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

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.903 of 2011**

(Arising out of OIO-29-32-COMMISSIONER-2011 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

**Nayara Energy Limited** **........Appellant**
P.O.Box 24, Head Po-Khabhalia,
Jamnagar, Gujarat

*VERSUS*

**C.C.E. & S.T.-Rajkot** **.......Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

**APPEARANCE:**
Shri Aquwal Sheeraji, Ms. Dimple Gohil & Shri Roshil Nichani, Advocates for the Appellant
Shri Sameer Chitkara, Additional Commissioner (AR) for the Respondent

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

**Final Order No. A/ 10084 /2020**

DATE OF HEARING: 16.09.2019
DATE OF DECISION: 14.01.2020

**RAMESH NAIR**

The issue involved in the present case is that whether the appellants are entitled for cenvat credit on following inputs/ capital goods:

- Welding Electrodes,
- Welding filler wire,
- Materials used for railway line,
- M.S. Gratings/G.I Coated Gratings,
- Construction chemicals.

2. Shri. Aqeel Sheerazi, Learned Counsel along with Shri. Roshil Nichani, Advocate and Ms. Dimple Gohil, Advocate appearing on behalf of the appellant submits that the appellant's unit is an integrated huge petroleum plant engaged in manufacture of:

- Motor spirit;
- High Speed diesel;
- Furnace oil;
- Superior kerosene;

- LPG etc.

He submits that all the items on which cenvat credit was disputed are used either as inputs or capital goods in or in relation to the manufacturer of final product in their manufacturing unit. He submits that the Welding Electrodes is used as capital goods for the purpose of repairs and maintenance of plant and machinery. The said plant and machinery is undisputedly used in the manufacture of final product. Therefore the welding electrodes are used in relation to manufacture of final product, therefore, credit is admissible. In support he placed reliance on the following judgments:

- Ramala Sahkari Chini Mills Ltd. v CC Ex.-2010 (260) ELT 321 (S.C.)
- Ambuja Cements Eastern Ltd. CC. Ex., Raipur; 2010 (256) E.L.T. 690 (Chattisgarh)
- Hindustan Zinc Ltd. v UOI; 2008 (228) E.L.T. 517 (Raj.)
- Essar Oil Ltd. Vs CCE & ST Rajkot Order No. A/14000/2017 dated 20.12.2017-SMC
- Vikram Cement v CCE, Indore 2005 (187) E.L.T. 145 (S.C.)

2.1 As regard cenvat credit on material used for laying of Rail Line, he submits that the credit was denied only on the ground that such Rail Line was situated outside the factory premises. He submits that even though the Railway line is outside the factory but it is exclusively used for handing of material used in the manufacture of final product in the appellants’ factory. In support he placed reliance on the following judgments:

- Tata Steel Ltd. v CCE, Jamshedpur; 2016 (335) E.L.T. 303 (Tri.-Kolkata)
- Aditya Cement Vs Union Of India (HC) Rajsthan. 2008 (221) ELT 362 Raj [*Para 20]
- Jayaswal Neco Ltd. V CCE, Raipur 2015 (319) E.L.T. 247 (S.C.)
- Essar Oil Ltd. Vs CCE & ST Rajkot Order No. A/14000/2017 dated 20.12.2017-SMC

2.2 As regard the material namely M.S. Gratings the same is used as an essential accessory for supporting and holding and for approaching or reaching out plants/ processing units of refinery. It is a technological necessity without which the processing unit cannot perform. He submits that the capital goods used for fabricating structural support to plant and machinery which is used for manufacturing of excisable goods eligible for cenvat credit. In this regard, he placed reliance on the following judgments:

- Rajsthan Spinning & Weaving Mills 2010 (255) ELT 481 (SC)

- CCC & CEx, Vishakhapatnam-II Vs A.P.P Mills Ltd. 2013 (291) ELT 585 (Tri-Bang)
- Thiru Arooran Sugars v. CESTAT, Chennai – 2017 (355) E.L.T. 373 (Mad.)
- Mundra Ports & Special Economic Zone Ltd. v. Commissioner-2015 (39) S.T.R. 726 (Guj.)
- Essar Oil Ltd. Vs CCE & ST Rajkot Order No. A/14000/2017 dated 20.12.2017-SMC

- Larger Bench Decision of Tribunal on Banco Products (India) Ltd. Vs Commissioner; 2009 (235) ELT 636 (Tri-LB).

2.3 As regard, construction material he submits that the same is used in the maintenance of cooling towers in the refinery because of special characteristic of the construction chemicals, like high bonding characteristic, high strength, non-shrinking nature, moisture tolerant and resistance to chemical attack, it is essential for particularly petroleum industry. He further submits that certain construction materials are also used at the base of pumps, compressors, machines base plates, structural filling of holes and cavities in concrete, industrial equipment and machinery subject to static or dynamic forces and in the equipment to prevent chemical and acid spillage in the refinery. Therefore, as per the said used it is directly used in the manufacture of final products He placed reliance on the following judgments:

- Collector of Central Excise Vs. Solaries Chemicals Ltd., [2007 (214) ELT 481 (S.C.)
- Essar Steel Ltd. Order no. A/12600/2018 dated 15.11.2018.
- CCE & ST. Vs Vadinar Oil Terminal Ltd Order No. A/ 11451/2018 Dated 20.03.2018.

He further submits that in the appellants own case this Tribunal has allowed the cenvat credit in respect of identical goods involved in the present case which attained finality; therefore no different view can be taken.

2.4 He also submits that penalty and interest are also not sustainable for the reason that there is no mens rea on the part of the appellant. Penalty and interest can be imposed only in case of wrongful availment of credit with malafide intention.

3. On the other hand Shri Samir Chitkara Leanred, Additional commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He also placed reliance on the following judgment by supporting the impugned order.

- 2008 (229) ELT A127 (SC) – Steel Authority of India Ltd Vs. Commissioner
- 2008 (222) ELT 233 (Tri-Kol) – SAIL Vs. CCE, Ranchi
- 2012 (278) ELT 167 (AP) – Sree Rayalaseema Hi-Strength Hypo Ltd. Vs. CCE, Tirupati
- 2010 (260) ELT 321 (SC) – Ramala Sahkari Chini Mills Ltd Vs. CCE, Meerut-I
- 2014 (313) ELT 768 (Tri-Del) – Kisan Sahkari Chinni Mills Ltd Vs. CCE, Meerut-I

4. We have heard both the sides and perused the record. We find that all the items were used exclusively in relation to manufacture of final product in the appellants manufacturing unit. The welding electrode and welding filler wire were used for repair and maintenance of plant and machinery which is necessity to run the production of excisable goods. Therefore, the same is used even if not directly but indirectly indeed in relation to manufacture of final product. As regard material used for railway line the only ground for denial of credit by the adjudicating authority is that the railway line is located outside the factory premises. In the present case railway line installed partly within the factory and outside the factory is exclusively used for handing of material which is used in the manufacture of final product. We, following the judgment of Hon'ble Supreme Court in the case of Vikram Cement V. Commissioner- 2006 (197) E.L.T. 145 (S.C.), are of the view that credit on material used for laying rail line is admissible. As regard material namely M.S. Gratings/ G.I. Coated Gratings. We find that the same is used as accessory for supporting and holding for approaching how to plant/ processing units of refinery. The platforms for approaching or reaching out the plant is part and parcel of the entire plant and machinery particularly in large scale manufacturing unit without which the operation of plant is not possible. Therefore, the M.S. Gratings used as accessory in such structure is used in relation to the manufacture of final product. The construction chemical was used for the maintenance of cooling towers, pumps, compressors and machine base plates etc. is used for maintenance and operation of the plant, therefore, the same can be classified as accessory for plant and machinery. Hence, being essential chemicals for running plant is admissible inputs and eligible for Cenvat Credit. We find that in respect of all the items in question, this tribunal/High Court/Supreme Court has given judgment in favour of the assessee. More particularly in the appellants own case this tribunal's vide order No. A/14000/2017 dated 20.12.2017 considered the eligibility of the Cenvat Credit on the identical inputs/ capital

goods and the appeal was allowed. In these circumstances the law is settled in favour of the appellant. We, therefore of the considered view that the appellants are entitled for Cenvat Credit in respect of the inputs/ capital goods in question.

5. Therefore, the impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 14.01.2020)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Kamakshi