

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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10538 of 2013 - DB

(Arising out of OIO-10/COMMR/SURAT-II/2013 dated 29/01/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

United Phosphorous Ltd

Uniphos Hpuse, Madhu Park,
11th Road, Khar (w)
Mumbai, Maharashtra

.....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. 10539 of 2013 - DB

(Arising out of OIO-10/COMMR/SURAT-II/2013 dated 29/01/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

Harak Chand Jain

Deputy General Manager,
United Phosphorous Ltd,
Uniphos House, Madhu Park,
11th Road, Khar (w),
Mumbai, Maharashtra

.....Appellant

VERSUS

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

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

.....Respondent

APPEARANCE:

Shri Prakash Shah, Shri Mihir Mehta & Shri Mohit Rawal Advocate for the Appellant
Shri Ashok Thanvi Superintendent (AR) for the Respondent

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

Final Order No. 10064-10065/2024

DATE OF HEARING: 06.09.2023
DATE OF DECISION: 05.01.2024

RAMESH NAIR

The following issues are involved in the present case :-

1. Denial of Cenvat Credit of duty paid on goods viz. HR Coils, Plates, HSM Plates, Chequered plates, ISMB, Joists, Beam, Flates, Girder, Angles, Channels, Shapes & Section made of iron & steel pipes and cement etc.

2. Short reversal of cenvat credit on electricity supplied to sister concern.
3. Denial of credit of service tax paid on renting of godowns situated outside the factory premises,
4. Denial of credit of service tax paid for construction of shed of warehouse.
5. Non -payment of central excise duty on illicit clearance of waste and scrap.

2. Shri Prakash Shah, Learned Counsel along with Shri Mihir Mehta and Shri Mohit Raval, Advocates appearing on behalf of the Appellant submits that the credit of duty paid on HR Coils, Plates, HSM Plates, Chequered plates, ISMB, Joists, Beam, Flates, Girder, Angles, Channels, Shapes & Section made of iron & steel pipes and cement etc. is admissible to the appellant. The Adjudicating Authority has denied the credit on the basis of Larger Bench judgment of this Tribunal in the case of Vandana Global Ltd – 2010 (253) ELT 440 (Tri.- LB) wherein the amendment made by the Notification No.- 16/2009 – CE (NT) dated 07.07.2009 by inclusion of Explanation 2 to Rule 2 (k) was held effective from retrospective effect.

2.1 As per the amendment these items were excluded from the definition of inputs. It is his submission that the Larger Bench held that the said amendment has a retrospective effect. This proposition has been over ruled by the Hon'ble Chhattisgarh High Court reported at Vandana Global Ltd. Vs. Commissioner of Central Excise & Cus, Raipur – 2018 (16) GSTL 462. Therefore, the entire basis of the adjudicating authority denying the credit on such items is not correct.

2.2 As regard the issue relates to credit on renting of godown he submits that the appellant had correctly availed the credit of service tax on renting of godown situated outside the factory premises and construction and repair of

shed of warehouse within the factory. He placed reliance on the following judgments:-

- Deepak Fertilisers and Petrochemicals Corporation Ltd vs. Commissioner - 2013 (32) STR 532 (Bom.)
- Huhtamaki PPL Ltd vs. Commissioner of C. Ex. & ST, Surat-I – 2021 (50) GSTL 309 (Tri. Ahmd)
- Sanofi India Ltd vs. Commissioner – 2018 (10) TMI 1320- CESTAT Ahmedabad

2.3 Regarding issue of demand on purported illicit clearance of waste and scrap is not sustainable on the ground that the revenue failed to show that the appellant had availed the Cenvat credit on the machinery from which the waste and scrap were generated. He submits that the demand on waste and scrap is related to the worn-out machinery and not the scrap generated during the manufacture of excisable goods. He placed reliance on the judgment of Hon'ble Supreme Court in the case of Grasim Industries Ltd vs. Union of India – 2011 (273) ELT 10 (SC).

2.3 As regard the short reversal of Cenvat credit on electricity supplied to sister concern, the demand is not contested. He only requests to waive the penalty. Similarly, regarding denial of Cenvat credit on service tax paid on renting of godown situated outside factory premises, the Cenvat credit amount was paid. In support of his submission, he placed reliance on the following judgments: -

- Vandana Global Ltd vs. Commissioner of C.Ex & Cus., Raipur – 2018 (16) GSTL 462 (Chhattisgarh)
- Mundra Ports & Special Economic Zone Ltd vs. CCE & Cus – 2015 (39) STR 726 (Guj.)
- Thiru Arooran Sugars vs. CESTAT, Chennai – 2017 (355) ELT 373 (Mad.)

- Commissioner of C.Ex., Lucknow vs. Manakpur Chini Mills – 2019 (367) ELT 889 (All.)
- Commissioner of Central Excise, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd – 2010(255) ELT 481 (SC)
- Mangalam Cement Ltd vs. Commissioner of Central Excise, Jaipur-I – 2018 (360) ELT 737
- HNG Float Glass Ltd vs. CCE & ST, Vadodara-II – 2022 (12) TMI 132 – CESTAT Ahmedabad
- Commissioner of Central Excise Jaipur- II vs. M/s. Simplex Infrastructure Ltd – 2018 (7) TMI 704 – CESTAT New Delhi
- Commissioner of Customs, Central Excise & Service Tax, Tirupati vs. Dalmia Cement (Bharat) Ltd – 2022 (9) TMI 851 -CESTAT Hyderabad
- Ultra Tech Cement Ltd vs. Commissioner of Central Excise, Raipur – 2016 (332) ELT 356 (Tri. Del) affirmed by- 2017 (347) ELT 3 (Chhattisgarh)
- M/s. Bajaj Hindustan Ltd vs. Commissioner of Customs, C.Ex. & ST., Allahabad – 2017 (6) TMI 1204- CESTAT Allahabad
- Mahindra & Mahindra Ltd vs. CCE, Aurangabad, Chandigarh, Kanpur & Chennai – 2005 (190) ELT 301 (Tri.- LB)
- Commissioner of C.Ex., Bangalore-II vs. SLR Steels Ltd – 2012 (280) ELT 176 (Kar.)
- Grasim Industries Ltd vs. Union of India – 2011 (273) ELT 10 (SC)
- Commissioner of C.Ex., Visakhapatnam-II vs. Sai Sahmita Storages (P) Ltd – 2011 (270) ELT 33 (A.P)
- Deepak Fertilisers and Petrochemicals Corporation Ltd vs. Commissioner - 2013 (32) STR 532 (Bom.)
- Huhtamaki PPL Ltd vs. Commissioner of C. Ex. & ST, Surat-I – 2021 (50) GSTL 309 (Tri. Ahmd)
- Sanofi India Ltd vs. Commissioner – 2018 (10) TMI 1320- CESTAT Ahmedabad

- Amrit Foods vs. CCE, UP- 2005 (190) ELT 433 (SC)

3. Shri Ashok Thanvi, 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. The main issue in the entire case is related to the admissibility of the Cenvat credit amounting to Rs. 1,87,93,726/- on various steel items. In this regard, we find that the Adjudicating Authority has denied the credit on the basis of Vandana Global Ltd Judgment of Larger Bench of CESTAT whereas the said judgment was reversed by the Hon'ble Chhattisgarh High Court, therefore, there is a sea change in the circumstances of law point involved in the present case regarding admissibility of cenvat credit on various steel items. We have also observed that as regard use of the goods the chartered engineer has given a certificate. Accordingly, the particular issue needs to be reconsidered by the Adjudicating Authority. Considering the law laid down by Hon'ble Chhattisgarh High Court and various subsequent judgments on this issue vis-a-vis the use of the goods as certified by the Chartered Engineer, the issue related to admissibility of cenvat credit on various steel items involving amount of Rs. 1,87,93,726/- is remanded to the Adjudicating Authority for a fresh consideration.

4.1 As regard the short reversal of cenvat credit on electricity supplied to the sister concern, the appellant have paid the amount of Rs. 25,589/- and on merit no contest was raised. In our considered view since the electricity was supplied to the sister concern, the cenvat related thereto is not admissible to the appellant and there is no ambiguity in the legal position therefore penalty corresponding to such reversal of cenvat credit imposed by the Adjudicating Authority is correct and legal and the same is upheld.

4.2 As regard the issue of cenvat credit of service tax paid on renting of godown situated outside the factory premises for an amount of Rs. 36,191/- we are of the view that merely because the godown was situated outside the factory premises, cenvat cannot be denied for the reason that the said godown was used for storage of the goods which was used in the manufacture, therefore, in our view the credit is admissible.

4.3 As regard the cenvat credit on the construction/repair of shed of warehouse within the factory, the same is directly in or in relation to the manufacture, therefore, the credit is admissible as held in the judgment of Sanofi India Ltd vs. Commissioner – 2018 (10) TMI 1320- CESTAT Ahmedabad.

4.4 As regard the demand of service tax on waste and scrap of plant and machinery, we find that the department could not establish that the waste and scrap generated from the machinery and on such machinery any cenvat credit was availed at the time of receipt and installation thereof. Therefore, unless and until the department shows that the appellant have availed any Cenvat credit, no demand on waste and scrap of such machinery can be made. Therefore, the demand of duty on the waste and scrap of the machinery is not sustainable, hence, the same is set aside.

4.5 As regard the appeal of Shri Harakchand Jain, wherein a penalty of Rs. 2 Lacs was imposed under Rule 26, we are of the view that since all the issues involved interpretation of the Cenvat credit rules, a personal penalty cannot be imposed in such a nature of case. Therefore, the penalty imposed on Shri Harakchand Jain is set aside.

5. In view of above discussion and finding, the appeal related to the amount of Cenvat credit of Rs. 1,87,93,726/- on various steel items is

disposed of by way of remand to the Adjudicating Authority and other issues have been decided as discussed above.

6. The Appeal No. E/10538/2012 is partly allowed and partly remanded to the Adjudicating Authority as discussed above and Appeal No. E/10539/2012 of Shri Harakchand Jain is allowed.

(Pronounced in the open court on 05.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha