IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**

and

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

C.M.A.No.3224 of 2009

The National Co-operative Sugar Mills Ltd.,
B Mettupatti P.O.
Alanganallur (Via)
Madurai District - 625 502 .. Appellant

versus

Commissioner of Central Excise
Madurai

Prayer: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944 against the order of Customs, Excise and Service Tax Appellate Tribunal, Chennai - 600 006 dated 07.08.2009 made in Appeal No.3/311/09.

For Appellant :Mr.N.Prasad

For Respondent :Mr.A.P.Srinivas
Senior Standing Counsel for Income-Tax

JUDGMENT

(Judgment of the Court was made by **S.MANIKUMAR, J.**)

Civil Miscellaneous Appeal is directed against the Final Order No.939/09 dated 07.08.2009 passed by Customs, Excise and Service Tax Tribunal, Chennai - 600 006, confirming the order of both original and Appellate Authorities, disallowing Cenvat credit on welding electrodes used by the appellant in their factory.

2. Short facts leading to the appeal are that M/s.National Co-operative Sugar Mills Ltd, is engaged in manufacture of sugar, falling under Chapter Heading No.1701 of the Central Excise Tariff Act, 1985. Based on the information gathered by the Divisional Preventive Unit that M/s.National Co-operative Sugar Mills Limited are availing Cenvat credit wrongly, on welding rods/electrodes and asbestos sheets, the officers attached to the Divisional Preventive Unit, Dindigul Division II, visited the factory on 05.01.2007 and conducted verification. Finding that the appellant has availed Cenvat credit on welding rods/electrodes and asbestos sheets, a show-cause notice dated 02.02.2007 was issued by the Adjudicating Authority, proposing to disallow Cenvat credit on welding rods/electrodes used by the appellant. The Adjudicating Authority also proposed to disallow Cenvat credit, on asbestos sheets, used by the appellant for roofing purposes. In the

Adjudicatory Notice, the authority has stated that the welding rods/electrodes used by the appellant were only for repair and maintenance purposes and hence not covered by the definition of 'inputs', as contemplated by Rule 2(k) of Cenvat Credit Rules, 2004. Adjudicating Authority placed reliance on a judgment of the Larger Bench of Delhi High Court in the case of ***Jaypee Rewa Plant vs. CCE*** reported in **2003 (159) ELT 553 (Tri-LB)**.

3. The appellant submitted a reply to the show-cause notice on 26.02.2007. Rejecting the reply, the adjudicating Authority, passed an order dated 31.08.2007, disallowing Cenvat credit on welding rods/electrodes and asbestos sheets. The adjudicating Authority also imposed interest under Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A of Central Excise Act, 1944. Penalty also been imposed under Rule 15 of Cenvat Credit Rules, 2004, alleging contravention of Rule 3 of the said Rules.

4. Being aggrieved by the Order in Original dated 31.08.2007, the appellant herein has filed an appeal before the Commissioner of Central Excise (Appeals), Maduari, who, by an order dated 26.02.2009, has modified the order in original dated 31.08.2007 of the adjudicating authority. The appellate Authority, has also disallowed

credit on welding rods/electrodes and allowed credit on asbestos sheets.

5. Aggrieved by the same, a further appeal was filed under Section 35B of the Central Excise Act, 1944 before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, which dismissed the appeal. Thus the present appeal is filed under Section 35G of the Central Excise Act, 1944 on the following substantial question of law.

> *"Whether the Hon'ble Customs, Excise and Service Tax Appellate Tribunal committed an error or law in disallowing the Cenvat Credit on welding rods/electrodes used by the Appellants when, in fact, the same were used in and or in relation to manufacture of the final product as required by Rule 2(k) of the Cenvat Credit Rules, 2004?"*

6. Heard both parties.

7. Appellant is a Co-operative sugar mill. On the aspect of usage of welding rods/electrodes in the sugar mill, Mr.N.Prasad, learned counsel for the appellant, submitted that major sections of sugar factory consists of: (i) Crushing, (ii) Syrup stage, (iii) Pan, (iv) Centrifugal and (v) Bagging. According to him, welding rods are used

at every stage. For instance, juice which emerges at the crushing stage is moved via M.S.pipes to syrup stage. Here, the acidic levels are high. Continuous passage of juice through pipes results in corrosion of pipes and eventually cracking of pipes. If the situation is allowed to continue, holes would develop affecting production, as the juice cannot pass from one stage to another. Therefore, welding electrodes are used to weld together cracks and holes, which may develop in M.S.Pipes. At syrup stage, juice is converted into syrup. Juice has to be kept in storage tanks which may develop cracks. Here again, welding electrodes are used. At the stage of pan, syrup is moved to the pan via M.S.pipes. In the pan, sugar crystals are grown. At this stage also, welding electrodes are used to keep M.S.Pipes in good condition, otherwise, production would be affected. At the centrifugal stage, molasses is separated and removed leaving the sugar crystals behind. At this stage also, there are storage tanks which store the mixture of molasses and crystal. This is because of the acidic nature of substance, corrosion may develop in storage tanks. The mixture of molasses and crystal have to be first stored, before being released in the centrifugal. The entire production of mixture and molasses and crystal, cannot at once be released into centrifugal. This requires upkeep of the storage tank and to fix fissures and holes in storage tank. If holes and cracks are allowed to develop, there would be loss of raw material, resulting in production being affected. After the centrifugal stage, where the sugar crystals are separated, bagging of sugar takes place. Thus, explaining each and every stage involved in the manufacture of sugar, and how welding electrodes are used in relation to the manufacture of the final product, namely sugar, it is the submission of Mr.N.Prasad, learned counsel for the appellant that welding electrode also is one of the inputs, used in relation to manufacture of final product and in that context, referred to in Rule 2(k) of Cenvat Credit Rules, 2004 which states that the word " *'input' which means all goods except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final products or not and includes lubricating oil, greases, cutting oils, coolants, accessories of the final product, cleared along with the final product, goods used as paints or as packing material or as fuel, or for generation of electricity of steam used in or in relation to manufacture of final product or for any other purpose within the factory of production."*

8. He further submitted that the word 'input' is wider and comprehensive to include all the goods except diesel, oil etc used in or in relation to the manufacture of the final product and therefore welding electrodes would fall under the definition of input.

9. He further submitted that Tribunal has committed an error in brushing aside the factual submission that the welding rods/electrodes were used by the appellant for welding of capital goods and such an activity, being integrally connected with the manufacturing activity was, in and or in relation to the manufacture of the final product, namely sugar.

10. Placing reliance on the decision in ***Jawahar Mills Ltd. vs. Commissioner of Central Excise, Coimbatore*** reported in ***1999 (108) E.L.T.47 (Tribunal)***, learned counsel for the appellant submitted that in the above reported case, stand of the revenue was that the items in dispute, namely, welding electrodes, wires, cables etc. were not capital goods, within the meaning of explanation to Rule 57Q of the Central Excise Rules, 1944, which covers goods used only in production, processing or bringing about any change in substance for manufacture of the final product and that the goods in question were not such goods and hence modvat credit was denied on welding electrodes. But the Tribunal rejected the stand of the revenue.

11. Inviting attention of this court to the meaning of the word 'capital goods' in Rule 57Q of the Central Excise Rules, 1944, Mr.N.Prasad, learned counsel for the appellant further submitted that capital goods means:

(a) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final products;

(b) Components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and

(c) moulds and dies, generating sets and weigh bridges used in the factory of the manufacturer.

12. He further submitted that the above decision of the Tribunal in holding welding electrodes will also qualify as capital goods under Rule 57Q and thus eligible for Modvat Credit has been upheld by the Hon'ble Supreme Court in ***Commissioner of Central Excise, Coimbatore vs. Jawahar Mills Ltd*** reported in ***2001 (132) E.L.T. 3 (S.C.).***

13. Learned counsel for the appellant also submitted that dismissal of the Revenue appeal in ***Jawahar Mills's case*** has been noticed by a Hon'ble Division Bench of this Court in ***Commissioner of Central Excise, Coimbatore vs. Madras Aluminium Company Ltd*** reported in ***2008 (226) E.L.T. 342 (Mad.),*** wherein, at paragraph No.6, the Hon'ble Division Bench held as follows:

" 6. In respect of oxygen gas, acetylene gas, electrodes, welding wire and iron, the Tribunal held that Modvat credit were to be allowed following the judgment of the Tribunal in ***1993 (67) E.L.T. 364****. The issue has been covered in favour of the assessee by the decision of the Apex Court in the case of* **C.C.E., Coimbatore v. Jawahar Mills Ltd., 2001 (132) E.L.T. 3** *in which the earlier decisions of the Supreme Court in the case of* ***Indian Farmers Fertiliser Co-operative Ltd. v. CCE, Ahmedabad, AIR 1996 SC 2542,*** *has been taken note of. Incidentally with regard to all these issues, the department has contended that the case of* ***Jawahar Mills Ltd. - 1999 (108) E.L.T. 47*** *held in favour of the assessee has been taken on appeal by the department to the Supreme Court and the same is pending. Now the Supreme Court in* ***2001 (132) E.L.T****. 3 decided the issue in favour of the assessee."*

14. He also submitted that though the Kolkatta Tribunal in ***SAIL vs. Commissioner of Central Excise, Ranchi*** reported in ***2008 (222) E.L.T. 233 (Tri. - Kolkata)*** held that the welding electrodes, not being used co-extensively, in the process of manufacture of the final product, are not eligible for Cenvat credit, the appeal filed by SAIL, was dismissed *in limini,* by the Hon'ble Supreme Court it was not a speaking order. At this juncture, this court also perused the order of the Hon'ble Supreme Court, which reads as

under:

> *"Delay condoned.*
>
> *On the facts of this case, matter stands dismissed."*

15. After considering ***Commissioner v. Jawahar Mills Ltd.*** reported in ***2001 (132) E.L.T. 3 (S.C.), Jaypee Rewa Plant vs. CCE*** reported in **2003 (159) ELT 553 (Tri-LB),** ***J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. Sales Tax Officer*** reported in ***1997(91) E.L.T.34 (S.C.)***, in ***Ambuja Cements Eastern Ltd. vs. Commissioner of Central Excise, Raipur*** reported in ***2010 (256) E.L.T. 690 (Chhattisgarh)***, wherein, the High Court of Chhattisgarh held that welding electrodes used for repair and maintenance of plant and machinery, are eligible for Cenvat credits, both as capital goods, as well as inputs. At this juncture, we also deem it fit to consider the Judgment of Chhattisgarh High Court, as to how the decision in SAIL case has been distinguished. At Paragraph Nos.13, 14, 16, 17, 21 and 22 and ultimately, at paragraph 23, relying on the decision of the Rajasthan High Court in ***Hindustan Zinc Ltd. v. Union of India*** reported in ***2008 (228) E.L.T. 517 (Raj.), Commissioner of Central Excise vs. India Cements Limited*** reported in ***2009 (238) E.L.T. 411 (Mad.)*** and the decision of the Delhi Tribunal in ***Birla Jute & Industries Limited*** reported in ***2002***

(139) E.L.T. A93, and subsequently, confirmed by the Hon'ble Apex Court, the Chhattisgarh High Court, allowed the appeals of the assessee, and answered the substantial question of law, raised therein viz., whether the welding electrodes used in repairs/maintenance of plant and machinery can be construed as input, as defined under Rule 2(g) of the Cenvat Credit Rules, 2002. The Hon'ble Division Bench of the Chhattisgarh High Court further held that welding electrodes used in repairs and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002 and thus, entitled for Cenvat credit. Relevant paragraphs in the said judgment are extracted hereunder:

> *"**13.** The decision in Jaypee Rewa Plant came into consideration before the Rajasthan High Court in the matters of Hindustan Zinc Ltd. [2008 (228) E.L.T. 517 (Raj.)], involving similar issue - "Whether welding electrodes used for repair and maintenance of plant and machinery are eligible for Cenvat credits, both as capital goods as well as inputs?" The High Court relying upon the decision of the Supreme Court in case of Jawahar Mills Ltd., in Paras 11 & 12 observed as thus:*
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> *"11. In our view, the Judgment of Hon'ble Supreme Court, in J.K.Cottons SPG & WVG Mills Co. Ltd v. Sales Tax Officer, Kanpur, reported in 1997 (91) E.L.T. 34, has a material bearing on the controversy involved in the present case. It may be*

noticed, that the Tribunal in J.P.Rewa case has referred to this judgment of Hon'ble Supreme Court in J.K.Cotton's case, by reproducing a part of the head note, but then, the very significant continuing next sentence has been omitted from consideration, inasmuch as the sentence following the portion quoted by the tribunal, is as under:

"They need not be ingredients or commodities used in processes, nor must they be directly and actually needed for "turning out or the creation of goods."

12. In that case, the Hon'ble Supreme Court even went to the extent of holding, that use of electrical equipments, like lighting, electrical humidifiers, exhaust fan etc. were also taken to be necessary equipment, to effectively carry on the manufacturing process. Thus, with the above, if the quoted part of the judgment in J.K.Cotton's case is read, it becomes clear, that the expression "in the manufacture of goods" should normally encompass entire process carried on by the dealer, of converting raw materials into finished goods, where any particular process, or activity, is so integrally connected with the ultimate production of the goods, but for that process, manufacturing, or processing of the goods would be commercially inexpedient, goods required in that process would, fall within expression "in the manufacturing of goods".

***14.** The Madras High Court in India Cements Ltd., while dealing the similar issue, relying upon the* *decision of the Supreme Court in Jawahar Mills Ltd. and Commissioner v. Birla Jute & Industires Ltd., decided the question of law in favour of the assessee and held that the Tribunal is correct in holding that the welding electrodes used for repairs and maintenance are covered under the definition of capital goods in terms of Rule 57Q of the Central Excise Rules, 1944.*

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***16.** The northern Bench of the Tribunal, New Delhi, in the matter of Birla Jute & Industries Ltd., held that Modvat credit is admissible for Electrodes and Calibration Gas Mixture (welding equipments), but not admissible for explosives under Rule 57A of the Central Excise Rules, 1944.*

Civil Appeals preferred by the revenue against the above order were again dismissed by the Supreme Court with an observation that the civil appeals have to be dismissed in view of the judgment of this Court in Jawahar Mills Ltd. (Commissioner v. Birla Jute & Inds. Ltd.)

***17.** The Kolkata Tribunal in the matter of SAIL held that Modvat Credit on goods and welding electrodes etc. which are used for welding, repaid and maintenance of machineries, is not admissible. Relying upon the decision in Jaypee Rewa Plant, it has been observed that the decision in this matter has not been appealed against or reversed. SAIL filed a petition for special leave to appeal against the above decision and dismissing the SLP, the Supreme Court passed the* *following order:*

"Delay condoned.

On the facts of this case, matters stand dismissed."

[Steel Authority of India Ltd. v. Commissioner - 2008 (229) E.L.T. A127 (S.C.)]

