

(2019) 02 CHH CK 0113

Chhattisgarh High Court

Case No: TAXC No. 36 Of 2006

M/s. Grasim Cement village And
PO Rawan

APPELLANT

Vs

Commissioner Of Central Excise
& Customs And Ors

RESPONDENT

Date of Decision: Feb. 8, 2019

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 2(a)

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

Bench: Division Bench

Advocate: Ashish Shrivastava, Maneesh Sharma

Final Decision: Allowed

Judgement

Ajay Kumar Tripathi, CJ

1. Heard learned counsel for the Appellant-Company and the learned counsel for the Respondent-Revenue.
2. Keeping in mind that a limited question of law is under consideration in this case, the requirement of preparing paper book is dispensed with.
3. This appeal has been preferred by the Appellant-Company against the order dated 21.07.2006 passed in Appeal No. E/2116/06-SM (BR) by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for short 'the Tribunal').
4. The appeal of the Appellant-Company was dismissed by the Tribunal refusing to give the benefit of Cenvat Credit on Welding Electrodes as an input for maintenance and repair of plant and machinery. No doubt, the view so taken by the Tribunal then, when the impugned order dated

21.07.2006 was passed, is said to be based on certain earlier adjudications, but since then, the law seems to have settled down and crystallized in some subsequent decisions and the said Tribunal itself has had occasion to pass the following order in case of Commissioner of Customs, Central Excise

Raipur v. M/s. Jindal Steel & Power Ltd. in Excise Appeal No. 50436/2018, vide order dated 09.04.2018:

5. After hearing both the parties and on perusal of the material available on record, it appears that the issue has come up before the Tribunal in the

case of Singhal Enterprises Pvt. Ltd. vs. CC&CE, Raipur [2016 (341) ELT 372 (Tri-Del)] where it was observed that -

12. We have gone through the judgment of the Hon'ble High Court of Allahabad cited by the Revenue. We find that the Hon'ble High Court has

considered the claim of Welding Electrodes under the definition of 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 and have come to

the conclusion that the credit will not be allowable under this Rule. However, we find that the credit of duty paid on Welding Electrodes has been held

allowable by several decisions of this Tribunal and hence the issue is no more res integra. We also find that several High Courts have also allowed

such credit considering the same as allowable within the definition of "Input" under the Cenvat Credit Rules. Once such reference can be made to the

decision of the Hon'ble High Court of Chhattisgarh in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise, Raipur, 2010

(256) E.L.T. 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 v. Union of India, 2008 (228) E.L.T. (Raj.), the Hon'ble High Court of Rajasthan allowed the Cenvat credit on the

welding electrodes. By following the said decision, we hold that the appellants are entitled to the credit on welding electrodes considering them as

Inputs".

5. Keeping in view the law as it stands today as also since a Division Bench of this High Court has taken the same view in Tax Case No. 30 of 2017

which was the case of Commissioner, Customs, Central Excise & Service Tax v. M/s. Singhal Enterprises Pvt. Ltd., decided on 19.07.2017, the

impugned order dated 21.07.2006 passed by the Tribunal, the order dated 23.03.2006 passed in Appeal No. 57/RPR-I/2006 by the Commissioner,

Central Excise & Customs (Appeals-I) as well as the order dated 29.12.2005 passed by the Assistant Commissioner, Central Excise Division,

disallowing the Cenvat credit are hereby set aside.

6. The appeal is allowed.