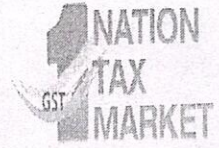




सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ : 079-26305065

☎ : 079 - 26305136

7531 to 7536

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): V2(72)56 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-109-18-19

दिनांक (Date): 30-Oct-18 जारी करने की तारीख (Date of issue): 7/12/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 25/JC(SK)/LTU-A/CX/2016-17 Dated: 03/02/2017

issued by: Joint Commissioner-Central GST, (Div-III), Ahmedabad North-Mumbai LTU

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Tata Motors Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



Cont...2

रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नागरीत सावधानिक क्षेत्र के बैंक का शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

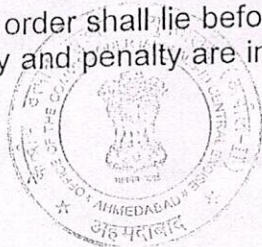
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस सन्दर्भ में इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



(D) In case of rebate or duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. के मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, Excise & Service Tax Appellate Tribunal:-

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/35E of CEA, 1944 an appeal lies to:-

(क) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका

वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



ORDER-IN-APPEAL

This appeal has been filed by M/s Tata Motorws Ltd, Survey No.1, Village Northkotpura, Taluka Sanand, Ahmedabad (Gujarat) [hereinafter referred to as "appellant"] against Order-in-Original No.25/Joint Commissioner (SK)/LUT-A/CX/2016-17 dted 04.01.2017 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner, Large Taxpayer Unit, Mumbai [hereinafter referred to as "adjudicating authority"].

2. During the course of Audit of the records of the appellant for the period of February 2009 to December 2011, it was observed that [i] they had availed credit of CENVAT amounting to Rs.40,61,597/- on the goods [i.e structural items-G.I Sheet/Coil, Gratings, Internal Riser, Seamless pipe, Steel Structure for Messanine Platform, Working Platform, M S Angle, M S Galve Gratings, M S Plate, Profile Steel Structure] falling under chapter 72 and 73 of CETA as a capital goods; and also availed CENVAT credit amounting to Rs.56,36,620/- on the goods viz M.S. Beam 300MM, M S Channel 30MM, Work Duck Panel, S.S.Fabricated Sheet Metal Parts, Supply of structural steel for weld shop and Bus bar used for conveyor systems/paint booth/weld shop and other structures. While taking the said credit, the appellant had considered the entire paint shop, welding shop etc as Capital goods. Based on the said audit report and as it appeared that the said goods are neither falling under definition of capital goods nor falling under definition of inputs as defined under Section 2 (a) and 2(k) of CENVAT credit Rules (CCR), a show cause cum demand notice was issued to the appellant for dis-allowing and recovery of CENVAT credit amounting to Rs.96,98,217/- under Rule 14 of CCR read with Section 11A (1)/11A(5) of Central Excise Act, 1944 (CEA) along with interest. The show cause notice also proposes for imposition of penalty under Rule 15 of CCR read with Section 11 AC of CEA. Later on, vide the impugned order, the adjudicating authority has confirmed all allegations rose in the show cause notice and denied/confirmed the CENVAT credit/demand with interest and imposed penalty equal to the demand amount.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- Duty paid on various iron & steel items such as angles, channels, beams etc which are used for fabrication of various equipment used in paint shop qualify as parts, components of capital goods. Therefore credit availed on the said items is admissible to them.
- The foundation and supporting structures are necessary for functioning of the capital goods under consideration and therefore the said items qualify as parts/components of respective capital goods; that without supporting structures, erection or installation the capital goods cannot be done nor huge machineries can be operated; that the items in dispute are used are integral part of machinery, conveyor systems, paint booth, weld shop etc within the



factory which is essential for painting of motor vehicles and without it, manufacturing process is not possible.

- Circular No.276/110/96-TRU dated 02.12.1996 clarifies that all parts, components, accessories which are to be used with capital goods and classifiable under any chapter heading are eligible for availment of CENVAT credit.
- The iron and steel items satisfy the main definition of 'inputs'; that they have significant role to play in th mainstream manufacturing process of finished goods and without the use of which finished goods will never come into existence
- Fromm the usage of the goods mentioned in their letter dated 11.01.2013 and chartered engineer's certificate, it is clear that the goods in question were used as integral part of their paint shop and not in the construction of factory building; since the goods were used as parts of main plant and machinery i.e paint booth and painting system, the credit on the same is in order.
- The eligibility for credit has to be decided at the stage before becoming part of immovable goods;
- The appellant has cited numbers of case laws in the favour of their arguments.

4. Personal hearing in the matter was held on 10.10.2018. S/Shri Rajesh B Shukla, Sanjay C Ekhande and Bhairav Vaishnav, Authorized Representatives of the appellant appeared for the same and reiterated the grounds of appeal. Shri Shukla submitted further additional submissions.

5. I have carefully gone through the facts of the case ad submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The point to be decided in the matter is as to whether [i] the CENVAT credit of Rs.40,61,597/- availed on the items [G.I Sheet/Coil, Gratings, Internal Riser, Seamless pipe, Steel Structure for Messanine Platform, Working Platform, M S Angle, M S Galve Gratings, M S Plate, Profile Steel Structure] which were integral part of paint shop to be considered as capital goods and [ii] whether the CENVAT credit amounting to Rs. 56,36,620/- on the goods viz M.S. Beam 300MM, M S Channel 30MM, Work Duck Panel, S.S.Fabricated Sheet Metal Parts, Supply of structural steel for weld shop and Bus bar used for conveyor systems/paint booth/weld shop and other structures is available as an input under Rule 2(k) of CCR.

6. The adjudicating authority has alleged that the appellant has contravened the provisions of Rule 2, Rule of the CCR in as much as they had availed the said credit on the items which were part paint shop used as parts of main plant and machinery by considering them as capital goods/inputs during the period 2009-2011. The adjudicating authority has further held that credit on capital goods is available only



on the items which are excisable goods covered under the definition of capital goods as defined under Rule 2(a) of CCR and used in the factory of the manufacturer. As regards inputs, they have to be covered under the definition of 'input' under Rule 2(k) of CCR and used in or integrally connected with the process of actual manufacture of the final product.

7. As per provisions of Rule 2 of CCR, Capital goods means:-

(a) "capital goods" means :-

(A) the following goods, namely :-

(i) **all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;**

(ii) pollution control equipment;

(iii) **components, spares and accessories of the goods specified at (i) and (ii);**

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) **tubes and pipes and fittings thereof; [* * *]**

(vii) storage tank, [and]

[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],

used -

(1)

As per Rule 2(k) of CCR "input" means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service, or];

[(v) all capital goods which have a value upto ten thousand rupees per piece.] but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

[(B) any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

[(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;]

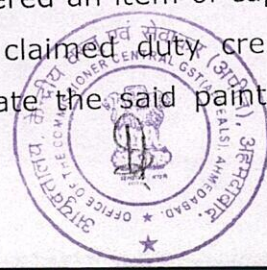
8. As per definition of capital goods, goods falling under chapter 82, 84, 85 and 90 and components, accessories thereof are capital goods. Further, the definition of inputs stipulates that any goods used in the factory for clearance of the final products including accessories. As per Note 5 of Section XVI, " machine" means any machine, machinery, plant, equipment apparatus or appliance cited in the heading of chapter 84 or 85.



9. From the records, I observe that the appellant had shifted their plant setup for manufacturing "NANO" cars from Singur to the present location. For this, the appellant have dismantled their Paint shop at Singur and relocated the same at the present location. They had cleared the structures of dismantled plant on payment of duty and thereafter taken credit from the present location, claiming that the above referred items were used in settling up of paint shop and related activities as capital goods. It is fact on record that the said goods were used as integral part of their paint shop which is a plant essential for painting the cars, within the factory and not in the construction of factory building.

10. As per certificate dated 27.11.2014 furnished by the Chartered Engineer, all the items have been used to construct/re-assemble various equipment in the category of plant and machinery and they do not form part of building. The chartered engineer has issued the said certificate on the basis of list provided by the appellant who certified that the items are in fact part of or raw materials to make different equipments, requirement for paint shop. It is an undisputed fact that the painting of the finished goods i.e. Cars is a process of manufacturing activities within the factory and it is a continuous processing which involve many process/operations in particular sequence as per the flow process. Therefore, the required equipments for such process cannot be separated from each other, hence structure is required to be constructed to accommodate them and to operate them to form the paint process. The foundation and supporting structures are necessary for functioning of the capital goods under consideration and therefore the said items qualify as capital goods or parts/components of respective capital goods; that without supporting structures, erection or installation such capital goods painting process cannot be done; that the items in dispute are used are integral part of machinery, conveyor systems, paint booth, weld shop etc within the factory which is essential for painting of motor vehicles and without it, manufacturing process is not possible.

11. The appellant has furnished detailed photograph, showing the functioning of the paint shop. As stated above, the items in dispute are used as integral part of machinery, conveyor system, paint booth, weld shop within the factory which is essential for painting of motor vehicles and without it, manufacturing process is not possible. The appellant has been able to demonstrate and also canvassed that these items were essential items without which factory could not be set up and needed for completing the manufacturing process of finished goods i.e cars. Since it is undisputed that these items were used in the factory premises for manufacturing of cars there is no ground for denial of the Cenvat Credit. To that extent, appellant is eligible for availment of Cenvat Credit of this amount. Further, as per chapter note 5 of chapter XVI, looking into the above facts, paint shop is a plant which is in use for further manufacturing activities, can be considered an item of capital goods falling under Chapter 84 or 85. Had the appellant claimed duty credit on the accessories of capital goods or inputs used to fabricate the said paint shop, the



impugned credit could not have been denied to the appellant. Apart from above, I also find that the provisions exist to allow input credit of duty paid on parts that go into the manufacture of capital goods. In the circumstances credit taken by the appellant cannot be denied.

12. Further, as discussed above, without the activities of painting the manufacturing activities of cars are incomplete. In the instant case, it is clear that for such activities, the appellant has set up paint shop within the factory. Therefore, applying the "user test" on the facts in hand, I have no hesitation in holding that the structural items used in the fabrication of paint shop would fall within the ambit of "capital goods" as contemplated in Rule 2 (a) (A). It is not the case of the department that these items are not required to be used in the fabrication of paint shop, which is an integral part, particularly when the activities is the essential process of manufacturing the said final products. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms Rule 2 (a)(A) and Rule 2(k) of CCR.

13. Further, the clarification on availment of Modvat credit on components, spars and accessories under Rule 57Q of Central Excise Rules 1944, issued by the CBEC vide Circular No.276/110/96-TRU dated 02.12.1996 is relevant here and support above contention. The clarification reads as under:

2. It has been brought to the notice of the Board that clause (d) of Explanation (1) is being interpreted by some of the field officers covering only such components, spares and accessories which would fall under Chapters shown under clauses (a) to (c) and credit is allowed only on those components, spares and accessories which are covered under the said chapters.

3. The matter has been examined. With effect from 23-7-1996, capital goods eligible for credit under Rule 57Q have been specified either by their classification or by their description. Clauses (a) to (c) of Explanation (1) of the said rule cover capital goods by their classification whereas clause (d) covers goods by their description viz. components, spares and accessories of the said capital goods. It may be noted that there is a separate entry for components, spares and accessories and no reference has been made about their classification. As such, scope of this entry is not restricted only to the components, spares and accessories falling under Chapters 82, 84, 85 or 90 but covers all components, spares and accessories of the specified goods irrespective of their classification. The same was the position prior to amendment in Rule 57Q (i.e. prior to 23-7-1996) when credit was available on components, spares and accessories of the specified capital goods irrespective of their classification.

4. Accordingly, it is clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any chapter heading are eligible for availment of Modvat credit."

14. Further, in the impugned order, the adjudicating authority has denied CENVAT credit to the appellant in respect of duty paid on various goods used in setting up paint shop. The paint shop in question falls under Chapter Heading 8479.10 of the Central Excise Tariff. The said chapter heading reads as under:

"847910 00 - Machinery for public work, building or the like."

Credit was denied in respect of structural items etc. all of which fall under Chapter heading 72 or 73 of the Tariff. Credit was denied on the basis that the goods falling



under Chapter headings 72 and 73 were not covered by the definition of 'capital goods' as per Rule 2(b) of Cenvat Credit Rules, 2002 (CCR). As per Rule 2(b) of CCR, capital goods include components, spares and accessories of goods falling under, *inter alia*, Chapter 84. As paint shop, an item falling under Chapter 84, the impugned goods which were used to set up the paint shop are required to be held as capital goods and the structural items used thereof to be considered as components, spares and accessories of paint shop of Chapter 84 and the CENVAT credit availed by the appellant is admissible to them.

15. The Hon'ble Supreme Court of India in the case of M/s CCE Jaipur Vs/ Rajasthan Spinning & Weaving Mills Ltd [2010 (255) ELT 481] has held that steel plates and M.S Channel as capital goods. The relevant portion of the said order is as under:

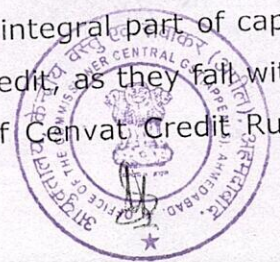
"12. Inter alia observing that capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances if any of these goods is used for producing or processing of any goods or for bringing about any change in the substance for the manufacture of final product, although this view was expressed in the light of the afore-noted definition of "capital goods" in the said Rule, which is not there in Rule 57Q, as applicable in the instant case, yet the "user test" evolved in the judgment, which is required to be satisfied to find out whether or not particular goods could be said to be capital goods, would apply on all fours to the facts of the present case, in fact, in para 6 of the said judgment, the court noted the stand of the learned Additional Solicitor General, appearing for the Revenue, to the effect that the question whether an item falls within the purview of "capital goods" would depend upon the user it is put to.

13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. it is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of Serial No. 5 of the goods described in column (2) of the Table below Rule 57Q."

16. The Hon'ble High Court of Himachal Pradesh in the case of M/s Gujarat Ambuja Cement Ltd [2008 (230) ELT 221] has also held that:

"Capital goods - Plates/rounds, TOR Steel, channels, angles, sheets, industrial cables, fuses, plugs, sockets, electric machinery used in hydraulic system motor pumps/electric motors by their use, covered in the definition of capital goods - Rule 57Q of erstwhile Central Excise Rules, 1944 - Rules 2(a) and 3 of Cenvat Credit Rules, 2004"

17. The decision of the Hon'ble High Court of Madras in the case of M/s Thiru Arooran Sugars [2017 (355) ELT 373 -Madras] has further held that "Inputs/capital goods viz MS Structural, which support plant & machinery, and cement & steel, which went in erecting foundations to hold plant & machinery, integral part of capital goods (plant & machinery) manufacturing final goods. Therefore, whether 'user test' applied, or test that they are integral part of capital goods applied, such items eligible to get benefit of Cenvat credit, as they fall within scope and ambit of both Rules 2(a)(A), as well as, 2(k) of Cenvat Credit Rules,



2004, during relevant period prior to amendment in Explanation 2 of Rule 2(k)". The Hon'ble Court has also held that Components, spares and accessories, falling under Chapter 72 of Central Excise Tariff Act, 1985, would qualify to be capital goods under Rule 2(a)(A)(iii) of Cenvat Credit Rules, 2004, as long as, same pertain to capital goods falling under Rule 2(a)(A)(i) of Cenvat Credit Rules, 2004.

18. Further, the Hon'ble Tribunal-Chennai in the case of M/s Hundai Motor India Ltd [2017 (346) ELT 431] has decided the issue on availment of Cenvat Credit on the structurals used in fabricated paint complex. The relevant portion is as under"

"9. Issue on - Availment of Cenvat credit on the structurals used in fabricated paint complex.

As regards the last issue of denial of Cenvat credit on the capital goods viz. steel structurals used in the fabricated shops, we find that there is no dispute on the fact that the structurals are used in paint complex which is capital goods used in the manufacture of motor vehicles. We find that this issue stands settled in favour of the assessee by various High Courts' orders in the following cases :-

- (i) CCE, Trichy v. India Cements - 2014 (305) E.L.T. 558 (Mad.) [decided on 13-12-2012]
- (ii) CCE & ST v. India Cements Ltd. - 2014 (310) E.L.T. 636 (Mad.) [decided on 10-7-2014]
- (iii) CCE, Mysore v. ICL Sugars Ltd. - 2011 (271) E.L.T. 360 (Kar.)
- (iv) CCE, Belgaum v. Hindalco Industries Ltd. - 2012 (286) E.L.T. 503 (Kar.).

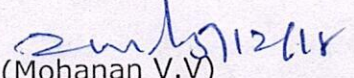
This Tribunal vide Final Order No. 40890/2014, dated 16-9-2014 in the case of Dalmia Cements (Bharat) Ltd. v. CCE, Trichy allowed Cenvat credit on the capital goods viz. structurals used in the process of manufacture of cement. By respectfully following the High Court's decision (supra), we hold that assessee is eligible for capital goods credit on the structural used in paint complex. The Revenue relying on the LB decision in the case of Vandana Global Ltd. (supra) and Apex Court decision in the case of Triveni Engineering & Industries Ltd. (supra) is not relevant in view of the jurisdictional High Court of Madras decision and other High Court orders discussed above. Therefore, we do not find any infirmity in the order of the LAA and uphold the same."

19. In view of above discussion and applying the ratio of the decision of Hon'ble Supreme Court/High Court/Tribunal supra, the credit of CENVAT availed by the appellant is admissible to them and accordingly, I set aside the impugned order totally.

20. In the forgoing discussion, I allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स)
Date : .10 .2018

Attested


(Mohanan V.V)
Superintendent (Appeal),
Central Tax, Ahmedabad.
By RPAD.

To,
M/s Tata Motors Ltd,
Revenue Survey No.1, Village Narthkotpura,
Taluka-Sanand, Ahmedabad



Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Joint Commissioner, Central Tax, Ahmedabad-North
4. The Assistant Commissioner, System, Central Tax, Ahmedabad North.
5. The Assistant Commissioner, CGST, Ddiv-III, Ahmedabad North
6. Guard File.
7. P.A.