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***21.** Shri Bhishma Kinger, learned counsel for the respondents/revenue, vehemently argued that in the matter of SAIL, the Tribunal at Klkata relying upon the decision in Jaypee Rewa Plant has held that Modvat credit on goods and welding electrodes etc. which are used for welding, repairing and maintenance of machineries, is not available under Rule 57A of the erstwhile Central Excise Rules, 1944. SAIL's Special Leave Petition against the above order of Kolkata Tribunal has been further dismissed and therefore, the view taken in Jaypee Rewa Plant is impliedly affirmed by the Supreme Court.*

We are unable to accept the aforesaid argument as we find that SLP against the decision of Kolkata Tribunal in SAIL has been summarily dismissed without any speaking order, whereas the Rajasthan HighCourt in Hindustan Zinc Ltd., after considering the Larger Bench decision of the Tribunal in Jaypee Rewa Plant, has observed that the matter has been decided by selectively referring to the decision of the Supreme Court in J.K.Cotton's case, and decided the matter by omitting the very significant continuing next sentence. Paras 11 & 12 of

Hindustan Zinc Ltd. have already been reproduced in the foregoing paragraph for ready reference.

22. *Thus, decision in the matter of Jaypee Rewa Plant is not a good law in view of above judgment of the Rajasthan High Court. That apart, the Madras High Court in India Cements Ltd. has held that the welding electrodes used for repairs and maintenance are covered under the definition of capital goods in terms of Rule 57Q. Similarly, in Birla Jute & Industries Ltd., also, the Delhi Tribunal held that Modvat credit is admissible for Electrodes and Calibration Gas Mixture (Welding equipments), but not admissible for explosives under Rule 57A of the Central Excise Rules, 1944, Civil appeals preferred by the revenue have been further dismissed by the Supreme Court.*

It is settled law that refusing of special leave to file appeal by a non-speaking or speaking order does not attract the doctrine of merger, whereas where an award, appeal or revision is provided against the order passed by the Court, Tribunal or any other authority before a superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law, as held by the Supreme Court in Kunha Yammed.

23. *On the basis of aforesaid discussions, relying upon the decision of the Rajasthan High Court in Hindustan Zinc Ltd., Madras High Court in India*

Cement Ltd., and Delhi Tribunal in Birla JUte & Industries Ltd., which have been subsequently, affirmed by the Supreme Court, we allow both the appeals, set aside the impugned orders and answer the substantial question of law in favour of the appellant-assessee and hold that welding electrodes used in repairs and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002 and thus, entitled for Cenvat credit."

16. On the aspect, as to how the word 'input' in Rule 2(g) of Cenvat Rules, 2002 has to be understood, the Hon'ble Supreme Court in Maruti Suzuki Ltd. vs. Commissioner of Central Excise, Delhi-III reported in 2009 (240) E.L.T. 641 (S.C.), at paragraph Nos.9, 10, 12, 14 and 16 held as hereunder:

"9. Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely :

(i) Specific part

(ii) Inclusive part

(iii) Place of use

10. Coming to the specific part, one finds that the word "input" is defined to mean all goods, except light diesel oil, high speed diesel oil and petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final *product or not. The crucial requirement, therefore, is that all goods "used in or in relation to the manufacture" of final products qualify as "input". This presupposes that the element of "manufacture" must be present.*

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12. In the case of Union Carbide India Ltd. v. Collector of Central Excise, Calcutta-1 reported in 1996 (86) E.L.T. 613 (Tri) a larger Bench of CEGAT observed that a wide impact of the expression "used in relation to manufacture" must be allowed its natural play. Inputs (raw materials) used in the entire process of conversion into finished products or any other process (like electricity generation) which is integrally connected with the ultimate production of final product has to fall within the above expression. It was observed that the purpose was to widen the scope, ambit and content of "inputs". According to the Special Bench of CEGAT, the purpose behind the above expression is to widen the ambit of the definition so as to attract all goods, which do not enter directly or indirectly into the finished product, but are used in any activity concerned with or pertaining to the manufacture of the finished product.

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14. In the case of Collector of Central Excise, New Delhi v. M/s.Ballarpur Industries Ltd. reported in (1989) 4 SCC 566 the difference between the *expression "used in the manufacture" and "used as input (raw material)" was highlighted. In that judgment, it was held that undoubtedly the said two expressions are distinct and separate, but, when an ancillary process (like electricity generation) aids the making of an end product, then, the ancillary process gets integrally connected to the end product. In the said judgment, this court applied what is called as "the dependence test". It may, however, be noted that in the definition of "input" the expression "used in or in relation to the manufacture of final product" is not a standalone item. It has to be read in entirety and when so read id reads as "used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not". These words "whether directly or indirectly" and "whether contained in the final product or not" indicates the intention of the legislature. What the legislature intends to say is that even if the use of input (like electricity) in the manufacturing process is not direct but indurect still such an item would stand covered by the definition of "input". In the past, there was a controversy as to what is the meaning of the word "input", conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of input, the Legislature has clarified that even if an item is not contained in the final product still it would be* *classifiable as an "input" under the above definition. In other words, it has been clarified by the definition of "input" that the following considerations will not relevant:*

(a) use of input in the manufacturing process be it direct or indirect;

(b) even if the input is not contained in the final product, it would still be covered by the definition.

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input". Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relatino to manufacture of the final product. The intention of the Legislature is that inputs falling in *the inclusive part must have nexus with the manufacture of the final product.*

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16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per so also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for *credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."*

17. Attention of this court is also invited to another decision of the Madras High Court in ***Commissioner of Central Excise, Trichy vs. CESTAT, Chennai*** reported in ***2014 (309) E.L.T. 71 (Mad.),*** wherein, the department has challenged the decision of the Tribunal, allowing credit on steel wire, rope, MS welding electrodes, etc. Taking note of the decision in ***Commissioner of Central Excise v. Madras Aluminium Co. Ltd.*** reported in ***2008 (226) E.L.T. 342 (Mad.)***, at paragraph 16, the Hon'ble Division Bench of this court, held hereunder:

"16. As far as item Nos.(v), (vi), (vii), (viii), (ix) and (x) MS Plates various sizes, Oxygen Gas, Acetylene Gas, MS welding electrodes, Aluminium Welding wire and CI Welding wire are concerned, these inputs were under the consideration of Tribunal's decision in the assessee's own case reported in 2001 (136) E.L.T. 182 (Tribunal-Chennai) (MALCO v. CCE, Coimbatore) which is subsequently confirmed by the Division Bench of this Court in the case reported in 2008 (226) E.L.T. 342 (Madras), CCE v. Madras Aluminium Ltd. Therefore, these items are also eligible for credit."

18. As rightly contended by Mr.N.Prasad, learned counsel for the appellant, the term 'inputs', is wide enough to cover all the goods, except the goods specifically mentioned in the definition, inputs used in or in relation to the manufacture of the final product, whether directly or indirectly or whether it contained the final products or not. Judicial pronouncements extracted supra, makes it abundantly clear that welding electrodes used for repair and maintenance of machineries, in relation to manufacture of the final product, namely sugar, is eligible for Cenvat credit.

19. Though Mr.A.P.Srinivas, learned Senior Standing Counsel for Central Excise made submissions to sustain the order of the Tribunal impugned before us, in the light of the discussion and

decisions extracted, directly applicable to the case on hand, we are not inclined to accept the same.

20. The substantial question of law raised in the appeal *Whether the Hon'ble Customs, Excise and Service Tax Appellate Tribunal committed an error or law in disallowing the Cenvat Credit on welding rods/electrodes used by the Appellants when, in fact, the same were used in and or in relation to manufacture of the final produce as required by Rule 2(k) of the Cenvat Credit Rules, 2004?, is* answered, in the affirmative, in favour of the appellant/assessee.

In the result, the Civil Miscellaneous Appeal is allowed. Impugned Final Order No.939/09 dated 07.08.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, is set aside. However, there shall be no order as to cost.

(S.M.K., J.) (D.K.K., J.)
15.07.2016

Index : Yes
Internet : Yes

To
The Customs, Excise and Service Tax Appellate
Tribunal, South Zonal Bench, Chennai - 600 006.

S.MANIKUMAR, J.
AND
D.KRISHNAKUMAR, J.
asr

C.M.A.No.3224 of 2009

15.07.2016