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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12042 of 2019-SM

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-001-APP-07-2017-18 dated 29.05.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Bodal Chemicals Limited .... **Appellant**
Plot No 123,124, Phase-I, GIDC, Vatva
AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise, Ahmedabad .... **Respondent**
C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE :

Shri N.K. Tiwari, Consultant for the Appellant
Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Respondent

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

DATE OF HEARING / DECISION : 28.04.2022

FINAL ORDER NO. A/10403/2022

RAMESH NAIR :

The issue involved is whether the appellant is entitled for Cenvat credit in respect of MS Angles, Channels, Beams and Plates used as capital goods during the period 2008-09 and 2009-2010.

2. Shri N.K. Tiwari, learned Consultant appearing on behalf of the appellant submits that these goods were used in repair and maintenance of plant and machinery therefore, the same is capital goods and the credit is admissible. He submits that in the appellant's own case, this Tribunal vide order Nos. A/12081/2017 (in Appeal No. E/10208/2016) and A/12095/2017 (in Appeal No. E/10732/2016) considered and decided the issue.

3. Shri Dinesh M. Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the appellant reiterates the findings of the impugned order. He submits that this is a second round of appeal. In the first round, this Tribunal has directed to verify the document/ Chartered Engineer certificate as regards the use of goods and the appellant has not produced the Chartered Engineer certificate therefore, the credit is rightly denied by the original adjudicating authority and the appellate authority.

4. I have carefully considered the submissions made by both the sides and perused the record. The limited issue is to decide the Cenvat credit on the basis of the use of said goods and the nature of the said goods as per Tribunal directions. I find that the appellant have not produced Chartered Engineer certificate however, they submitted the documents related to accounting of the goods and as per the Chartered Accountant certificate, the goods on which the credit is availed, have been accounted for and used for repair of plant and machinery. It is also observed that in the show cause notice, the use of the goods has been mentioned in the statement enclosed with the show cause notice. In this statement also it is observed that all the steel material was used in the plant and machinery. Though the appellant has not provided Chartered Engineer certificate which was not practicable as the use was taken place almost 7-8 years ago. Therefore, this can be accepted on the fact of use of goods from these documents. As regards the TMT Bar, it was used in the plant and machinery or platform made for the plant. Therefore, it is admissible for Cenvat credit. The similar issue has been considered in the appellant's own case as cited by the learned Counsel and the Tribunal passed the following order:-

> "4. I find that the dispute centres around the eligibility of CENVAT credit of the duty paid on the disputed items used within the factory for repair and maintenance of the capital goods, as per the definition of 'input' as prescribed under Rule 2(k) of CCR, 2004. This

issue has been considered in the judgments of the cases of Kisan Sahkari Chini Mills Ltd. Vs. Commissioner of Central Excise, Lucknow 2013 (292) ELT 394 (Tri.-Del.), Commissioner of Central Excise, Customs & Service tax, Visakhapatanam-1 vs. Jindal Stainless Ltd. 2016 (343) ELT 527 (Tri-Bang.) and Sarjoo Sahkari Chini Mills Ltd. Vs. Commissioner of Central Excise, Lucknow 2009 (248) ELT 559 (Tri. Del) This Tribunal in Kissan Sahakari Chini Mills Ltd's case (supra) after analysing the principle of law observed as follows:

> *"5. I have considered submissions from both the sides and perused the records. I find that the issue as to whether the goods used for repair and maintenance of plant and machinery are eligible for cenvat credit, stands decided in favour of the Appellant by Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) wherein Hon'ble High Court has held. that MS/SS plates used in the workshop meant for repair and maintenance of the plant and machinery's would be liable for Cenvat credit and also by the judgments of Hon'ble Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise (supra) and Hon'ble Karnataka High Court in the case of Commissioner of Central Excise v. Alfred Herbert (India) Ltd. (supra) wherein Hon'ble High Court have held that the inputs used for repair and maintenance of plant and machinery would be eligible for cenvat credit. The learned departmental representative has cited a contrary judgment of Hon'ble High Court of Andhra Pradesh, In the case of Sree Rayalaseema Hi-Strength Hypo Ltd. v. Commissioner of Customs & Central Excise, Tirupati reported in 2012 (278) E.L.T. 167. Since three High Courts as mentioned above, have held that the inputs used for repair and maintenance of plant and machinery are eligible for cenvat credit, I am of the view that it is these which have to be followed.*
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> *5.2 The Apex Court in the case of J.K. Cotton SPG & WVG Mills Co. Ltd. v. Sales Tax Office reported in 1997 (91) E.LT. 534 (S.C.), interpreting the scope of the expression in the manufacture of goods in Section 8(3)(C) of the Central Sales Tax Act, 1956 has in para 9 of the judgment held that this expression would cover the goods used in any process/activity which is so integrally connected to the ultimate manufacture of goods without that process or activity, even if theoretically possible, is commercially inexpedient. The scope of the expression used in the definition of 'input' In Rule 2(k) of the Cenvat Credit Rules, 2004 "used in or in relation to manufacture of final products, whether directly or indirectly and whether contained the final products or not is much wider than the scope of the expression "used in manufacture of and therefore the expression- "used in or in relation to manufacture of final product, whether directly or indirectly in the definition of input in Rule 2(2) would cover all the goods whose use is commercially expedient in manufacture of final products.*
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> *5.3 Repair and maintenance of plant and machinery is an activity without which smooth manufacturing is not possible. Commercially, manufacturing activity is not possible with malfunctioning machines, and leaking tanks, pipes and tubes. Therefore the activity of repair and maintenance of plant machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for Cenvat credit. For eligibility of an Input for Cenvat credit what is relevant is whether the activity in which that Input is used has nexus with the manufacture of final product and the nexus has to be determined on the basis of criteria as to whether that activity is commercially essential for manufacture of the final products."*

> 5. There is no dispute of the fact that these Items were used in the factory for repair and maintenance of the capital goods. In the result, the impugned order is set-aside and the appeals are allowed with consequential relief, if any, as per law."

5. As per my above observation and support of the decision in the appellants own case, the appellant is entitled for the Cenvat credit in respect of goods in question. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

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(Ramesh Nair)
Member (Judicial)

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