

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11732 of 2014- DB

(Arising out of OIO-SUR-EXCUS-002-COM-082-084-13-14 dated 31/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Cheminova India Limited

229, 241, 242/p, Gidc Estate,
Panoli, Taluka : Ankleshwar,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-ii

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

.....Respondent

WITH

- **Excise Appeal No. 11733 of 2014- DB (Cheminova India Limited)**
- **Excise Appeal No. 11734 of 2014- DB (Cheminova India Limited)**
- **Excise Appeal No. 10885 of 2015- DB (Cheminova India Limited)**

APPEARANCE:

Shri Mehul jiwani , Advocate for the Appellant

Shri R.K.Agarwal, Superintended (AR) & Shri P. Ganesam Superintended (AR) for the Respondent

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

Final Order No. A/11398-11401/2023

DATE OF HEARING: 20.04.2023/29.05.2023
DATE OF DECISION: 28.06.2023

RAMESH NAIR

The brief facts of the case are that the appellant is engaged in the manufacture of pesticides and insecticides which are falling under chapter 38. For running the factory, the appellant obtained permission from Pollution Control Board under Water (Prevention and Control of pollution Act, 1974) and Air (Prevention and Control of Pollution Act, 1981).

02. The appellant has obtained such permission from Gujarat Pollution Control Board who has given consent letter. This permission lays down certain parameters for discharge of water and gas arise during the manufacture of chemical. As per the consent of pollution control board, the appellant is required to ensure that air and water discharge meets the parameters specified in the permission, to meet such requirements the appellant has availed the service of effluent treatment before discharge of the effluent arises during the manufacture. If the effluent is discharged without being treated then the permission granted by the Gujarat Pollution Control Board to the appellant to manufacture the goods will be cancelled and thereby they will have to stop manufacturing activity. The appellant have availed the cenvat credit in respect of the services received in relation to effluent treatment of the industrial waste.

03. The case of the department is that the said cenvat credit is not admissible to the appellant on the ground that the effluent treatment activity is post manufacture and the same is not used in or in relation to manufacture of final product accordingly, the cenvat credit so availed by the appellant was denied therefore, the present appeals filed by the appellant

04. Shri Mehul Jiwani, learned Chartered Accountant appearing on behalf of the appellant submits that the effluent treatment is mandatorily necessary to carry out the production activity as per the consent given by the Pollution Control Board, if the industrial waste arising during the course of manufacture is not treated in the effluent treatment plant and the treated water is not discharged, the permission can be cancelled and without permission the appellant cannot run the production. It is therefore, the effluent treatment activity is necessary to carry out the uninterrupted production activity of the appellant therefore, the activity is in relation to

manufacture of final product. Accordingly, the cenvat credit is admissible. He placed reliance on the following judgments:-

- M/S KANORIA CHEMICALS & INDUSTRIES LTD. 2015 (7) TMI 970 AHMEDABAD.
- ADROIT PHARMACHEM PRIVATE LIMITED 2022 (1) TMI 59 CESTAT AHMEDABAD
- M/S. WIPRO ENTERPRISES (P) LTD., 2018 (12) TMI 1167 – CESTAT CHENNAI
- ANAR CHEMICALS PVT. LTD. 2011 (24) S.T.R. 32 (TRI. - AHMD.)
- CHEMPLAST SANMAR LTD. 2004 (176) E.L.T. 412 (TRI. - CHENNAI)
- MONARCH CATALYST PVT LTD 2014 (300) ELT 89 (TRI-MUM)
- FERROMATIK MILACRON INDIA LTD 2011 (21) STR 8 (GUJ)
- INDIAN FARMERS FERTILIZERS CO-OPERATIVE LTD 1996 (86) ELT 177 (SC)
- S.C. ENVIO (AGRO) INDIA PVT LTD 2023 (2) TMI 940- CESTAT MUMBAI
- M/S SHREE SAYAN VIBHAG SAHAKARI KHAND UDYOG MANDLI LTD 2018(2) TMI 1094 CESTAT AHMEDABAD
- LOTUS POWER GEAR P. LTD. 2017 (358) E.L.T. 1244 (TRI. BANG.)
- HINDUSTAN ZINC LTD. 2019 (367) E.L.T. 616 (RAJ.)
- TRW STEERING SYSTEM LTD. V. COMMISSIONER 2018 (11) G.S.T.L. J187 (MAD.)]
- GANESAN BUILDERS LTD. 2019 (20) G.S.T.L. 39 (MAD.)
- BOMBAY DYEING AND MANUFACTURING LTD. 2018 (363) E.L.T. 1107 (Tri. - Mumbai)
- STANZEN TOYOTETSU INDIA (P) LTD. 2011 (23) S.T.R. 444 (KAR.)
- MICRO LABS LTD. 2011 (270) E.L.T. 156 (Kar.)
- CONTINENTAL FOUNDATION JT. VENTURE 2007 (216) E.L.T. 177 (S.C.)
- UNIFLEX CABLES LTD 2011(271) E.L.T.161 (S.C.)

05. In Appeal No. E/10885/2015, the Learned Chartered Accountant appearing on 29.5.2023 submits, that the appeals heard on 20/04/2023 being on the same issue. In the appellant's own case. Hence, this appeal be also decided on the basis of argument made in appeal No. E/11732-34/2014 & E/10885/ 2015.

06 Shri Rajesh K. Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. In appeal No. E/10885/2015, Shri, P. Ganesam Learned Superintendent authorized representative appearing for the revenue, also reiterates the finding of the impugned order.

07. We have carefully considered the submissions made by both the sides and perused the records. Since all the appeals are on the same issue though heard on different dates i.e. 20.04.2023 & 29.05.2023, we are deciding all the appeals together. We find that the revenue has denied the cenvat credit on services related to the effluent treatment activity of the waste generated during the course of manufacture of the final product of the appellant. The denial of cenvat credit is on the ground that the effluent treatment activity is post manufacture which has nothing to do with the manufacture of final product of the appellant. We find that even though the effluent treatment is not directly connected with the manufacture of final product of the appellant but as per the pollution control act (supra) the appellant is bound under the law to carry out the effluent treatment of the Industrial waste generated during the course of manufacture of their final product. As per the provision of Pollution Control Act, if the effluent generated in the manufacture is not treated the appellant shall not be liable to run their factory. In this undisputed position, the effluent treatment activity is necessary to carry out the uninterrupted production of the final product in the appellant's factory therefore, it can be conveniently draw the conclusion that the effluent treatment activity is a vital part of overall manufacturing of the final product if this be so then the input services used for effluent treatment are admissible input service. This issue is no longer res-integra as in the various judgments the services related to effluent treatment has been held as admissible input service and cenvat credit was allowed. Some of the judgments are cited below:-

In case of M/S KANORIA CHEMICALS & INDUSTRES LTD (supra) this tribunal dealt with the similar fact and passed the following order:-

4. Heard both the sides and perused the case records. The issue involved in the present appeal is whether certain pollution control services availed by the appellant are eligible to CENVAT Credit under CENVAT Credit Rules 2004 or not. Revenue filed this appeal on the ground that the activities in relation to business have been deleted from the definition of input services during the relevant period. It is observed from the permissions granted by Gujarat Pollution Control Board under The Water (Prevention And Control of Pollution) Act, 1974, that Appellant was required to maintain certain standards of effluent from Appellants factory as a mandatory and statutory necessity. When the activity is required to be done mandatorily under a statutory obligation, then it cannot be said that the same is not in relation to the manufacture of finished goods in Appellants factory. This principle was settled by Honble Supreme Court in the case of Indian Farmers Fertilizer Co-op. Ltd Vs CCE Ahmedabad (supra), where duty free raw material Naptha used for effluent treatment plant, was held to be eligible for exemption. Para 9 of this case law is relevant and is reproduced below:-

"9. That leaves us to consider whether the raw? naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."

5.1 In view of the above observations made by Apex Court, treatment of effluent from a factory has to be considered as essential and integral part of the process of manufacture. The ratio of this judgment will be applicable to the services availed by the Appellant. Accordingly, appeal filed by the Revenue is rejected and cross objection filed by Respondent is disposed of.

In case of M/S. WIPRO ENTERPRISES (P) LTD., 2018 (12) TMI 1167 – CESTAT CHENNAI this tribunal's Chennai Bench on the issue of credit on water treatment given the following finding:-

9. Coming to Water Treatment Service, I find that the same is utilized by the appellant as per the guidelines or norms of PCB according to

*which establishment of Effluent Treatment Plant in the factory is a statutory requirement for the treatment of polluted water. With regard to Garden Maintenance Services too, I find that the same is required as per the guidelines of the PCB for the purpose of a better work atmosphere. Further, I find that this issue stands decided by a plethora of decisions including the decision of the Hon'ble Madras High Court in the case of **Wipro Ltd. Vs. Commissioner of C.Ex., Pondicherry – 2018 (10) G.S.T.L. 172 (Mad.)** wherein the jurisdictional High Court has held that Housekeeping and Landscaping Services were entitled to CENVAT Credit of service tax paid on them. In the light of the discussions made hereinabove, I am of the view that the appellant has rightly availed Credit on Water Treatment Service and Garden Maintenance Service for which reason I set aside the demand raised on this count.*

10. To sum up:

(i) Demand on Rent-a-Cab Service for the period from April 2008 to March 2009 is set aside;

(ii) Demand on Rent-a-Cab Service for the period from December 2011 to October 2012 is upheld with interest thereon;

(iii) The demand raised on Water Treatment Service and Garden Maintenance Service for the period January 2015 to December 2015 is set aside;

11. The appeals are partly allowed on the above terms.

Similarly, in the case of ANAR CHEMICALS PVT. LTD. 2011 (24) S.T.R. 32 (TRI. - AHMD.) this bench of the tribunal on the maintenance service of effluent treatment plant allowed the cenvat credit, the relevant order is as under:-

2. *The Hon'ble Supreme Court in the case of Indian Farmers Fertilizer Cooperative Ltd. referred supra, has held that pollution control aparatus/device used in plant are to be treated as part and parcel of manufacturing process for production of end product. Further, on going through the ratio of law declared in the above judgment, is to the effect that definition of input services is wide and take into its ambit all the activities relating to the functioning of business. Admittedly, the Pollution Control Board requires the appellant to maintain Effluent Treatment Plant upto a certain standard and all the services used by the assessee for maintenance of such standard has to be held as activities relating to business. In the case of Brakes India Ltd. referred supra, it was held that creation and maintenance of garden within the factory premises by treating industrial and domestic sewage water, is mandatory requirement from Pollution Control Board and the man power services used for garden maintenance are required as infrastructure for manufacture and clearance of final product and the credit is admissible in respect of the same. Similarly, in the case of*

Coca Cola India Pvt. Ltd. referred supra, it stand held that the expression "business" is an integrated/continuous activity and not confined or restricted to mere manufacture of production. The activities in relation to business covers all activities related to functioning of business. As such, as long as there is a connection between the services and the manufactured goods, the input credit is admissible.

In view of the above, I hold that the services availed by the appellant in respect of Effluent Treatment Plant are admissible input services and the CENVAT Credit of Rs. 1,01,797/- (Rupees One Lakh, One Thousand, Seven Hundreds and Ninety Seven Only) is admissible to the appellant.

3. *As regards dis-allowance of CENVAT Credit of Rs. 3,50,286/- (Rupees Three Lakhs, Fifty Thousands, Two Hundreds and Eighty Six Only) and of Rs. 56,374/- (Rupees Fifty Six Thousands, Three Hundreds and Seventy Four Only), it is not clear from the impugned order of the Commissioner (Appeals) that as to whether the same is denied on the ground of procedural lapses or on the ground that the duty does not stand deposited by the service provider with the department. It is also seen that the appellate authority has observed that the issue of non-payment of Service Tax by service provider was raised in the Audit. Whether this was the audit of present appellant or of the service provider is not clear. As such, I would like the Commissioner (Appeals) to decide the said issues afresh after taking note of various decisions of the Tribunal relied upon by the appellant before me.*

4. *In view of the above, the demand of Rs. 1,01,797/- (Rupees One Lakh, One Thousand, Seven Hundreds and Ninety Seven Only) along with interest and penalty of identical amount is set aside. In respect of other issues, the matter is remanded to Commissioner (Appeals), for fresh consideration.*

5. *The appeal is disposed off in above manner.*

The similar issue related to effluent treatment plan has been dealt with in detail by the Hon'ble Supreme Court in the case of INDIAN FARMERS FERTLIZERS CO-OPERATIVE LTD 1996 (86) ELT 177 (SC) wherein, the Hon'ble Apex Court expressed the following issue:-

7. *Emphasis was laid, and rightly, by learned counsel for the appellants on the phraseology used in the Exemption Notification. The exemption is made available to such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is "used elsewhere in the manufacture of fertilisers". The water treatment,*

steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end-product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

8. *For our conclusion we draw support from the judgment of this Court in Collector of Central Excise, Calcutta-II v. Eastend Paper Industries Ltd. - [1989 \(43\) E.L.T. 201](#) = 1989 (4) SCC 244, where it was held, "Where any particular process.....is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression in the manufacture of goods". This was a reiteration of the view expressed in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Another - 1965 (1) SCR 900. It was there held, "The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production". In Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. - (1984) 4 SCC 566, the respondent manufactured paper and paperboard, "in the processes relating to which "sodium sulphate" is used in the chemical recovery cycle of sodium sulphate which forms an essential constituent of sulphate cooking liquor used in the digestion operation". The Exemption Notification concerned provided exemption to goods which had used as raw material or component parts any goods (inputs) falling under Item 68 of the First Schedule to the Act from so much of the excise duty leviable thereon as was equivalent to the excise duty paid on the inputs. The Court quoted what had been said in Dy. CST v. Thomas Stephen & Co. Ltd., namely, "Consumption must be in the manufacture as raw material or of other components which go into the making of the end-product" and observed that, correctly apprehended, that statement did not lend itself to the understanding that for something to qualify itself as a raw material it had necessarily and in all cases to go into and be found in the end-product. The court also quoted with approval the case of Eastend Paper Industries Limited cited above.*

9. *That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The*

apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

10. *In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the appellants is entitled to the exemption provided by the Exemption Notification No. 187/61 as amended from time to time.*

In view of the above judgments and other judgments cited by the appellant, it can be seen that the issue is no longer res-integra as the services availed in respect of effluent treatment plant for treatment of industrial waste is in relation to the overall manufacturing activity of the appellant's final product in the appellant's factory therefore, the said services are input service hence, the credit is admissible.

08. Accordingly, we set aside the impugned order and allow the appeals with consequential relief.

(Pronounced in the open court on 28.06.2023)

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

**(C L MAHAR)
MEMBER (TECHNICAL)**