

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 41 of 2009

(Arising out of OIA-290/2008/COMMR-A-/RAJ passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

M/s. Sanghi Industries Ltd

Clinker Unit, Village-sanghipuram,
Po-motiber, Taluka-abdasa,
Kutch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T., Rajkot

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

.....Respondent

WITH

- 1. Excise Appeal No. 42 of 2009 (Sanghi Industries Ltd)**
- 2. Excise Appeal No. 45 of 2009 (C.C.E. & S.T., Rajkot)**
- 3. Excise Appeal No. 650 of 2008 (Sanghi Industries Limited)**
- 4. Excise Appeal No. 821 of 2009 (Sanghi Industries Limited)**
- 5. Excise Appeal No. 822 of 2009 (Sanghi Industries Limited)**
- 6. Excise Appeal No. 853 of 2009 (Sanghi Industries Ltd)**
- 7. Excise Appeal No. 999 of 2007 (Sanghi Industrial Clinker Mill)**
- 8. Excise Appeal No. 930 of 2011 (Sanghi Industries Ltd)**

(Arising out of OIA-281/2008/COMMR-A-/RAJ passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIA-281/2008/COMMR-A-/RAJ passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

(Arising out of OIO-15-16-COMMR-2008 passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

(Arising out of OIO-12-COMMISSIONER-2009-RAJKOT- passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

(Arising out OIO-13-COMMISSIONER-2009-RAJKOT- passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

(Arising out of OIO-16-COMMISSIONER-2009-RAJKOT- passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

(Arising out of OIA-110/2007/COMMR-A-/RAJ passed by Commissioner of Central Excise-RAJKOT)

Arising out of OIO-34-35/COMMR/2011 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

APPEARANCE:

Shri. Anand Nainawati and Shri. Jigar Shah, Advocate for the Appellant
Shri. T.G. Rathod, Joint Commissioner (AR) for the Respondent

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

Final Order No. A/ 12344-12352 /2019

DATE OF HEARING: 13.08.2019
DATE OF DECISION: 12.12.2019

RAMESH NAIR

The present appeal Nos. E/41-42& 45 of 2009, E/650/2008, E/821-822/2009, E/853/2009, E/930/2011 and E/999/2007 involve common issue of denial of cenvat credit of services and thus are being taken up together for disposal. In case of appeal Nos. E/853/2009, E/821/2009, E/42/2009, E/930/2011, E/999/2007, E/930/2011, E/650/08 the cenvat credit stands denied on following grounds :

- (i) that the Appellant clinker unit is not eligible to avail credit of input services as the invoices were billed in name of Grinding unit; they availed credit so as to maximise the refund of excise duty in terms of Notification No. 39/2001 – CE dt. 31.07.2001 availed by the grinding unit;
- (ii) cenvat credit of port service is not available as the Appellant has not explained whether the said input service is in respect of ship or goods. The cenvat credit cannot be availed in respect of final products of grinding unit. The credit availed on port service, wharfage and dredging services is not available as the services was not only used for export of clinker but export of cement by grinding unit and that port is not a registered premises of Appellant ;
- (iii) credit was availed on Misc Services and the nature of service is not known; cenvat credit of manpower service in respect of Jetty is not available as it has got no connection with the manufacture of final product.
- (iv) credit on telephone and mobile services is not admissible as it cannot be established that the mobile phone are used for manufacturing operations conducted by clinker unit and the landline phones installed in head office and other places are used in manufacture and clearance of final products of clinker unit;

- (v) credit on repair and maintenance services received by the appellant would not be admissible
- (vi) cenvat credit on GTA services received for transportation of clinker from clinker unit to grinding unit is not admissible as it is outward transportation and that tax was paid on abated value of 25% under benefit of Notification No. 32/2004 – ST dt. 31.12.2004 hence credit is not available.
- (vii) credit on dredging service is not admissible as it has no connection with manufacture of final products;
- (viii) credit of manpower services, operation and maintenance services received for Power Plant is not available as power plant is situated outside the factory premises and the power so produced is supplied not only to clinker unit but also to grinding unit and residential colonies of Appellant and office.
- (ix) Credit on services of Inspection of cement, sampling and analysis work for cement, clinker cement testing, cement packing loading work, cement stevedoring and cargo handling work, cement vessel operation at Kandla and wharfage and DLB Charges, Advertisement of cement in print media are related to grinding unit and hence the credit is not available to Appellant.
- (x) the Appellant has availed credit in respect of service tax paid by the service provider which is more than prescribed 10.2% for an amount of Rs. 5,66,671/-.

2. The appeal No. E/45/2009 has been filed by revenue towards disallowing credit of Rs. 16,29,309/- on dredging services.

3. Shri. Anand Nainawati & Shri. Jigar Shah, Learned Counsel appearing for the Appellant submits that at the relevant time the Appellant had two units namely clinker unit and grinding unit. The clinker unit clears the clinker on payment of duty to grinding unit which in turn manufactures cement from clinker. The grinding unit were availing exemption under notification No. 39/2001 – EC Dated 31.07.2001 under which they were eligible for refund of duty paid through PLA. The central excise authorities raised dispute about the eligibility of appellant for said exemption and therefore the appellant surrendered the benefit of said exemption and the refund amount which they received as benefit under said exemption was also deposited in cash. During the relevant period the cenvat credit of service tax paid on services was availed by them in clinker unit. The same was denied to them on ground

that the services were not eligible input service and were pertaining to grinding unit. He submits that the services in question are common in both units. It is settled by judicial precedents that the services are input services. He relies upon the provisions of Rule 7 of Cenvat Credit Rules, 2004 on manner of distribution of credit by input service distributor and submits that the cenvat credit of input services can be distributed to any of the units of the manufacturer. He relies upon Hon'ble High Court judgment in case of ECOF Industries Pvt. Ltd. 2013 (29) STR 107 (Kar). He also submits that during the impugned period though they were not registered as Input Service Distributor but the substantial benefit cannot be denied on procedural lapse. He places reliance on Hon'ble High Court judgment in case of Dashion Ltd. 2016 (41) STR 884 (GUJ) and Tribunal's order in case of Sun Pharma Medication Pvt. Ltd. 2016 (11) TMI 477 -CESTAT. He further submits that even on same grounds the proceedings against the Appellant were dropped by the Additional Commissioner considering the fact that subsequently the Appellant got registered themselves as Input Service Distributors w.e.f 21.02.2008. The adjudicating authority held that the cenvat credit was available even though relatable to grinding unit and it can be distributed to clinker unit in terms of Rule 7.

4. As regard admissibility of input services for credit, he submits that all the services on which credit was availed by them are input services. He relies upon judgments in case of Reliance Industries Ltd. 2017 (3) TMI 835 CESTAT as approved by Hon'ble Gujarat High Court in Tax appeal No. 630 of 2017. He further submits that entire quantity of clinker manufactured by the clinker unit is either exported or supplied to grinding unit. The wharfage and telephone services are common for both units. The issue is covered by Hon'ble High Court judgment in case of Coca Cola India Pvt. Ltd. 2009 (15) STR 657 (BOM) that credit of advertisement services cannot be denied.

4.1 He also submits that the clinker unit has actually performed as job worker of Grinding division and the issue of credit eligibility is settled in their own case by the tribunal's order as reported 2014 (302) ELT 564 (TRI) wherein it was held that the electricity supplied to clinker unit can be taken as supply to job worker. The Id. Counsel also submits that once entire benefit of notification No. 39/2001 - CE dt. 01.03.2001 was surrendered, the distribution of credit to clinker unit cannot be denied. He relies upon Tribunal order in case of Pioma Industries 1995 (77) ELT 424 (TRI) and Orissa Cement Ltd. Vs. State of Orissa AIR 1991 SC 1676. The whole

exercise is revenue neutral as the cenvat credit of input service is made eligible on grinding unit than in view of the legislative changes the entire amount is refundable in cash. Also that the goods manufactured during the period where benefit of notification No. 39/2001 – CE was availed were not exempted goods as the duty was payable and the refund was only to extent of cash deposit of duty.

5. Shri. T.G. Rathod, Learned Joint Commissioner (AR) appearing for the revenue submits that the services were not exclusively used in Appellant's unit and hence the credit is not available. In respect of wharfage services, it includes port charges for Stevedoring. The description in respect of port charges was shown as "wharfage charges and port charges for cement vessel". The services are not in respect of clinker. The work order is also for handling bagged cement at Kandla port and hence the services are not used by the Appellant. The advertisement services were for cement and not clinker. The dredging service has done for providing adequate draught for ships and other vessels and to maintain shipping channel which is not in relation to manufacture of clinker. The services of mobile and telephone are not established to be in relation to landline phone installed in clinker unit. The mobile phone is in possession of individual working at Ahmedabad office. Thus they are not eligible to avail credit. He relies upon judgment in case of M/s Sintex Ind. Ltd. 2013 (287) ELT 261 (GUJ).

5.1 He further submits that in terms of Rule 7 of Cenvat Credit rules, 2004, the credit cannot be distributed where exempted goods are manufactured. In the present case the cement unit is working under notification No. 39/2001 – CE dt. 31.07.2001 as exempted unit and hence the goods manufactured by Cement unit are exempted. Thus the services utilized by the cement unit cannot be distributed. He relies upon judgment in case of ECOF Industries Pvt. Ltd. 2011 (271) ELT 58 (KAR). That even otherwise also the Appellant have got their Ahmedabad office registered as Input service Distributor w.e.f 21.02.2008 only and prior to this period no credit can be distributed. The invoices were not issued in name of Appellant and hence credit is not available as held in case of Automotive Coaches & Components Ltd. 2015 – TIOL – 2101 – HC – MAD-CX.

6. Heard both the sides and perused the case records. The credit on different service has been denied to the Appellant on the ground that the

services were availed by the grinding unit which was availing benefit of exemption notification No. 39/2001 – CE dt. 31.07.2001 and which made the goods exempted and hence no credit is available. Further that the services being availed by the grinding unit, the Appellant clinker unit is not eligible for cenvat credit. The impugned orders also deny credit on ground that the services are not eligible as input service, since not used in relation to manufacture by clinker unit.

6.1 We are not in agreement with the analogy that credit is not available as the goods during the material time were cleared under the exemption Notification No. 39/2001 – CE dt.31.07.2001. Once the exemption benefit stands surrendered by the Appellant they are eligible for the benefits available to them. Even otherwise we find that there is no bar to avail cenvat credit on input and input services if the goods are being cleared under the exemption supra. Further the exemption benefit was only to the extent of refund of duty paid in cash and hence there is no reason to label the goods as exempted goods. The units availing the exemption in question were very much eligible to avail credit. However once the exemption benefit stands surrendered *Ab-Initio*, the unit very well become eligible for the credit. Obviously in such case the input credit was available to be distributed in terms of Rule 7 of Cenvat Credit Rules, 2004 which at the relevant time did not provide for distribution of credit on pro-rata basis. The credit could be distributed to any of the units of the manufacturer and there was no bar on distribution. Our views are based upon judgment in case of ECOF Industries Pvt. Ltd. 2013 (29) STR 107 (Kar) and 2011 (23) STR 337 (Kar) wherein the Hon'ble Court held as under :

"4. The assessee had availed the Service tax credit based on the invoices issued by the Chennai office indicating that the Service tax are taken by their unit at Malur. That the Service tax paid by the Chennai unit pertains to advertisement of their product 'Sabena Dish Wash Bar' which was manufactured by their Cuttack Unit and not by the unit at Malur. Therefore, the assessee was dealing with the very same product. Rule 7 of the Cenvat Credit Rules governs procedure/manner of distribution of credit by input service distributor by imposing two conditions therein, which are as follows :

"a. Credit distributed under the invoice of ISD does not exceed the amount of Service tax paid.

b. Credit of Service exclusively used for exempted goods or exempt service is not distributed."

5. Therefore, the assessee is entitled to distribute the Cenvat credit on the input services on its manufacturing unit or other

units providing the output services. The view taken in the order in appeal that the distribution of credit is for the advertisement of the product, which is not at all manufactured at Malur Unit, therefore, cannot be accepted. The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is manufactured is therefore not the mandate of Rule 7 of the Cenvat Credit Rules."

6.2 Coming to the issue that the Appellant at the relevant point of time were not registered as "Input Service Distributor", we are of the view that the registration requirement was only procedural and could not be made ground to deny credit distribution. Even otherwise also the Appellant unit has taken registration for input service distribution w.e.f 21.02.2008. In case of Sun Pharma Medication Pvt. Ltd. 2016 (11) TMI 477 CESTAT, the Tribunal has allowed the appeal filed by the assessee. The Hon'ble Gujarat High Court in case of Doshion Ltd. 2016 (41) STR 884 (GUJ) also allowed the cenvat credit by holding as under:

"5. Rule 7 pertains to manner of distribution of credit by input service distributor. At the relevant time, this Rule 7 permitted input service distributor to distribute Cenvat credit in respect of service tax paid on the input service to its manufacturing units or units providing output service, subject to the two conditions, viz. :-

"(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service [used by one or more units] exclusively engaged in manufacture of exempted goods or providing of exempted service shall not be distributed;"

5.1 *It was only later on that additional condition by way of Clause (d) to Rule 7 was added, which reads as under : -*

"credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period."

6. *The first objection of the Department therefore that the credit from one unit was utilized for the purpose of duty liability of other unit without pro rata distribution by the input service distributor therefore would not survive in view of no previous restriction of this nature flowing from Rule 7 of the Rules of 2004. In fact, the Tribunal has seen entire situation as a Revenue neutral, since as pointed out by the assessee, it had availed only 20% of the credit for payment of service tax and the balance was paid in cash."*

6.3 Same views were taken by the Tribunal in case of Maruti Suzuki India Ltd. 2015 – TIOL – 2040 – CESTAT-DEL. We also take note of the fact that even for the subsequent period the Appellant unit was allowed credit by the revenue in adjudication proceedings and the revenue did not challenged said

findings. Further when the grinding unit has surrendered the benefit under Notification No. 39/2001 - CE, there is no reason to deny credit to the Appellant unit in terms of Rule 7 of Cenvat Credit rules, 2004. Our views are also based upon judgment passed by Hon'ble Supreme Court in case of Orissa Cement Ltd. Vs. State of Orissa AIR 1991 SC 1676 wherein the Hon'ble Apex Court held as under :

"70. In our view, we need not enter into a discussion on the principles of prospective validation enunciated by at least some of the Judges in Golaknath (supra) as the direction in 'India Cement can be supported on another well settled principle applicable in the area of the writ jurisdiction of Courts. We are inclined to accept the view urged on behalf of the State that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier. The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the Court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that it is open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Many situations of this type arise in actual practice. For instance, there are cases where a Court comes to the conclusion that the termination of the services of an employee is invalid, yet it refrains from giving him benefit of "reinstatement" (i.e. continuity in service) on "back wages". In such cases, the direction of the Court does result in a person being denied the benefits that should flow to him as a logical consequence of a declaration in his favour. It may be said that, in such a case, the Court's direction does not violate any fundamental right as happens in a case like this where an "illegal" exaction is sought to be retained by the State. But even in the latter type of cases relief has not been considered automatic. One of the commonest issues that arose in the context of the situation we are concerned with is where a person affected by an illegal exaction files an application for refund under the provisions of the relevant statute or files a suit to recover the taxes as paid under a mistake of law. In such a case, the Court can grant relief only to the extent permissible under the relevant rules of limitation. Even if he files an application for refund or a suit for recovery of the taxes paid for several years, the relief will be limited only to the period in regard to which the application or suit is not barred by limitation. If even this instance is sought to be distinguished as a case where the Court's hands are tied by limitations inherent in the form or forum in which the relief is sought, let us consider the very case where a petitioner seeks relief against an illegal exaction in a writ petition filed under Article [226](#). In this situation, the question has often arisen whether a petitioner's prayer for refund of taxes collected over an indefinite period of years should be granted once the levy is found to be illegal. To answer the question in the affirmative would result in discrimination between persons based on their choice of the forum for relief, a classification which, prima facie is too fragile to be considered a

relevant criterion for the resulting discrimination. This is one of the reasons why there has been an understandable hesitation on the part of Courts in answering the above question in the affirmative."

6.4 Similarly in case of National Engineering Ind. Ltd. 2015 – TIOL -1976-CESTAT-DEL and ONGC Ltd. 2015 – TIOL-1584-CESTAT-MUM, the tribunal has held that cenvat credit cannot be denied even in absence of head office as Input service Distributor.

6.5 Coming to the dispute as to whether the impugned services would qualify for input credit, we find that the credit has been availed on Advertisement, C & F Agent, Channel subscription, Dealer Commission, Dredging, GTA, Lease Line Rent, Manpower supply, Mobile & Telephone, Operation and Maintenance, Port Service, Power Plant, Repair and Maintenance, Technical Testing and Analysis, Travel Agency, Wharfage, Water treatment Chemical. We find that the issue is no more res-integra in the light of Hon'ble Apex Court judgment in case of Maruti Suzuki Ltd. 2009 (240) ELT 641 (SC) and Hon'ble High Court judgment in case of Ultratech Cement Ltd. 2010 (20) STR 577 (BOM) and M/s Coca Cola India Pvt. Ltd. 2009 (15) STR 657 (Bom.) wherein it has been held that all activity related to business are covered under the definition of Input Service. There is no dispute about the fact that all the impugned services have been used for business activity of Appellant and hence, we do not find any reason to deny credit. Our views are based upon Tribunal's order in case of Reliance Industries Ltd. 2016 (45) STR 383, M/s Cadila healthcare Ltd. 2013 (30) STR 3 (GUJ.), Parth Poly Wooven Pvt. Ltd. 2012 (25) STR 4 (GUJ), National Steel & Agro Industries Ltd. 2014 (36) STR 805 (TRI) and Castrol India Ltd. 2013 (30) STR 214 (TRI), STR. In Appellant's own case as reported in 2019 (2) TMI 1488 – CESTAT AHMEDABAD the credit on outward transportation of GTA Services was allowed and we do not find any reason to deviate from the said judgment in present case also. Further even the Tribunal Reference Bench in case of Parry Engineering & Electronics P. Ltd. Vs. CCE Order no. 344-353/2015 dt. 29.07.2015 has held that the cenvat credit is available in respect of services received for Wind Mill installed outside the factory. Similarly in present case even if the power plant, port services and other related services are rendered outside factory premises, but the fact remains that the same are related with business activity of Appellant and hence eligible for credit. We find that the Appellant in relation to power supplied to

residential colony has already reversed the cenvat credit proportionate to such power supply which we deem as sufficient compliance with the Cenvat Credit rules and hence there is no reason to deny credit of remaining amount. We also find that in respect of each service credit stands allowed in following judgments:

Sn.	Description of service	Judgments
(i)	Advertisement Services	Coca Cola India Pvt. Ltd. 2009 (15) STR 657 (Bom.),
(ii)	Port Services, C & F Agent Service for clearing and export of goods,	DYNAMIC INDUSTRIES LTD. 2014 (307) E.L.T. 15 (Guj.) Adani Pharmachem P. Ltd. 2008 (232) ELT 804 (TRI)
(iii)	Clearing services of goods from Dumpyard	JSW STEEL LTD. 2012 (281) E.L.T. 582 (Tri.) CADILA HEALTHCARE LTD. 2010 (17) S.T.R. 134 (Tri.)
(iv)	Dealer's Commission	INDIAN OIL CORPORATION LTD. 2017 (358) E.L.T. 1111 (Tri. - Chennai)
	GTA Services towards export and outward transportation	Sanghi Industries Ltd. 2019 (2) TMI 1488 – Cest-Ahm. Ambuja Cements Ltd. 2009 (14) STR 3 (P & H)
	Mobile and Telephone Services, Lease line rent	EXCEL CROP CARE LTD. 2008 (12) S.T.R. 436 (Guj.) Ultratech Cement 2010 (20) STR 589 (Bom.)
	Manpower supply Operation, Repair and Maintenance of Power Plant	ENDURANCE TECHNOLOGY PVT. LTD. 2017 (52) S.T.R. 361 (Bom.) Ultratech Cement 2011 (21) STR 297 (TRI)
	Technical Testing and Analysis	KRITI INDUSTRIES (I) LTD. 2017 (47) S.T.R. 81 (Tri. - Del.)
	Travel Agency Service	DOSHION LTD. 2013 (30) S.T.R. 240 (Tri. - Ahmd.)
	Water Treatment Chemical used for making sea water usable	JAYPEE BELA PLANT 2010 (259) E.L.T. 114 (Tri. - Del.) Vikram Cement Ltd 2006 (194) ELT 3 (SC)

6.6 In respect of dredging services we find that the same was in respect of jetty in the factory premises and is used for transportation as well as import and export of goods. Since the services are related with the business of the company, the Appellant are eligible to avail credit of the same. As regard denial of credit on excess tax charged by the service provider, we find that the assessment at the end of the service provider has not been challenged. The Appellant has paid the amount of service tax charged to them. In such case, the credit cannot be denied to them. We thus are of the view that the Appellant are eligible for availing cenvat credit on impugned services, Resultantly we allow all the appeals filed by M/s Sanghi Industries Ltd in the above terms with consequential reliefs, if any.

7. As regard the Appeal No. E/45/2009 filed by the revenue on account of disallowing credit on dredging service, the amount involved is only 16.29 lakhs and being below monetary limit the appeal is dismissed on Governments Litigation Policy as per Circular No. vide F. No. 390/Misc/116/2017-JC dated 22.08.2019.

8. All the appeals are disposed off as above.

(Pronounced in the open court on 12.12.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)