltd. @Hash Commissioner Of Customs And Central Excise Visakhapatnam-II Commissionerate??

Date of Decision : 10-12-2020

Acts Referred:

Central Excise Tariff Act 1985 — Chapter 72
Central Excise Act, 1944 — Section 11AC
Central Excise Rules, 1944 — Rule 15A
Cenvat Credit Rules, 2004 — Rule 2(k)

Citation : (2020) 12 CESTAT CK 0035

Hon'ble Judges : P. Dinesha, J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Advocate : Y. Srinivas Reddy, A.V.L.N. Chary

Final Decision : Allowed

Judgement

1. This appeal is filed against order-in-original No 22/2011 dated. 22.02.2012 The appellant is a manufacturer of fertilizers and had taken CENVAT

credit on HR plates, SS plates & sheets , beems, bars, channels and angles falling under Chapter 72 of the Central Excise Tariff Act 1985 used in

fabrication of various capital goods namely storage tanks, chimneys, ductings, dry tower etc. A show-cause notice was issued to the appellant seeking

to deny CENVAT credit on these items and recover the same along with interest. It was also proposed to impose a penalty under Section 11AC of

the Central Excise Act and under Rule 15A of the Central Excise Rules. After following the process, learned Commissioner, by the impugned order,

denied CENVAT credit and ordered its recovery along with interest and imposed penalties as proposed.

2. Learned counsel for the appellant submits that this issue is no longer res integra. It has been decided by the Honâ??ble High Court of Madras in

the case of Thiru Arooran Sugars Vs CESTAT Chennai [2017(355) ELT 373 (Mad) and by the Honâ??ble High Court of Gujarat in the case of

Mundra Ports & special Economic Zone Ltd Vs CCE [2015 (39) STR (726) (Gu tj)hat MS angles, bars etc. falling under Chapter 72 which are used

for manufacture of capital goods are eligible for CENVAT credit as inputs. These decisions were followed by this Bench in several cases. He further

submits that after 07.07.2009 Explanation 2 has been added to the definition of inputs in Rule 2(k) of CENVAT Credit Rules 2004 denying CENVAT

credit on cement, angles, channels CTD and TMT bars and other items used for construction of factory shed, building or laying a foundation or making

of structures for support of capital goods. The period in the impugned order pertains to post this amendment and they have already reversed the entire

CENVAT credit on inputs which were used in making support structures. He took the bench through the details of such reversal. What they are

claiming now is the disputed amount which is only the CENVAT credit availed on MS angles, plates etc. which are used for manufacture of capital

goods. He produced details of the capital goods which were fabricated using these inputs.

3. Learned AR reiterates the finding of the lower authorities.

4. We have considered the arguments of both sides and find that the issue is no longer res integra and it has been decided by the Honâ??ble High

Court of Madras in the case of Thiru Arooran Sugars (supra) and Honâ??ble High Court of Gujarat in the case of Mundra Ports & Special

Economic Zone Ltd (supra) that CENVAT credit is available on the MS angles, plates etc. used in fabrication of capital goods. The amendment with

effect from 07.07.2009 only excludes such material which is used for construction of the factory or erection of capital goods and not credit on

materials used in manufacture of capital goods itself. These decisions of Honâ??ble High Courts of Madras & Gujarat have been consistently

followed by CESTAT including this Bench. In view of the above, we find that the impugned order is unsustainable and is liable to be set aside and we

do so.

5. The impugned order is set aside and the appeal is allowed with consequential relief if any.

(Operative portion of the order pronounced in open court on conclusion of the hearing)