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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.285 of 2010
(Arising out of OIO-19/VDR-II/MODERNPETRO/MKR/COMMR/2009 dated 24/12/2009 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Modern Petrofils **......Appellant**
N.H.No. 8, Post-Bamangam, Taluka-Karjan,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat - 390023

APPEARANCE:
None appeared for the Appellant
Shri Vinod Lukose, Superintendent(Authorized Representative) for the Respondent

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

Final Order No . A/ 10073 /2022

DATE OF HEARING: 04.10.2021
DATE OF DECISION: 04.02.2022

RAMESH NAIR

The relevant facts of the case in brief are that Appellant are engaged in the manufacture of Synthetic yarn (POY) falling under Chapter 54 of the Central Excise Tariff Act, 1985. They were availing the benefit of Cenvat credit of inputs, input service and capital goods under Cenvat Credit Rules. A show cause notice dated 06.05.2009 was issued, proposing demand of Cenvat credit amounting to Rs. 2,25,96,901/- along with interest taken wrongly on the Furnace Oil / fuel used in the generation of electricity, part of which cleared to other unit and residential colony during the period 2004-05 to 2007-08. It has also proposed to impose a penalty of equal amount of cenvat duty. By the impugned OIO dated. 24.12.2009, the Commissioner disallowed the Cenvat credit of Rs. 2,25,96,901 along with interest and imposed a penalty of equal amount of Cenvat credit under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.Therefore, the appellant filed the present appeal.

2. The appellant in grounds of appeal submitted that thePOY Division and DTY division both situated on the same factory premises. At material time the POY Division and DTY Division were considered and registered one factory even under the Factories Act. Both the divisions have a Common registration for the purpose of Sales Tax and Income tax Act and there is a single common balance sheet being prepared for the divisions. Both the divisions together constitute the single business entity of M/s Modern Petrofils. DTY Division is neither as sister concern nor as sister unit of POY Division. The said DTY Division of the Appellant is not situated outside the factory premises of the Appellant. Although there are separate Central Excise Registrations, the facts remain that the factory in which both these units are situated is one. Therefore the Appellant is legally entitled to avail Cenvat Credit in respect of furnace oil as the same was used in generation of electricity within the factory of production. Further there is no purchase agreement between Divisions, no payment is being made by DTY Division to POY Division evidencing sale of electricity. Small quantity of electricity generated in the factory was supplied to the residential township of the appellant. They also submitted that there has been no suppression or misstatements on the part of the Appellant in the present matter. Thus, demand is patently time-barred. The appellant had also submitted synopsis on 30th September, 2019 which was taken on record. They also relied upon the following judgments:-

- GUJARAT NARMADA VALLEY FERTILIZERS CO. LTD.- 2012 (286) ELT 481 (SC)
- RAMALA SAHKARI CHINI MILLS LTD- 2010-SC-102-SC-CX
- MARUTI SUZUKI INDIA LTD- 2009 (240) ELT 641
- M/s GNFC – 2012 (286) ELT 481

3. Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of revenue submits that issue is already decided by this Tribunal in case of MEHSANA DISTRICT CO-OP. MILK PRODUCERS UNION Vs. CEX. AHMEDABAD -III 2019(31) G.S.T.L. 484 (Tri-Ahmd). ER-1 submitted by the

Appellant for the period April 2004 to March 2008, revealed that appellant had not declared the manufacturing of electricity and steam and supply of electricity to the DTY Division and the residential colony. This itself proves that appellant have suppressed the facts and misstated the facts with clear intention to evade the Central Excise Duty. Therefore, an extended period is rightly invoked.

4. On careful consideration of the submissions made by both sides and perusal of the records, we find that the Revenue has denied the Cenvat Credit in respect of Furnace Oil used for generation of electricity on the ground that the part of electricity was used by the appellant's DTY division and part of the credit of Rs. 37,555/- was disallowed on the ground that the electricity to this extent was used in the residential quarters. As regard the issue that whether the Furnace oil is used in the appellants POY unit for generation of electricity and the same was used in their DTY unit, the same should be considered as outside the factory or otherwise, we find that even though both POY unit and DTY unit are two division but both belongs to one single entity i.e. M/s Modern Syntex (I) Ltd., moreover both the units are located in the same premises, merely because both the units have separate central excise registration, it cannot be treated two separate entities, therefore in our considered view the cenvat credit on this ground cannot be denied. However the lower authorities have denied the Cenvat Credit relying on the Hon'ble Supreme Court judgment in the case of Maruti Suzuki India Pvt. Ltd.-2009 (240) ELT 641 which was subsequently referred to the Larger Bench in the case of GNFC reported at 2012 (286) ELT 481. Both sides have not brought on record regarding the outcome of the Larger Bench of the Supreme Court as on date, accordingly, we are of the opinion that the matter needs to be re-considered on the basis of the outcome of the Larger Bench of the Supreme Court in the case of GNFC (Supra). We also find that

the appellant has made out a strong Prima facie case on limitation which also needs to be re-considered by the adjudicating authority.

5. As per our above observations, we set aside the impugned order and remand the matter to adjudicating authority for passing a fresh order after giving sufficient opportunity to appellant. The adjudicating authority is expected to pass denovo adjudication order within a period of 3 months from the date of this order. Appeal is allowed by way of remand to the Adjudicating authority.

(Pronounced in the open court on 04.02.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta