

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Excise Appeal No. 87385 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/789-790/18-19 dated 08.04.2019 passed by the Commissioner(Appeals), CGST & C.Ex, Nashik II)

Vriddheshwar SSK Ltd.
At Village Adinathnagar,
Tal. Pathardi
Dist. Ahmednagar

.....Appellant

VERSUS

The Commissioner of CGST & C.Ex,
Nashik II
Commissionerate, Plot no. 155,
Sector 34, CIDCO,
Nashik

.....Respondent

APPEARANCE:

Shri Sagar Kulkarni, Advocate for the appellant
Shri P.K. Acharya, Supdt.(AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86098 / 2022

DATE OF HEARING : 03.11.2022

DATE OF DECISION : 24.11.2022

Per: AJAY SHARMA

This appeal has been filed by the appellant assailing the order dated 08.04.2019 in Appeal No. 284A/2018-19 by which the Commissioner (Appeal) Central Excise & GST, Nashik partly allowed the appeal filed by the appellant and reduced the inadmissible Cenvat credit to Rs.2,53,331/- alongwith penalty by

allowing Cenvat credit on *Nickle Screen and sugar bag stacker* and rejecting it for S.S. Welding Tube, Steel, Tubes, Alloy Steel Pipe, Prime HR Steel Coil, M.S.Wire, M.S.Slate, S.S. Welded tube, H.R. Steel pipe, Link Outer etc. which, according to learned commissioner, appear to be structural items of general use and cannot be considered as capital goods in terms of Rule 2(a) Cenvat Credit Rules, 2004 and also that such items are generally used for structures providing support to capital goods which are clearly excluded from the definition of capital goods.

2. The issue to be decided is whether the appellant, who is manufacturing sugar & molasses, is justified in availing the Cenvat credit on various items viz. S.S. Welding Tube, Steel, Tubes, Alloy Steel Pipe, Prime HR Steel Coil, M.S.Wire, M.S.Slate, S.S. Welded tube, H.R. Steel pipe, Link Outer which, according to them, have been used in those machines which are manufacturing the final product?

3. The facts leading to the filing of the Appeals are stated in brief as follows. The appellants are manufacturers of sugar and molasses and are availing the benefit of Cenvat credit on inputs, capital goods and input services under the provisions of Cenvat Credit Rules, 2004. (hereinafter referred to as "CCR, 2004"). During audit, it has been noticed that they had availed Cenvat credit of central excise duty amounting to Rs.2,68,091/- paid on items such as Steel Tubes, M.S. Wire, S.S. Welding Tube, Nickel Screen, Alloy Steel Pipes, H.R. Steel Pipe, Sugar Bag Stacker Chain etc. as inputs. Since according to the department, such items are not inputs for manufacture of sugar and molasses and Cenvat credit is not admissible on such items therefore on being pointed out by the audit, the appellant reversed the amount vide Cenvat account Debit entry dated 16.4.2014 & challan dated 06.11.2015 respectively. But as the appellant had already availed inadmissible Cenvat credit, therefore a show cause notice dated 03.11.2015 issued to the appellant as to why:-

"(a) The amount of Rs.2,68,091/- should not be demanded and recovered as per the provisions of Section 11A(1) of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 for contravention of Rule 3 of Cenvat Credit Rules, 2004 and the amount of Rs.2,57,082/- paid vide Cenvat Credit Account Debit E.No.04 dated 16.06.2014 should not be appropriated against the duty demanded;

(b) Interest should not be recovered from them under Rule 14 of Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944;

(c) Penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944, should not be imposed upon them."

4. The same was confirmed by the Adjudicating Authority and the appeal filed by the appellant against the adjudicating order was rejected by the learned Commissioner vide order dated 08.02.2018 without going into the merits, for non-compliance of the provisions of Section 35F, Central Excise Act, 1944. Thereafter this Tribunal, in an Appeal filed by the Appellant, vide order dated 05.10.2018 while observing that the appellant has complied with the requirement of section 35F *ibid*, remanded the case back to the learned Commissioner for deciding the appeal afresh on merits. After remand, the learned Commissioner has passed the impugned order by reducing the inadmissible Cenvat credit to the tune of Rs.2,53,331/- alongwith penalty.

5. Learned counsel for the appellant submits that Steel tubes, M.S. Wire, SS Welding Tube, Alloy Steel, Pipe, H.R. Steel Pipe, chain, M.S. Slate, H.R. Steel Coil, Link outer etc. are all inputs/parts used in the various machineries being used by the

appellant for manufacturing their final products i.e. Sugar & Molasses and they are essential parts for smooth and efficient functioning of the machinery used by the appellant for manufacturing Sugar & Molasses. He further submits that these are capital goods only and are not used for carrying out any type of construction or renovation work or for any permanent fixed structure. According to learned counsel these are movable items and excisable goods. Per contra learned Authorised Representative submitted that the appellant have not produced any evidence to establish that the said goods are capital goods as per Rule 2(a), CCR, 2004 and prayed for dismissal of the appeal filed by the appellant. As per learned Authorised Representative Rule 2(a) *ibid* define 'capital goods' exhaustively and the goods on which the appellants have availed the credit do not fall within the said definition as they are neither the goods falling under Chapters 82,84,85, 90 and Heading No.68.02 and sub-heading No.6801 of first schedule of Central Excise Tariff Act,1985 nor components, spares and accessories of capital goods.

6. I have heard rival submissions and perused the Appeal paper book including the synopsis/ written submissions and the case laws cited by the respective sides. The issue herein pertains to denial of Cenvat credit to the appellants, who is the manufacturer of Sugar and molasses, on Steel tubes, M.S. Wire, SS Welding Tube, Alloy Steel, Pipe, H.R. Steel Pipe, chain, M.S. Slate, H.R. Steel Coil, Link outer. The basis of denial is that these are not the capital goods and the appellant had failed to produce any evidence in support of their submission. According to learned Counsel the said items are utilized by the appellant in machines such as Pan & Quadruple Body, Evaporator & Juice Heater, Oliver & Gas line piping & spray piping, Sulphur burner, centrifugal machine, bagasse belling, cane carrier slat fitting etc. and that these parts are necessary in the smooth and efficient functioning of the machinery used in manufacturing sugar &

molasses. Although while rejecting the claim, a finding has been recorded by the authorities below that these parts were used for structural purposes but no evidence for arriving at such a finding has been discussed or produced anywhere by the department. The only case made out by the department is that the items in issue are not covered by the definition of *capital goods* in terms of Rule 2(a) *ibid* and are generally used for structures providing support to the capital goods which are excluded from the definition of *capital goods*. I find that apart from this bald allegation, no cogent evidence has been put forth by the department to show that these parts have been used for structural purpose and therefore in the absence of any evidence to the contrary, the claim made by the appellant cannot be denied.

7. Otherwise also in view of the decisions placed on record by the learned Counsel, the issue involved herein is no more *res integra*. So many decisions have been passed by the Tribunal as well as by the Hon'ble High Court on this issue deciding the same in favour of the assessee. In the matter of *Kallakurichi co-operative Sugar Mills Ltd. vs. CCE, Puducherry Commissionerate; 2020 SCC Online CESTAT 2529*; Chennai Bench of the Tribunal has held Welding rods, steel pipes, HR sheets, SS welding tubes, MS angles, channels as capital goods and allowed the Cenvat credit availed by the appellant therein. There the Tribunal has also recorded that apart from a bald allegation in the SCN that these items are used as support structures or for laying foundation, department has not put forward any cogent evidence to show that these are support structures for particular item of capital goods. Similarly in the matter of *The Oudh Sugar Mills Ltd. vs. CCE, Lucknow; 2015 SCC Online CESTAT 3577* the Allahabad Bench of the Tribunal, following the decision of the Tribunal in the matters of *Uttam Sugar Mills. vs. CCE, Ghaziabad; 2006(74) RLT 697* and *Simbhaoli Sugar Mills Ltd. vs. Commr* [which has been upheld by the Hon'ble Supreme Court

in Commissioner vs. Sibhaoli Sugar Mills Ltd.; 2002 (139) ELT A294 (SC)], while considering the items such as Aluminium coil, HR coil, H.R. Sheet, C. Plate, M.S. Bar, Shape & Section capacity, H.R. Sheet, has held that any accessories, spares or components used in the manufacture or fabrication of machinery, which is further used for manufacture of sugar and molasses would be eligible for the benefit of Cenvat Credit. Similarly Hon'ble High Court of Judicature at Madras in the matter of *India Cement Ltd. vs. CESTAT, Chennai; 2015 (321) ELT 209* has held that M.S. Rod, sheet, M.S. Channel/Plate/flat etc used for erection/fabrication of structural support for various machines like crusher, kiln, hooper etc. without which such structural machinery could not be erected and would not function, are eligible for Cenvat Credit. Undoubtedly, as demonstrated by learned counsel, the parts in issue herein have been used for smooth and efficient functioning of the machinery which has been used for manufacturing Sugar and Molasses and therefore there is no reason not to allow the credit in issue to the Appellants.

8. In view of the discussion made hereinabove I am of the considered view that the appellants are entitled for Cenvat credit of the items in issue herein and accordingly the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 24.11.2022)

(Ajay Sharma)
Member (Judicial)