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

REGIONAL BENCH- COURT NO. 02

Excise Appeal No. 12628 of 2018

[Arising Out Of OIA-BHV-EXCUS-000-APP-155-156-2017-18 Dated- 02/07/2018 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

Marinelines Ship Breakers Pvt Ltd **.....Appellant**
Plot No. 47, Ship Breaking Yard Alang, Post Manar,
BHAVNAGAR,
GUJARAT

VERSUS

C.C.E. & S.T.-Bhavnagar **.....Respondent**
Plot No.6776/B-1...Siddhi Sadan,
Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

WITH

Excise Appeal No. 12629 of 2018

[Arising Out Of OIA-BHV-EXCUS-000-APP-155-156-2017-18 Dated- 02/07/2018 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

Shree Kamal Kumar Khemka **.....Appellant**
M/S Marinelines Ship Breakers Pvt. Ltd.,
Plot No. 47, Ship Breaking Yard Alang, Post Manar,
Bhavnagar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **.....Respondent**
Plot No.6776/B-1...Siddhi Sadan,
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Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:
Shri. Rahul Gajera, Advocate for the Appellant
Shri. Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10139-10140 /2025

DATE OF HEARING:25.02.2025
DATE OF DECISION:25.02.2025

In the present case, the dispute is about Cenvat Credit availed or allowed to be availed on fuel oil in engine parts of the vessel brought for breaking purposes. The stand of the department is that the appellants are not entitled to Cenvat Credit as such fuel is a part of the ship as held by the Hon'ble Gujarat High Court-2013 (288) ELT 347 (Guj.) in the matter of Priya Holding Pvt. Ltd Vs. Commissioner of Customs (Prev) which dealt with the classification of the oil in the engine of the vessel and declared that the same was classifiable under Chapter Heading 89.08 when imported into India. Same view was endorsed by the Hon'ble Supreme Court in the matter of Mahalaxmi Ship Breaking Corporation Vs. Commissioner of Customs, Bhavnagar-2023 (384) ELT 482 (S.C). The view point of the department as emerging from findings and as reiterated by the Learned AR is that such Oil being part of the vessel is not entitled to any Cenvat Credit.

2. Learned Advocate rebutting the department's case in present appeal, states that the one of the judgments quoted above by the department specifically dealt with the issue of whether Cenvat Credit was available to the appellants or not were not confined to the classification of the oil contained in the engine. He seeks to placed reliance on CCE & S.T-Bhavnagar Vs. Navyug Ship Breaking Company reported in 2023 (3) TMI 636-CESTAT Ahmedabd which as per his assertion specially dealt with the issue in para-5 of the decision. The learned advocate however is in agreement that they are as per law, can only take 85% credit of the oil which is part of engine and

cannot claim anything more than that. This matter was never an issue in the present litigation.

3. This Court has considered the rival submissions. It finds that sufficient mind was applied by the Division Bench of this Tribunal in the decision of Navyug Ship Breaking Company (cited supra) (in para-5 as reproduced below) and therefore deserves to be followed:

> *Para "05. We have carefully considered the rival submissions and perused the records. It can be seen that obtaining of goods and material by process of breaking ship is deemed as manufacturing activity liable to central excise duty as per section note 9 of section XV of Central Excise Tariff Act, 1985 which reads as under:*
>
> > *"in relation to the products of this section, the process of obtaining goods and material by breaking up of ships, boats and floating structure shall amount to 'manufacture*
>
> *Section XV covers all goods and materials falling under section 72 to 83 of the Schedule 1 appended to the Central Excise Tariff Act, 1985. Thus, all such goods and materials obtained by such process are considered as 'excisable goods being subject to levy of duties of excise as per section 2 (d) of the Central Excise Act, 1944. As a corollary the goods and materials, except those covered under section XV (Chapter 72 to 83) are considered as non-excisable irrespective of the fact that they are obtained by breaking up of ships. Thus, Fuels and Oils are non-excisable. It is in this context the cenvat credit of CVD paid on fuel and oils was denied to the Respondent by the adjudicating authority. The case of the department mainly is that fuel and oils are removed as such from the ship before commencing the breaking activity and are not specified products of section XV amounting to manufacture and hence the same cannot be "input' for the Respondent for the process of obtaining goods and materials by breaking ship. However, as can be observed from the appeal memo itself fuel and oils for the use of ship, found as* store in the ship when brought for breaking purposes are inevitably required to be removed for efficient and safe operation of breaking of ship. This position is also specifically admitted in the appeal memo in para 3.4.4. In this background, it is clear that Fuel and Oils are by-product that are inevitably required to be removed from the ship in the course of commencing the activity of breaking the ship and if that be so, there is no reason for denial of cenvat credit of CVD paid on any part of the Ship including its stores viz. fuel and oil on the ground that they do not form part and parcel of the ship or that they are removed at a stage before commencing the activity of breaking ship or that their classification is under different heading. It is settled law that in the course of manufacturing activity any by-product emerges; cenvat credit on that part which pertains to by-product cannot be denied on the ground that such by-products are non-excisable goods or that they are not used in or in relation to manufacturing activity of

manufacturer of excisable goods. This was made clear by para 3.7 of CBEC Manual for supplementary instructions that states as follows:

> *"CENVAT credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product. Similarly, CENVAT is not be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly."*

5.1 There can be no doubt that for the purpose of carrying out the manufacturing activity as envisaged under note 9 to section xv viz. obtaining goods and material by breaking of ship, the entire ship as imported is the "input" for a ship breaker. Ordinarily, ship when imported for breaking purpose would contain fuel and oil whether in the engine, machinery or in the bunker/tanks. There is no reason to treat the same not part of the ship imported for breaking purpose. It has been rightly held by Learned Commissioner (Appeals) that removal of fuel and oil is the initiation of ship breaking activity and cannot be said as separate activity. Further, Learned Commissioner (Appeals) has rightly held that in view of para 6 of the circular no. 1014/2/2016-CX., dated 1-2-2016, that cenvat credit of CVD paid on fuel & oils cannot be denied to the Respondent.

06. In view of foregoing discussion, impugned order is required to be upheld and appeal of department is liable to be dismissed. Accordingly, we uphold the impugned order and dismiss the revenue's appeal. CO also stand disposed of."

3.1 In view of the foregoing, this Court following the aforesaid decision permits in Principle, the Cenvat Credit on the oil brought in the ship engine when used for ship breaking purposes to the extent of 85%.

4. Appeal is allowed in the above terms.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi