

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.488 of 2011

(Arising out of OIO-01/COMMR/2011 dated 06/01/2011 passed by Commissioner of Central Excise-AHMEDABAD-III)

C.C.E. & S.T.-Rajkot

.....Appellant

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

VERSUS

Sanghi Industries Ltd

.....Respondent

(Cement Division) Clinker Unit, Sanghipuram, Po-Motiber, Taluka-Abdasa,
KUTCH, GUJARAT

WITH

Excise Appeal No.525 of 2011

(Arising out of OIO-01/COMMR/2011 dated 06/01/2011 passed by Commissioner of Central Excise-AHMEDABAD-III)

Sanghi Industries Limited

.....Appellant

1st Floor, President House, Amraiwadi,
AHMEDABAD, GUJARAT

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

.....Respondent

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:

Shri Dharmendra Kanjani, Superintendent (AR)for the Appellant
Shri R. Subramanyam, Advocate for the Respondent

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

Final Order No. A/ 10423-10424 /2022

DATE OF HEARING: 24.01.2022
DATE OF DECISION: 10.05.2022

RAMESH NAIR

These two appeals are filed one by the Revenue and another by the assessee against O-I-O No. 01/COMMR/2011 dtd. 06.01.2011 passed by Commissioner, Central Excise, Ahmedabad-III.

1.1 Briefly stated the facts of the case are that the appellant had availed total Cenvat credit of Rs. 1,92,67,294/- during the period June 2007 to December 2007 on various items viz. M.S Beams / M.S. Pipes/ Plates / Channels / Sheets / Flats/ Chain / Anodes / Tube / Conveyor Belts / Filter Bags / S.S. Structures / Tyres/ Rope / Welding Electrodes etc. Show Cause Notice was issued to the appellants for recovery of the said credit along with interest and penalty alleging that the impugned goods used for civil construction purpose or repairs do not fall under the definition of inputs nor do they fall under the category of Capital Goods as per the Rule 2 of the Cenvat Credit Rules, 2004. On adjudication, out of total demand, demand of Rs. 1,71,26,939/- was dropped and demand of Rs. 21,40,371/- was confirmed with interest and penalty. Aggrieved by the said impugned order, both Revenue and assessee are in appeal.

02. Shri R. Subramanyam, Learned Advocate on behalf of the assessee submits that said materials have been used for maintenance and repair of the plant and machinery and capital goods within the factory. As regard the use of impugned goods Joint Memorandum /Verification report, was drawn Jointly by the Assistant Commissioner of Central Excise, Gandhidham and the DGM (Excise) of the assessee, at the factory premises. Based on the said Joint Verification Report. Learned Commissioner had passed the impugned order and allowed the Cenvat Credit. The Department in their grounds of Appeal has not challenged the Joint Verification Report which is the basis of factual verification and the bona fide grounds on which the cenvat credit was allowed. He relied upon the said verification report and pray that the appeal filed by the department may kindly be rejected. He placed reliance on the following decisions:-

- Final Order No. A/12086-12088/2017 dtd. 28.08.2017 passed in their own matter.
- Final Order No. A/12941-12949/2017 dtd. 09.10.2017 passed in their own matter.
- Reliance Industries Ltd. Vs. UOI- 2018 (360) ELT 244 (Bom)
- CCE Vs. Jindal Steel & Power Ltd. – 2011(263) ELT 557 (Tri. Del)
- Jaypee Bela Plant Vs CCE -2005 (180) ELT 31 (Tri. Del)
- CCE Vs Manikgarh Cement Ltd.- 2005 (190) ELT 7 (SC)
- Indorama Cement Ltd. Vs. CCE – 2007-TIOL-1578-CESTAT-MUM
- Birla Corporation Ltd. Vs. CCE – 2005 (186) ELT 266 (SC)

2.1 As regard the confirmed cenvat credit demand, he submits that an amount of Rs. 12,304/- was taken as credit of inputs on aluminium zinc anodes which were used in laboratory of Appellant. Without quality checks of the raw materials or the final products, the same cannot be used for manufacture. All the materials that is required by the laboratory, are used in the quality check and quality check being a vital part of the manufacture process, credit taken on such materials cannot be denied.

2.2 He further submits that cenvat credit amount of Rs. 9,88,421/- was taken on Tower and SS Structures, ACSR conductor, MS Plate and Shell albid HD2 which were used in the erection of transmission towers installed from the power plant to the factory for bringing electricity. The electricity is used in the functioning of the various plant and machinery, in the factory. Hence Cenvat Credit be allowed. He placed reliance on the Judgment passed in their own case in the matter of Sanghi Industries Ltd. Vs. CCE, Rajkot – 2006(206)ELT 575 (Tri. Del).

2.3 He also submits that cenvat credit amount of Rs. 11,39,646/- was availed on furnitures which were used in the guest house located in the factory. The cenvat cannot be denied on furnitures used for business purpose. Without prejudice he also submits that have already paid this amount during the Misc. Application hearing for stay. The Credit was taken but subsequently reversed and therefore, it would amount to non-availment of credit. He prayed that the penalty proposed to this extent may kindly be set aside. He placed reliance on the following decision.

- M/s Rahans Metals Pvt. Ltd. Vs. CCE, Rajkot- 2007(8)S.T.R. 498 (Tri. Ahmd.)
- M/s Hemnil Metal Processors Pvt. Ltd. Vs. CCE, Pune -I- 2010 (261) ELT 429 (Tri.- Mumbai)

03. Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of Revenue reiterated the findings of the Learned Commissioner on the items whereunder the credit was denied. However, on the goods on which the Learned Commissioner has allowed the credit, the Ld. AR reiterates the grounds of appeal. He submits that the adjudicating authority has found that the materials under dispute had been used within the factory of manufacture for the purpose of plant and capital goods and same qualify

as inputs in terms of Explanation 2 to Rule 2 (k) of the Cenvat Credit Rules, 2004. As per the said explanation only such goods which are used in the manufacture of capital goods which are further used in the factory of the manufacturer, fall within the ambit of 'input'. Whereas, in the instant case it has been found that the materials under dispute have been used in the factory of manufacturer for the purpose of maintenance of plant/ capital goods and for the purpose of plant and capital goods. The materials used for the purpose of repair and maintenance of plant are not covered under the ambit of 'input' in view of the explanation 2 of Rule 2(k) of the Cenvat Credit Rules 2004. And as such, the cenvat credit attributable to such materials used for the purpose of repair and maintenance of plant should not have been allowed in as much as the same do not qualify as inputs in terms of the provisions of Rule 2 (k) of the Cenvat Credit Rules, 2004. He placed reliance on following decisions.

- Maruti Suzuki Ltd. Vs. CCE, Delhi -III – 2009(240)ELT 641(SC)
- Ramala Sahkari Chini Mills Ltd. Vs. CCE, Meerut-I- 2010(260)ELT 321 (SC).

04. We have carefully considered the submissions made by both sides and perused the record. Having considered the rival contentions, we find that the department have erred in relying upon the amended Explanation-II with effect from the year 2009, whereas admittedly the credits in question were taken during period June 2007 to Dec. 2007. We further find that the ruling in the case of '*Vandana Global Ltd.*', by Larger Bench Tribunal [[2010 \(253\) E.L.T. 440](#) (Tribunal-LB)], have been overruled by Hon'ble Gujarat High Court in the case of '*Mundra Port*' [[2015 \(39\) S.T.R. 726](#) (Guj.)] and by Hon'ble Madras High Court in the case of '*India Cement Ltd.*' reported at [2015 \(321\) E.L.T. 209](#) (Mad.), wherein it is categorically held that steel items and supporting structures are essential part of the machinery, so as to run the same for manufacture of dutiable finished products. Accordingly, the Hon'ble High Court held that the steels items used in the plant and machinery and supporting structures are eligible for Cenvat credit. In the present matter use of the impugned goods were not disputed by the department, further revenue also not disputed the Joint verification report duly signed by the Deputy Commissioner, Central Excise, Gandhidham and representative of assessee. The said verification report has categorically described the usage of the materials under dispute on which cenvat credit has been availed by the assessee. We also find that the issue of utilization of goods for repairs and maintenance of capital goods is no longer *res integra*

and the same have been decided in favour of the assessee by number of decisions. If any items is used for repair and maintenance of the plant and machinery, the same would be eligible for Cenvat credit in view of the judgment of the Hon'ble Chhattisgarh High Court in the case of Ambuja Cement Eastern v. CCE, Raipur [[2010 \(256\) E.L.T. 690](#) (Chhattisgarh)] and Hon'ble Karnataka High Court in the case of CCE, Bangalore v. Alfred Herbert (India) Ltd. [[2010 \(257\) E.L.T. 29](#) (Kar.)]. Therefore, in the present matter Ld. Commissioner has rightly allowed the cenvat credit of Rs. 1,71,26,939/ -.

4.1 The disputed items in question are also claimed to have been used for repairs/maintenance of capital goods by way of replacement of old/worn out parts/components of such capital goods. This factual position is to be seen through the verification reports. However, the revenue has proceeded on the premise that the disputed items were used for fabricating/manufacturing of capital goods. If this finding is presumed to be correct for a moment, then there is a *prima facie* case for holding that the disputed items were used in the manufacture of capital goods and, hence, by virtue of the aforesaid Explanation to the definition given under Rule 2(k), disputed items could be considered as "inputs". We hold that the credit is admissible on the disputed goods in question.

4.2 We find that Learned Commissioner has denied credit on Aluminium Zinc anodes amounting to Rs. 12,304/- which was used in laboratory of the factory. The said laboratory is functioning in the factory of the appellant for quality checks of raw materials and finished goods. The impugned goods were used in laboratory of appellant, which ultimately used for manufactured goods and satisfy the definition of input, hence the Cenvat credit should not be denied to the assessee.

4.3 We also find that the Learned Commissioner has denied the cenvat credit of Rs. 9,88,421/- availed on goods which were used in the erection of transmission towers installed from the power plant to the factory for bringing in the electricity. The Ld. Commissioner observed that the primary condition in respect of the goods which may qualify the definition of either 'inputs or 'capital goods' under Cenvat Credit Rules, 2004 is that they have to be used within the factory of manufacture. This criteria has not been satisfied in this matter. However we find that in the case of *Hindalco Industries Ltd.* [2014 \(313\) E.L.T. 311](#) (supra), after considering apex court judgment in *Vikram Cements* [2006 \(197\) E.L.T. 145](#) (S.C.) it was observed as under :

6.3 We are of the view that the ratio of the above-mentioned judgments of the Apex Court is squarely applicable to the facts of this case, as the Renu-sagar Power Plant, which is a captive power plant of the appellant company, together with the cement factory of the appellant company constitute one integrated unit and it is not disputed that except of small quantity of electricity generated being used in the Renu-sagar township, the remaining quantity is used in the appellant's factory for production of aluminium. Therefore, the Cenvatcredit in respect of capital goods and inputs used in the captive power plant located at Renu-sagar cannot be denied just because the power plant is located at some distance from the factory.

6.4 We also find that the Apex Court in the case of *State of U.P. v. Renu-sagar Power Company* reported in (1988) 4 SCC 59 has held that Renu-sagar Power Plant had no separate and independent existence apart from and independent of Hindalco (the appellant) and therefore the Renu-sagar Power Plant has to be treated as captive power plant of Hindalco.

7. However, since, admittedly, some quantity of electricity generated is used in the township and is not used in the factory of the appellant company for manufacture of excisable goods, to that extent, the input duty credit would not be admissible in view of judgment of the Apex Court in the case of *CCE v. Solaris Chemtech Ltd.* [[2007 \(214\) E.L.T. 481](#) (S.C.)]. However, for determining the quantum of input duty credit, which would be inadmissible on this ground, the matter would have to be remanded to the original Adjudicating Authority.

4.4 In *Steel Authority of India Ltd. v. Commissioner of Central Excise, Bhubaneswar* reported in [2007 \(219\) E.L.T. 960](#) (Tri.-Del.), the Tribunal also held that mere location of capital goods outside the factory premises is no ground for denying the credit. In the present matter impugned goods were used in the erection of transmission towers installed from the power plant to the factory of appellant for bringing the electricity, the said electricity undisputedly used in the factory premises of the Appellant for manufacturing their final product which has been cleared on payment of duty. Therefore, relying on the case laws cited by the appellant in their own case, in the matter of *M/s Sanghi Industries Ltd. Vs. CCE, Rajkot* *supra* are squarely applicable to the facts of this case, we hold that the appellant has correctly availed the credit on disputed goods.

4.5 As regard the availment of Credit of Rs. 11,39,646/- availed on furnitures, we find that there is no dispute that the said furnitures are used in guest house and the guest house is part of factory. In Board's Circular No. 943/4/2011-CX, dated 29-4-2011, it is mentioned that "goods such as furniture and stationery used in an office within the factory are goods used

in the factory and are used in relation to the manufacturing, business and hence, the credit on the same is to be allowed”.

4.6 Undisputedly, the guesthouse is used for operations of the factory. Nothing is available on record to show that guesthouse is used for any other purpose. In view of this fact, since guesthouse used for operations of factory which has direct nexus with factory which produces excisable goods therefore Cenvat credit is admissible to the appellant on the furnitures used in Guest House of the factory. We also find that in the case of M/s Agarwal Foundries Vs. Commr. of C. Ex., Cus. & S.T., Hyderabad 2015 (321) E.L.T. 267 (Tri. - Bang.) the Tribunal held as under :

2. After hearing both the sides, I find that in this case air-conditioner has been used within the factory in the control panel room to keep the temperature down. There is no dispute that it has been installed in the factory. As regards furniture, the learned counsel relied upon the Board's circular issued by the Board vide Circular No. 943/4/2011-CX., dated 29-4-2011. In the circular it was mentioned that 'goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed'. This circular was issued after the amendment of Cenvat Credit Rules specifically denying benefit of Cenvat credit on certain activities which are not at all related to manufacture. The issue before me relates to the period April 2007. According to the definition of 'input' as it existed during the relevant period, inputs used in the factory 'for any other purpose' the credit is admissible. In this case there is no denial of the fact that furniture had been used within the factory. Under the circumstances, I have to hold that appellant is eligible for the benefit of Cenvat credit and I hold so. In the result the appeal is allowed.

05. As discussed above, in the result, the Revenue's appeal being devoid of merit is dismissed and assessee's appeal is allowed.

(Pronounced in the open court on 10.05.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)