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

REGIONAL BENCH- COURT NO.3
Excise Appeal No.11892 of 2018
(Arising out of OIA-AHM-EXCUS-002-APP-295-17-18 dated 21/02/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Encore Natural Polymers P Ltd ………**Appellant**
227/233 Gidc, Naroda
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-ii ………**Respondent**
Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:
Shri. S J Vyas, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12613 /2021

DATE OF HEARING: 09.12.2021
DATE OF DECISION:09.12.2021

RAMESH NAIR

The brief facts of the case are that during the course of detailed scrutiny conducted by the jurisdictional Range Superintendent of the appellant it was observed that the appellant had availed and utilised CENVAT Credit of Rs. 54,590/- on Construction Of Water Tank & Pump Room which as per department is not an input service under the provisions/rule of Service Tax and CCR, 2004. On the pointing out by the Jurisdictional Range Superintendent the appellant had reversed the Cenvat Credit in the same RG-23 Part-II and informed vide letter dated 16.08.2015. Subsequently, a show cause notice came to be issued whereby it was proposed to demand, interest on the reversal of Cenvat Credit and also to imposed penalty under Rule 15 (2) of Cenvat Credit Rule, 2004 read with Section 11AC (1) (c) of the Central Excise Act, 1944. The appellant have raised an objection, before the adjudicating authority on the ground that the Cenvat Credit is otherwise admissible as the Construction of Water and Pump Room is nothing but Modernization and Renovation of the existing factory which is falling in the inclusion clause, therefore, the appellant submitted before the adjudicating authority that since the appellant was otherwise not required to reverse the credit there is no question of interest and penalty on the said amount. The adjudicating authority though considered the appellant's plea on the merit of admissibility of Cenvat Credit, however, it was held that the activity of the construction falls under the exclusion category therefore, the appellant is not entitled for the Cenvat Credit, consequently, the demand of interest and penalty has been confirmed. Being aggrieved by the Order-In-Original the appellant filed the appeal before the Commissioner (Appeals) who upheld the Order-In-original and rejected the appeal of the appellant, therefore the present appeal.

2. Sh. S J Vyas, Learned Counsel appearing on behalf of the appellant submits that even though the Cenvat Credit was reversed by the appellant but no show cause notice issued for denial of the Cenvat Credit and consequential demand of such amount. Therefore, in absence of any show cause notice was confirming the demand of Cenvat Credit no interest and penalty can be demanded. He alternatively submits that the services on which the appellant had availed the Cenvat Credit is construction of water tank and pump room. These services clearly falls under the category of Modernization, Renovation and repair of the factory, therefore, it is covered under inclusion clause of definition of input service as per Rule 2(l) of CCR,2004. Accordingly, the appellant was not required to reverse the credit. Since, the credit is admissible, there is no question of interest and penalty.

3. Shri. Dharmendera Kanjani, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that the construction of water tank and pump room is nothing but a construction service which is covered under exclusion category in definition of input service, therefore, the appellant was not entitled for the Cenvat Credit and an inadmissible Cenvat Credit the lower authorities have rightly imposed the penalty and demanded the interest.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that interest and penalty will arise only when there is a short payment and non payment of duty or wrong availment of

Cenvat Credit. In the present case the appellant had availed the Cenvat Credit in respect of construction of water tank and pump room. Since this construction was done in the existing factory to expand the facility of the existing factory therefore, it will clearly fall under the Modernization and Renovation of the factory. This is not a case where a new factory was set up which excluded from the definition of input service. Since nature of construction done in the factory is of Renovation and Modernization of the existing factory which is clearly covered under inclusion clause of the definition of input service, therefore, the appellant was entitled for the Cenvat Credit of such input service. Since the Cenvat credit itself is admissible the same is not recoverable, consequently, neither any interest can be demanded nor any penalty can be imposed, therefore, the demand of interest and penalties clearly illegal and incorrect.

5. Hence, the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi