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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.866 of 2012

(Arising out of OIO-08/DEMAND/CEX/COMMR/BRC-I/2012 dated 11/10/2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

Gujarat Alkalies And Chemicals Ltd **........Appellant**
P.O. : Petrochemicals,
Vadodara, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri Dhaval Shah, Advocate for the Appellant
Shri Prabhat Rameshwaram, Additional Commissioner (AR) for the Respondent

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

Final Order No. A/ 11280 /2022

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 06.10.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant are entitled for the cenvat credit in respect of input services used for setting up of windmill located outside the factory premises.

02. Shri Dhaval Shah, learned counsel appearing on behalf of the appellant at the outset submits that this issue is no longer res-integra as this tribunal given various judgments on the same issue wherein, the cenvat credit on input service used for setting up of windmill even though located outside the factory premises was allowed. He placed reliance on the following judgments:-

- SWISS GLASCOATE EQUIPMENTS Vs. CCE & ST, VADODARA-I-MANU/CS/0041/2022
- AMBUJA CEMENTS LIMITED Vs. CCE & ST, SURAT-I- 2022 (6) TMI 819-CESTAT Ahmedabad

- PARRY ENGINEERING AND ELECTRONICS & ORS Vs. CCE, AHMEDABAD/VADODARA/RAJKOT- 2016 (1) TMI 518- CESTAT Ahmedabad
- COMMISSIONER OF C.EX., KOLHAPUR Vs. FINOLEX INDUSTRIES LTD.- 2022 (6) TMI 3- CESTAT Mumbai.
- RAJRAM MAIZE PRODUCTS Vs. CCE, RAIPUR-MANU/CE/0054/2022
- CCE & CUS., AURANGABAD Vs. ENDURANCE TECHNOLOGY PVT. LTD.- 2017 (52) S.T.R. 361 (Bom.)
- DEEPAK FERTILIZERS & PETROCHEMICALS CORP. LTD. Vs. CCE, BELAPUR- 2013 (32) STR 532 (Bom.)
- COMM.C.Ex., & S.T. CHENNAI Vs. ASHOK LEYLAND LTD.- 2019 (369) ELT 162 (Mad)

03. Shri Prabhat Rameshwaram, learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue for consideration before us is whether the appellant is eligible for cenvat credit in respect of input services used for setting up of windmill which is located outside the factory premises. The lower authority have denied the credit on the ground that the windmill for which the services were availed are located outside the factory. We find that even though the windmill is located outside the factory premises, the electricity generated through the said windmills are at last used in the manufacture of final product through the State Electricity Board therefore, merely because the windmills are located outside, for this reason the cenvat credit cannot be denied. This issue has been considered by this tribunal in various judgments. This tribunal in the case of Swiss Glascoate Equipments Vs. CCE, & ST., Vadodara-I, relied on the decision of the Bombay High Court in the case of Deepak Fertilizers & Petrochemicals Corp. Ltd.- 2013 (32) STR 532 (Bom.) to hold as under :-

> *5] On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills Installed by the respondents is input service as defined by clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final product would be susceptible to CENVAT credit. Rule does not say that input service received by a manufacture received at the factory premises. The judgments referred to above, also interpret the word "input" service in similar fashion.*

In the case of Commissioner of Central Excise, Nagpur Versus Ultratech Cement Ltd. [cited supra), the Division Bench of this Court held that the definition of "input service" is very wide and covers not only services which are directly or indirectly used in or in relation to manufacture of final product but also includes various services used in relation to business of manufacture of final product. The expression "activities" in relation to business is also discussed in this judgment by referring to judgment of Apex Court.

In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. Versus C.C.Ex. Belapur [cited supra] the Division Bench held as under:

> *"The definition of the expression input service covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression input service'. Rule 2(1) initially provides that input service means any services of the description falling in sub-clauses (1) and (II). Rule 2(1) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of Inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex-facie contrary to the provisions contained in Rule 2 (l). The first part of Rule 2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2 (l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2 (1). Rule 2 (1) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the works used in Rule 2 (1). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(1). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process.*

6] In view of this discussion, we have no hesitation to hold that the answer to question No.(I) is in affirmative. Despite this settled position, learned counsel for the appellant tried to submit that the judgment cited at Sr. No. (2) is being challenged before Supreme Court. This submission does not really help us in deciding the appeals. Both appeals are dismissed.

From the above judgment, it can be seen that the issue is identical in the present case as in the above cited case. Therefore, the ratio of the above judgment is applicable in the present case. Accordingly, irrespective of the fact that windmill is located outside the factory premises, repair and maintenance service is admissible for Cenvat credit in terms of rule 2 (l) of Cenvat Credit Rules, 2004. Accordingly, the impugned orders are set aside. Appeals are allowed.

05. In view of the above judgment and also various judgments cited by the learned counsel for the appellant, the issue is no longer res-integra accordingly, the cenvat credit in respect of input service used for setting up of the windmill even though outside the factory premises, the credit is admissible. Accordingly, the impugned order is set aside. Appeal is allowed.

(Operative portion pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul