

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70489 of 2022

(Arising out of Order-in-Appeal No.436-CE/APPL/LKO/2022 dated 21/07/2022
passed by Commissioner (Appeals) Central Excise & CGST, Lucknow)

M/s Indian Potash Ltd.,
(Unit-Jarwal Road, Bahraich-271901)

.....Appellant

VERSUS

Commissioner of Central Excise &

CGST, Lucknow

....Respondent

(3/194, Vishal Khand3, Gomati Nagar, Lucknow-226010)

APPEARANCE:

Shri Vivek Mishra, Consultant for the Appellant

Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70132/2025

DATE OF HEARING : 31 January, 2025
DATE OF DECISION : 31 January, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.436-CE/APPL/LKO/2022 dated 21/07/2022 passed by Commissioner (Appeals) Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"I have carefully gone through the case records. I find that the limited question which needs to be decided in the present appeal is whether CENVAT Credit on account of purchase of HR Plates and Welding Electrode is eligible or not which according to the appellant qualifies the definition of being input.

From the records I find that HR Plates are classifiable under Chapter 84 of the Central Excise Tariff Act, 1985 but, admittedly the same has not been used as

component, spare or accessory of the goods of Chapter 84 and on party's own admission that they have been used in repair and maintenance of the plant and machinery, therefore, I am inclined to hold the CENVAT Credit on the same is neither available as capital goods nor as input.

As regards the issue of Welding Electrode' for their admissibility of credit I find that the same has been settled by the Nagpur Bench of Hon'ble Bombay High Court in their judgment in the matter of Manikgarh Cement vs. Commissioner of Customs & Central Excise, Nagpur reported at 2018 (360) E.L.T. 86 (Bom.) wherein, it has been held that:-

"the eligibility of the welding electrodes used for repairs and maintenance of plant and machinery to be considered as inputs used in or in relation to manufacture of final goods so as to be covered by definition of inputs under the Cenvat Credit Rules. This Court in Lloyd Metals & Engineers Ltd. (supra) on principle held that material used for repairs and maintenance of capital goods cannot be considered to be an input under Cenvat Credit Rules, 2004."

In view of above I uphold the confirmation of demand of Rs. 1,87,085/- under Rule 14 of the CENVAT Credit Rules, 2004 as amended read with Section 11A(4) of the Central Excise Act, 1944, interest on amount of Rs.1,87,085/- under Section 11AA of the Central Excise Act, 1944 read with Section 174 of Central GST Act, 2017 and impose penalty of Rs.1,87,085/- under rule 15(2) of CENVAT Credit Rules, 2004 as amended read with Section 11AC of the Central Excise Act, 1944 read with Section 174 of Central GST Act, 2017

The appeal filed by the appellant is disposed of accordingly."

2.1 Appellant is manufacturer of sugar and molasses falling under Chapter Heading No.17011490 & 17031000 of first schedule to Central Excise Tariff Act, 1985 and engaged in availing the Cenvat credit on duty paid.

2.2 During the course of audit it was brought to notice that appellants have availed Cenvat credit on welding electrode and HR Plates as capital goods.

2.3 Show cause notice dated 29.07.2019 was issued to the appellant asking them to show cause as to why-

- 1. An amount of Rs. 1,87,085/- should not be demanded and recovered from them under Rule 14 of Cenvat Credit Rule, 2004, as amended, read with 11 A (4) of the Central Excise Act, 1944,*
- 2. Interest on the above amount should not be demanded and recovered from them under Section 11 AA of the Central Excise Act, 1944.*
- 3. A Penalty should not be imposed upon them under rule 15 (2) of Cenvat Credit Rules, 2004 as amended read with Section 11 AC of the Central Excise Act, 1944 for contravention of above mentioned Rules Cenvat Credit Rules, 2004."*

2.4 The said show cause notice was adjudicated as per the Order-in-Original dated 30.03.2021 by observing as follows:-

"(i) Confirmed the demand of Rs.1,87,085/- under Rule 14 of the CENVAT Credit Rules, 2004, as amended read with Section 11A(4) of the Central Excise Act, 1944.

(ii) Confirmed the demand of interest on amount of Rs.1,87,085/- in lieu of wrongly availed and utilized CENVAT Credit under Section 11AA of the Central Excise Act, 1944 read with Section 174 of Central GST Act, 2017.

(ii) Imposed penalty of Rs. 1,87,085/- under rule 15(2) of CENVAT Credit Rules, 2004 as amended read with Section 11AC of the Central Excise Act, 1944 read with Section 174 of Central GST Act, 2017."

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order referred in para 1 above.

2.8 Aggrieved appellant have filed this appeal.

3.1 Shri Vivek Mishra, employee of appellant appears and submits an authorization. We have Smti Chitra Srivastava learned Authorised Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 I find that the issue is squarely covered by the decision of Hon'ble Gujarat High Court in the case of M/s Nayara Energy Ltd, [Order dated 3 April, 2024 in Tax Appeal No. 158 of 2024] wherein following has been held:-

"10. Learned advocate Ms.Sancheti invited the attention of the Court to the findings given by the Hon'ble Apex Court in para nos.14 and 16 which reads as under:

"14. In the case of Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. reported in (1989) 4 SCC 566 the difference between the expression "used in the manufacture" and "used as input (raw material)" was highlighted. In that judgment, it was held that undoubtedly the said two expressions are distinct and separate, but, when an ancillary process (like electricity generation) aids the making of an end product, then, the ancillary process gets integrally connected to the end product. In the said judgment, this Court applied what is called as "the dependence test". It may, however, be noted that in the definition of "input" the expression "used in or in relation to the manufacture of final product" is not a standalone item. It has to be read in entirety and when so read it reads as "used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not". These words "whether directly or undefined indirectly" and "whether contained in the final product or not" indicates the intention of the legislature. What the legislature intends to say is that even if the use of

input (like electricity) in the manufacturing process is not direct but indirect still such an item would stand covered by the definition of "input". In the past, there was a controversy as to what is the meaning of the word "input", conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of "input", the Legislature has clarified that even if an item is not contained in the final product still it would be classifiable as an "input" under the above definition. In other words, it has been clarified by the definition of "input" that the following considerations will not be relevant:

- (a) use of input in the manufacturing process be it direct or indirect;*
- (b) even if the input is not contained in the final product, it would still be covered by the definition.*

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input". Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that undefined it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of

the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when undefined they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product" It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration

per se. They become relevant only when the above crucial requirement of being "used in or in undefined relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."

11. Reliance was also placed on the admission of the SLP in case of M/s.Hindustan Zinc Ltd. (Supra) and Vandana Global Limited as the Rajasthan High Court and Jharkhand High Court respectively held in favour of the assessee for entitlement of the Cenvat credit on similar products.

12. On the other hand, learned advocate Mr.Vishal Agrawal for the respondent assessee submitted that the issue is no more res- integra in view of the decision of the Hon'ble Apex Court in Civil Appeal No.4704 of 2007 in case of the Kisan Co-operative Sugar Factory Ltd. Vs. Commissioner, Central Excise, Meerut-I, wherein about forty appeals were disposed of by the Hon'ble Supreme Court in the similar issue and it was submitted that Hon'ble Supreme Court has held that in view of the settled legal position, the interpretation of the expression "used in or in relation to manufacture" was interpreted as to the item used for maintenance of the Plant and Machinery were also held to be the undefined item used in the manufacture of the finished goods. It was therefore submitted that the Tribunal has not committed any error in arriving at the findings that the respondent is entitled to the Cenvat credit on the items like Welding Electrodes, Welding filler Wires as capital goods as per Rule 2(k) of the CENVAT Credit Rules, 2004.

13. Having heard learned advocates for both the sides and considering the fact that the Tribunal has relied upon the decision in the respondent assessee's own case, as well as in view of the fact that now the issue is no more res-integra in view of the decision of the Hon'ble Supreme Court in case of Kisan Co-operative Sugar Factory Ltd. (Supra) wherein the Hon'ble Apex Court has held as under:

"16. The controversy with regard to the products in question are similar to all the cases. The availment of the credit

under the relevant Modvat/Cenvat Credit Rules in the context of eligible inputs as defined from time to time have been delineated under the respective rules starting from the period prior to 01.03.1995 and thereafter at subsequent periods undefined when the rules have been amended or substituted by fresh rules. The bone of contention in these cases revolves around the definition of inputs. It is not in dispute that the said definition is an exhaustive.

20. In view of the settled legal position, the interpretation of the expression "used in or in relation to manufacture" is of a very wide import and takes within its scope and ambit all items used in the process of manufacture whether directly or indirectly and whether contained in the final product or not. The items used for maintenance of plant and machinery are also items used in the manufacture of finished goods. Hence, credit on the items used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assesseees.

Thus, in view of the above judgments, credit on welding electrodes and other items such as jointing sheets, SS plates etc. used for maintenance, repair, up-keep or fabrication of plant and machinery are admissible to the assesseees."

4.3 By following the above order, I find no merits in the impugned order and set aside the same.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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