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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10466 of 2015- DB

(Arising out of OIO-BH-EXCUS-BHARUCH-COM-005-14-15 dated 20/12/2014 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

Coromandel International Ltd ....**Appellant**
Plot No 3204,
G I D C Ankleshwar,
Bharuch, Gujarat

VERSUS

C.C.E-Bharuch ......**Respondent**
Vadodara-II,GST Bhavan,
Subhanpura,Vadodara
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Prakash Shah, Mihir Mehta & Shri Mohit Rawal Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 10048/2024

DATE OF HEARING: 06.09.2023
DATE OF DECISION: 04.01.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for Cenvat credit on the services related to effluent treatment of the waste generated at the appellant’ s factory and such effluent treatment service availed from the third party agency i.e. Narmada Clean Tech Ltd, Saurashtra Enviro Projects Pvt Ltd and Bharuch Enviro Infrastructure Ltd.

2. Shri Prakash Shah, Learned Counsel along with Shri Mihir Mehta, Learned Advocate and Shri Mohit Raval, Learned Advocate appearing on behalf of the appellant submits that the issue is no longer res-integra as the Hon’ble Supreme Court as well as this Tribunal in various judgments held that the services related to effluent treatment are admissible input service and credit is admissible. He placed reliance on the following judgments: -

- Cheminova India Ltd vs. CCE & ST, Surat -II - E/11732/2014- Final Order dated 28.06.2023

- Adroit Pharmachem Pvt Ltd vs. Commissioner of C.Ex. & ST., Vadodara – 2022 (1) TMI 59 CESTAT Ahmedabad
- Commissioner of C.Ex.& ST., Surat-II vs. M/s. Kanoria Chemicals & Industries Ltd – 2015 (7) TMI 970 CESTAT Ahmedabad
- Wipro Enterprises (P) Ltd vs. Commissioner of GST & Central Excise – 2018 (12) TMI 1167 CESTAT Chennai.
- Anar Chemicals Pvt. Ltd vs. CCE – 2011 (24) STR 32 (Tri.Ahmd)
- Indian Farmers Fertilizer Cooperative Ltd vs. Collector, - 1996 (86) ELT 177 (SC)
- Union of India vs. Hindustan Zinc Ltd – 2019 (367) ELT 616 (Raj)
- Collector of C. Ex. Vs. Eastend Paper Industries Ltd – 1989 (43) ELT 201 (SC)
- Deepak Fertilizers & Petrochemicals Corpn. Ltd vs. C.C.Ex., Belapur – 2013(32) STR 532 (Bom.)
- C.C.E & Cus., Aurangabad vs. Endurance Technology Pvt Ltd – 2017 (52) STR 361 (Bom.)
- Huhtamaki PPL Ltd vs. Commissioner of C.Ex. & ST., Surat -I – 2021 (50) GSTL 309 (Tri. Ahmd)
- Commr. Of C. Ex., Vadodara – II vs. Siemens Healthcare Diagnostics Ltd – 2014 (36) STR 192 (Tri. Ahmd)

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the dispute related to admissibility of Cenvat credit on the effluent treatment service in respect of industrial waste generated in the factory of the appellant. The contention of the Revenue is that the effluent treatment of waste is not related to manufacture of final product, therefore, it does not have nexus with the manufacturing activity of the appellant. We do not agree with this contention of the Revenue for the

reason that as per the pollution control act, it is mandatory for every industrial unit to treat the effluent waste generated during the manufacture of final product, therefore, the industrial unit cannot carry out the production without compliance of pollution control norms which includes effluent treatment of waste generated during the manufacturing activity. Therefore, the effluent treatment of waste is necessary for overall manufacturing activity of the industrial unit. This issue has been considered in the various judgments as follows: -

a) Indian Farmers Fertilizer Cooperative Ltd vs. Collector, - 1996 (86) ELT 177 (SC) :

> *"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.*
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> *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.*
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> *11. There shall be no order as to costs."*

b) Cheminova India Ltd vs. CCE & ST, Surat -II - E/11732/2014- Final Order dated 28.06.2023 –

"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:-*
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> *"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 along 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."

4.1 The revenue also raised the contention that such effluent treatment services was availed beyond the place of removal; this issue has been considered by the Hon'ble Bombay High Court in the case of Deepak Fertilizers & Petrochemicals Corpn. Ltd vs. C.C.Ex., Belapur – 2013(32) STR 532 (Bom.) where in it was held as under: -

"5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a

broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(l). The first part of Rule 2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l).The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process.

6. For these reasons, we have come to the conclusion that the judgment of the Tribunal is ex facie unsustainable. The questions of law as framed are accordingly answered in the negative. The appeal is accordingly allowed.

7. There shall be no order as to costs."

4.2 Similarly, the ratio has been laid down in the following cases: -

- C.C.E & Cus., Aurangabad vs. Endurance Technology Pvt Ltd – 2017 (52) STR 361 (Bom.)

- Huhtamaki PPL Ltd vs. Commissioner of C.Ex. & ST., Surat -I – 2021 (50) GSTL 309 (Tri. Ahmd)
- Commr. Of C. Ex., Vadodara – II vs. Siemens Healthcare Diagnostics Ltd – 2014 (36) STR 192 (Tri. Ahmd)

4.3 In view of the above judgments, the revenue's claim that since the service was availed beyond the place of removal, credit is not admissible completely fails and, on that ground, credit cannot be denied.

5. As per our above observation and finding, the appellant is legally entitled for availment of Cenvat credit in respect of effluent treatment service. Hence, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 04.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha