CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12939 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-290-2018-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

M/s Unique Chemicals ....**Appellant**
Plot No. 5, GIDC, Panoli, Ta-Ankleshwar,
Bharuch, Gujarat.

VERSUS

C.C.E. & S.T.-Vadodara-ii .....**Respondent**
1st Floor, Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

APPEARANCE

Sh. Yogesh B. Desai, Advocate for the Appellant
Sh. T.K. Sikdar, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. A/ 11446 /2019

DATE OF HEARING: 31.07.2019
DATE OF DECISION: 31.07.2019

RAMESH NAIR

The issue involved is that whether the appellant is entitled for the cenvat credit in respect of Repair and Maintenance, Erection, Installation and Commissioning and Consulting Engineering Service used for expansion of the production capacity.

2. Sh. Yogesh B. Desai Ld. Counsel for the appellant submits that the cenvat credit was denied on the ground that the "setting up of the factory" has been removed from the inclusion clause of definition, thereafter, the cenvat credit on service in relation of setting up of the factory is not admissible. He submits that all the services were used for expansion of the existing production capacity, therefore, it is not for new setting up of the factory. Moreover, even after removal of the term "setting up" service, from the inclusion category as provided vide Notification No. 3/2011-CE (NT) dated 01.03.2011 w.e.f. 01.04.2011, the credit is admissible. He further submits that since the services are used directly or indirectly in or relation to the manufacture of final

product as the expansion of the existing production capacity is in relation to manufacture of final product. He placed reliance on the following judgments in support of his submission:

- Shiruguppi Sugar Works Ltd 2019-TIOL-821-CESTAT-BANG
- Nuvoco Vistas Corporation Ltd 2019 (2) TMI 1292-CESTAT-Chandigarh
- Idea Cellular Ltd 2016-TIOL-1198-CESTAT-MUM
- Manaksia Coated Metals And Industries Ltd 2018-TIOL-1100-CESTAT-AHM
- BMM Ispat Ltd 2019 (5) TMI 587-CESTAT-Bangalore

3. Sh. T.K. Sikdar Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the ground for denial of the cenvat credit by the lower authority is that since "setting up" has been removed from the inclusion clause of definition, the credit in respect of setting up of the factory is not admissible. As per the facts of the present case, the factory is already existing and running its production, it is only expansion of existing production capacity, therefore, it cannot be said that there is setting up of the new factory. Moreover, the services were not excluded in the exclusion category as brought in definition of input service w.e.f. 01.04.2011. Therefore, all the services were used in or relation to the manufacture of final product as the expanded production capacity is only for manufacture of final product. The judgment cited by the appellant supporting their case, accordingly, I do not agree with the lower authority, hence, the impugned order is set aside. Appeal is allowed.

(Dictated & pronounced in the open court*)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

Seema