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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 13838 of 2013

(Arising out of OIO-88-COMMR-2013 Dated- 22.08.2013 passed by Commissioner of Central Excise-RAJKOT)

Nayara Energy Limited **........Appellant**
VILLAGE : VADINAR, JAMNAGAR,
JAMNAGAR-GUJARAT

VERSUS

C.C.E. & S.T. Rajkot **........Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:
Ms. Dimple Gohil, Advocate for the Appellant
Shri Dharmendra Kanjani, Authorised Representative for the Respondent

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

Final Order No. A/ 12303 /2021

DATE OF HEARING:28.04.2021
DATE OF DECISION:11.08.2021

RAMESH NAIR

This appeal is directed against order in original no. 88/Commr/2013 dated 21.08.2013 / 22.08.2013 passed by Commissioner of Central Excise-Rajkot. The issue involved in the present case is that whether the appellant are entitled for cenvat credit in respect of following inputs/ capital goods.

- Welding Electrode
- Filler Wire
- Filler Wire/ Welding Wire
- PSC Sleepers/ MBC PSC Sleepers/ Rail IU Grade
- M.S. Gratings/ G.I. Coated Gratings
- Electrode
- Wire FLR

2. The Learned Commissioner denied the credit on the ground that some of the input/ capital goods were not used in or in relation to

manufacture of final product and as regard the railway line material, the Learned Commissioner held that since these were used and situated outside the factory premises cenvat credit was disallowed.

3. Ms. Dimple Gohil, Learned Counsel appearing on behalf of the appellant submits that all these goods were used in or in relation to manufacture of final product and this issue is no longer res-integra as in respect of each and every item this Tribunal in many judgements held that the cenvat credit on the same items are admissible. She further submits that Learned Commissioner has upheld the charge of suppression on the grounds that intimation of availment of credit on the said goods was submitted only when information pertaining to that goods was called for by the Jurisdictional Superintendent. She further submitted that the appellant had intimated the Jurisdictional Superintendent vide letter dated 18.11.2008 regarding availment of credit on the goods, namely, welding electrodes, MS Gratings and material for railway line, therefore, there is no suppression of fact. Accordingly, the penalty is also not imposable.

4. Shri D. Kanjani, Learned Superintendent (Authorized Representative) on behalf of Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submission made by both the sides and perused the records. We find that all the goods have been used in or in relation to manufacture of the final product directly or indirectly. MS Gratings were used as an essential accessory for supporting and holding and for approaching or reaching out plants/ processing units of refinery in which raw material is processed for manufacture of petroleum products. Looking to the nature of the industry, it is a technological necessity without which the processing unit cannot perform. As regard welding material it is used for repairs and maintenance of the plants and

machinery, the repair and maintenance activities are essential for smooth manufacturing operations without which manufacturing activity is not feasible, therefore, the cenvat credit is clearly admissible. Railway line material is used to move inputs/ raw material and manufactured goods within the factory premises. The movement of goods through railway track is directly connected to the manufacture of final product, therefore, the credit cannot be denied on these items. We find that the appellant have cited various judgements. There is no dispute that all these items on which the credit was claimed by the appellant have been dealt with in various judgements and the credit was allowed. The input/ capital goods wise chart of relevant judgments are given below:

Sr. No.	**Regarding eligibility to Cenvat Credit**	**Case Law**
1.	Capital goods/ inputs	• Nayara Energy Ltd. Vs CCE & ST Rajkot 2020-TIOL-727-CESTAT-AHM • Rajasthan Spinning & Weaving Mills 2010 (255) ELT 291 ELT 585 • CCE vs A.P. P. Mills Ltd. 2013 (291) ELT 585 (Tri. Bang.) • Metro Chem Industries Ltd. 2013 (292) ELT 578 (Tri. Ahmd.) • Thiru Arooran Sugars 2017 (355) ELT 373(Mad.) • Mundra Prots & Special Economic Zone Ltd. 2015 (39) STR 726 (Guj.) • Essar Oil Ltd. Order No. A/14000/2017 dated 20.12.2017 (SMC) • Singhal Enterprises Pvt. Ltd. 2016 (341) ELT 372 (Tri. Del.) affirmed in 2018 (359) ELT 313(Chhattisgarh) • Modi Rubber Ltd. 2000 (119) ELT 197 (Tri. LB)

		• Banco Products (India) Ltd 2009 (235) ELT 636 (Tri. LB)
2.	Welding Electrodes	• Nayara Energy Ltd. Vs CCE & ST Rajkot 2020-TIOL-727-CESTAT-AHM • CCE vs Steel Authority of India Ltd. 2020 (38) GSTL 171 (Chhattisgarh) • Commr. Vs Singhal Enterprises 2018 (359) ELT 313 (Chhattisgarh) • ACC Ltd. 2018 (361) ELT 343 (Bom.) • Ambuja Cements Eastern Ltd. 2010 (2560 ELT 690 (Chhattisgarh) • Hindustan Zinc Ltd. 2008 (228) ELT 517 (Raj.) • Essar Oil Ltd. Order No. A/14000/2017 dated 20.12.2017 (SMC) • Vikram Cement 2005 (187) ELT 145 (SC) • Commr. Vs Alfred Hubert (I) Ltd. 2010 (257) ELT 29 (Kar.)
3.	Railway Line Material Inputs	• Nayara Energy Ltd. Vs CCE & ST Rajkot 2020-TIOL-727-CESTAT-AHM • CCE vs Steel Authority of India Ltd. 2020 (38) GSTL 171 (Chhattisgarh) • Tata Steel Ltd. 2016 (335) ELT 303 (Tri. Kol.) • Aditya Cement 2008 (221) ELT 362 (Raj.) • Jayaswal Neco Ltd. 2015 (319) ELT 247 (SC) • Ultratech Cement Ltd. 2016 (339) ELT 127 (SM) • Jindal Steel and Power Ltd. 2016 (343) ELT 608 (SM) • Essar Oil Ltd. Order No. A/14000/2017 dated 20.12.2017 (SMC) • Vikram Cement 2006 (194) ELT 3 (SC)

6. In view of the above, it can be seen that on every item, this Tribunal has considered the admissibility of the cenvat credit and in various judgements, it was held that the credit is admissible on the goods in question. Therefore, following the precedent decisions of this Tribunal and various courts, we are the view that the appellant is entitled for the cenvat credit on the said goods. Accordingly, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in the open court on 11.08.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha