CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 10777 of 2016-DB

[Arising out of Order-in-Original/Appeal No BHR-EXCUS-000-COM-078-15-16 dated 22.03.2016 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch]

Meghmani Finechem Ltd ...Appellant

Plot No. Ch-1 & Ch-2, Gidc, Dahej, Tal-vagra,
BHARUCH
GUJARAT-392130

VERSUS

C.C.E-Bharuch ...Respondent

R K CASTA SECOND FLOOR, CORPORATE HOUSE, STATION ROAD
Bharuch
Gujarat-392001

APPEARANCE:

Present For the Appellant : Shri Sudhanshu Bissa, Advocate

Present For the Respondent : Shri D.Kanjani Superintendent (AR)

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

FINAL ORDER NO. A/12632 / 2021

DATE OF HEARING:13.12.2021
DATE OF DECISION:13.12.2021

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for Cenvat Credit in respect of additional power plant of 20MW set up in the existing factory. The case of the department is that since it is the setting up of new plant, it is not included in the inclusion clause. Therefore, the credit is not admissible in terms of Rule 2(l) of Cenvat Credit Rules, 2004.

2. Shri Sudhanshu Bissa, learned counsel appearing on behalf of the appellant submits that on the identical issue related to the expansion of the power plant in the factory of the appellant, this Tribunal has taken a decision vide order no. A/12916/2017 dated 10.10.2017 wherein it was held that setting up of new power plant in the existing factory is nothing but modernizing of the factory. Accordingly the Cenvat Credit is admissible.

3. Shri D. Kanjani, leanrned Superintendent (Authorised Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that in view of this Tribunal's order no. A/12916/2017 dated 10.10.2017, the issue is no longer res integra. We are also of the view that even if the new power plant is set up in the existing factory where already one power plant is existing, it will not amount to new setting up of factory but it will be covered under the modernizing of the existing factory which is specifically covered under the inclusion clause of the definition of input services. Accordingly, the credit is admissible. The Tribunal's order dated 10.10.2017 in the appellant's own case in the same set of facts is reproduced below:

> *"6. I find that the both the lower authorities have mis-directed their findings in the facts and circumstances of this case. There is no dispute that the Appellant had existing 40 MW captive power plant, but erected 20 MW captive power plant to enhance the capacity of power production for captive use. In my view, this would fall under the category of modernization of the factory as there is no dispute that the new power plant of 20 MW is within the factory premises of the Appellant who is a manufacturer of excisable goods. I find that the ratio of the Tribunal's decision in the case of Mahindra & Mahindra Ltd. would squarely apply in this case in favour of the Appellant herein.*
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> *7. In view of foregoing, the impugned order is set aside and the Appeal is allowed."*

5. We follow the ratio of the judgment taken by the Tribunal in the aforesaid order. Accordingly, appellants are entitled for Cenvat Credit. Hence, the impugned order is set aside and appeal is allowed.

(Dictated and pronounced the open court.)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Diksha