

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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13028 of 2013-SM

[Arising out of Order-in-Original/Appeal No PJ-246-VDR-I-2013-14 dated 18.07.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal)]

Eimco Elecon India Limited

.... Appellant

Anand Sojitra Road, Vallabh Vidyanagar,
ANAND, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara-i

.... Respondent

1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Mrugesh Pandya, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 07.02.2023

DATE OF DECISION: 09.02.2023

FINAL ORDER NO. A/10271 / 2023

RAMESH NAIR :

The appellant have two units i.e. Unit-1 and Unit-2 which are adjacent to each other. The appellant carrying out part of process in Unit-2 on the machinery installed therein and after the entire process is done, Unit-1 is clearing the final products on payment of duty. The appellant have availed Cenvat credit in respect of some spares and accessories of laser cutting machines which were used in Unit-2. The case of the department is that since the spares and accessories were used in Unit-2, Cenvat credit thereof shall not be admissible to appellants i.e. Unit-1.

2. Shri Mrugesh Pandya, learned Counsel appearing on behalf of the appellant submits that processing of both the units i.e. Unit-1 and Unit-2 are

integrated and goods which are finally cleared from Unit-1 on payment of duty therefore, the Cenvat credit on spares and accessories used for the parts manufactured in Unit-1 should be allowed. He submits that in respect of capital goods i.e. Laser Cutting machines installed at Unit-1, a similar issue was raised earlier also but this Tribunal vide order No. A/10006/2019 dated 02.01.2019 allowed the credit. The present issue is similar to the issue decided in aforesaid decision, therefore the issue is no longer in dispute.

3. Shri Sanjay Kumar, Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both sides and perused the record. I find that objection of the department is that since spares and accessories procured by Unit-1 is used in Unit-2 where the Laser Cutting machines was installed, the credit for the same is in dispute. Firstly, I find that the excisable goods manufactured and cleared from the appellant's Unit-1, therefore, it is undisputed that the spares and accessories were used in or in relation to the manufacture of excisable goods of the appellant. Secondly, the similar issue has been decided in the appellant's own case in respect of capital goods i.e. machineries installed in the Appellant's Unit-2 vide Final order No. A/10006/2019 dated 02.01.2019 and Tribunal passed the following order:-

"4. We have gone through rival submissions. We find that the appellant has relied on the decision of Hon'ble High Court of Madras in the case of Habasit lakoka (supra), the facts in the said case were similar as can be seen from para 3 of the said order.

"3. The respondent assessee availed Modvat credit in respect of capital goods used in the manufacture of Leather Nylon Sandwich Beltings in its registered factory. By order dated 12-6-2000, the original authority held that the respondent had two units namely (1) Central Excise registered factory producing excisable final products and (2) another unit called Mother Roll Plant which was not registered under the Central Excise Rules; that they purchased capital goods

and installed in their registered factory and took the credit of the duty paid thereon; that subsequently for want of space, they shifted the machinery to their another Unit namely Mother Roll Plant which was situated 500 mts away from the registered unit and that at the time of removal of the capital goods, they neither obtained permission nor reversed the credit of duty taken on the said capital goods. The department reversed the credit amount of Rs. 87,976/-. The claim made by the respondent assessee for refund of the said amount was on the ground that the capital goods installed in their Mother Roll Plant was eligible for the credit of duty inasmuch as the said plant process the goods of the registered factory. The original authority rejected the claim by holding that 57Q(1) stipulates that the capital goods should be installed in the place of manufacture of final products and not in the place outside the place of manufacture of final products. The Commissioner affirmed the order of the original authority. The respondent approached the Tribunal and the Tribunal by the impugned order dated 15-10-2004 allowed the appeal and directed for refund to be sanctioned. Before passing the impugned order, the Tribunal called for the report of the Commissionerate. The Tribunal, after noting the findings contained in the report of the Commissioner held that the Mother Roll Plant is for all practical purposes, part of the appellants main factory and it can be reasonably held that the subject capital goods were used by the respondent in the factory of production of final products and therefore, it was entitled to avail Modvat credit of the duty paid thereon under Rule 57Q."

Hon'ble High Court after examining the issue observed as follows:

"7. There is no dispute that the capital goods involved hereunder is one of the capital goods falling within the schedule to the Central Excise Tariff Act and used for the manufacture of the final products. Therefore, the only other question to be examined is whether the respondent has satisfactorily established the condition namely that the said capital goods were used in the factory for the manufacture of final products. The salient points noted in the report establishes beyond doubt that except the fact that the capital goods were used in the respondent's own premises situated just 500 mts away from the place of manufacture and that after carrying out necessary connected processes in that premises which is called as Mother Roll Plant, the same is brought to the place of manufacture where the final products is rolled out. Therefore, the activity of the respondent in the usage of the capital goods can be said to be part of its manufacturing activities of final product in its registered factory. It is also not the case of the appellant that by usage of the capital goods in the Mother Roll Plant, the same was in any way alienated to any one, other than the respondent factory.

8. The salient points noted in the report of the Commissioner established beyond doubt that the capital goods were used in the factory of the respondent for the purpose of manufacture of final products. When the above said conclusion was inevitable, as held by the Tribunal, the respondent was entitled to avail Modvat credit duty paid on the capital goods concerned. Consequently, the order of the Tribunal cannot be faulted. The question of law is therefore, answered in the negative and the appeal stands dismissed. No costs. Consequently, connected C.M.P. No. 10540 of 2005 is closed."

Similarly in the case of Pooja Forge Ltd. (supra), in a dispute of similar nature, Tribunal observed as follows:

"2. The contention of the appellant is that both the units belong to the appellant and that manufacturing activities connected to the production of nuts, bolts and screws were taking place in both the units. It is also the explanation that machinery was moved for repair, test etc. Whatever be the reasons for moving them, the Id. Counsel has emphasized that, this is not a case of alienation of machinery on which capital goods had been taken, to warrant return of credit.

3. As against the contentions of the appellant, Id. SDR would submit that since the movement of the capital goods was without permission from the unit where the credit was taken to another unit, there was violation of the rules. He also emphasized that at the time of movement/receipt of the capital goods, the second unit was not registered with the Central Excise.

4. A perusal of the records makes it clear that capital goods were moved only between the appellant's own units and that too for use in the manufacture of the same final products. The case does not involve any disposal or alienation of Modvated capital goods, which would warrant return/denial of Modvat credit. There is no justification for denying the credit. Imposition of penalties were also unjustified. In these circumstances, the impugned orders are set aside and appeals are allowed with consequential relief to the appellants."

In case of Mileen Engineers (supra) also Tribunal observed in para 7 & 8 as follows:

"6. I find that though the appellant has taken credit at the time of receiving of capital goods but it is also fact that capital goods was installed in the adjacent premises and used in relation of manufacture of final product in the registered premises. Since capital goods was used in the manufacture of final product for which excise duty is paid, in my view, credit is admissible from the date of installation and use of capital goods. Incorporation of the said premises is merely procedure requirement. The main requirement of availing Cenvat credit is that capital goods should be used in the manufacture of dutiable goods which is not under dispute. In view of this position, I am of the view that appellant was entitled for the Cenvat credit from the date of receipt and installation of the capital goods even though the part of the factory of the appellant was incorporated subsequently. As regard reliance placed by the Id. AR in case of Mangal Electricals Industries, I find that in the said judgment facts are not identical as the capital goods was installed in another unit, the assessee's plea was that the goods were removed to another unit for job work whereas in the present case they received capital goods and installed in the adjacent premises but it was indeed used for the goods manufactured by the appellant in his registered premises, therefore fact of Mangal Electricals Industries case is different from facts of the present case. In view of the above discussion, impugned order is modified and appeal of the appellant is allowed."

From the above decisions it is apparent that the essential condition for availment of credit as interpreted by various courts is that the capital goods should be used in or in relation to manufacture of the final product and even if the same are used outside the factory for the said purpose the credit cannot be denied so long as the said capital goods are not alienated by the appellant.

5. In the instant case, before availing the cenvat credit the appellant had applied for common registration and it is seen that no response was given by the Revenue on the application for common registration made by the appellant. The said application was neither accepted nor rejected. In these circumstances, it is apparent that the appellant had sought to follow all the requirements of the cenvat credit Rules, before availing the cenvat credit.

6. In view of above cited case laws and special circumstances of the case, we do not find any merit in the impugned order. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief."

5. In view of my above observation which is supported by aforesaid decision of this Tribunal, the issue is no longer res-integra. Accordingly, the impugned order is set-aside and the appeal is allowed with consequential relief.

(Pronounced in the open court on 09.02.2023)

(Ramesh Nair)
Member (Judicial)

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