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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12322 of 2018-SM

(Arising out of OIA-48-AGU-ADT-VAD-2017-18 Dated- 22/05/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

N R Agarwal Industries Ltd ....**Appellant**
Plot No. 901/P, Iii Phase, Gidc, Vapi,Gujarat

VERSUS

C.C.E. & S.T.-Surat-I ....**Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,Gujarat- 395001

APPEARANCE:
Shri. Suriyanarayanan, Advocate for the Appellant
Shri R.K Bhaskar (Superintendent) Authorised Representative for the Respondent

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

Final Order No. A/ 12332 /2021

DATE OF HEARING: 24.08.2021
DATE OF DECISION:24.08.2021

RAMESH NAIR

The issue involved is that whether the appellant is entitled for Cenvat credit in respect of Outward transportation of Hazardous Waste transported from their factory to the M/S Satyen Flourine Industires and Gujarat Paper Mills Association who is supposed to handle the Hazardous waste. The transportation cost for disposal of Hazardous waste was borne by the appellant as per the clause in the tri- parte agreement between M/S Satyen Flourine Industires and Gujarat Paper Mills Association and NR Agarwal.

2. Shri Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that the credit was denied by both the lower authority relying on the Hon'ble Supreme Court Judgment in the case of COMMISSIONER OF CENTRAL EXCISE SERVICE TAX Vs ULTRATECH CEMENT LTD- 2018 (2) TMI 117- (SC). He submits that the issue in the present case is different from the facts of the case of the of the Ultra Tech Judgment. He

submits that this not a case of removal of excisable goods however, during the process of manufacturing some Hazardous waste is generated from the inputs and as per the mandatory requirement under Gujarat Pollution Control Board the waste has to be disposed of as per the manner prescribed therefore, this activity is related to the manufacturing activity of the final product. Therefore, the judgment of Ultratech is not applicable. He submits that the service availed for disposal of Hazardous waste has been allowed as input service in the case of COMMISSIONER OF CENTRAL EXCISE, PUNE-II M/S L'OREAL INDIA PVT LTD-2018(1)TMI 362 Cestat-(Mum)

3. Shri R.K Bhashkar, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. Both the Lower Authorities have denied the Cenvat Credit on Outward Transportation of Hazardous waste relying on Hon'ble Supreme Court Judgment in the case of the Ultra tech. However, in the present case the facts are entirely different, as in Ultratech judgment the fact was removal of Excisable Goods and payment of duty however, in the present case the disposal of Hazardous waste is as per the requirement of Gujarat Pollution Control Board and the cost of transportation for disposal of such waste is borne by the appellant. In fact this activity is though the way of transportation but it is the disposal of Hazardous waste which is generating during the course of manufacture. In this fact the service of transportation is covered under the main clause of dentition provided under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, the judgment of ultratech of the Apex Court is not at all relevant in the facts of the present case. The identical issue has been considered by this tribunal in the case of M/S L'OREAL INDIA PVT LTD (Supra) wherein certain services were used for

disposal of Hazardous waste and credit in respect of such service has been allowed. The relevant judgment is reproduced below:

> *"3. The short issue involved is as to whether the respondent is entitled to service tax paid on the services utilized for removal of hazardous waste. Commissioner (Appeals) has held in favour of the assessee by observing as under:-*
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> *"9. On going through the facts of the case as discussed in the show cause notice, Order-inOriginal, Grounds of Appeal, I find that the Appellant are the manufacturers of Cosmetic products and during the course of manufacture of some Hazardous material is getting generated out of the manufacturing of finished products. It is a fact that they are not manufacturers of the Hazardous material. It is generated during the course of manufacture of final product, which is unavoidable. Therefore there is force in the argument made by the appellant that the said Hazardous waste is the by product generated during the course of manufacture of final product. Further manufacturing is also not possible without the generation of this hazardous waste. Also as per the provisions of Rule 5(2) of Hazardous Waste (Management, Handling and Transbourdary Movement) Rules, 2008 ("HW Rules) "the hazardous waste shall be collected, treated, re-cycled, re-processed, stored or disposed of only in such facilities as may be authorized by the State Pollution Control Board for the purpose". Accordingly to this provision, these hazardous waste are required to be properly disposed off for which the Appellant has no in house facility nor they were authorized for treating such hazardous waste and therefore there is no option than to send the said hazardous waste to Maharashtra Enviro Power Ltd. ("MEPL") who have been authorized by Maharashtra Pollution Control Board ("MEPB") to dispose of the said waste. From the said provisions it is evident that it is the responsibility of the manufacturer to dispose off the said hazardous waste generated during the course of manufacture and therefore disposal of waste is part and parcel of the manufacturing activity and has a direct nexus with the manufacturing process. Had it been the facility of disposal of such waste was available in the factory, the appellant would have done it in house. However, since the said facility is not available with the Appellant they have opted to get the same done outside factory. Therefore there is no force in stand taken by Respondent that the said activity is post manufacturing activity. Thus it is very clear that the such disposal of Hazardous material is mandatory for the appellant and non-compliance can lead to grave consequences, and therefore the services provided by*

m/s.Maharashtra Enviro Power Ltd. Pune are undoubtedly input service for the appellant, and therefore the Appellant is eligible for Cenvat Credit on service regarding disposal of hazardous waste. "

4.1 In view of the above judgment and the discussion made herein above that even though it is a transportation service, but in respect of disposal of Hazardous waste that is the activity related to manufacturing, it is covered under input services definition. Hence, the credit is admissible.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Geeta