CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70166 of 2023

(Arising out of Order-In-Appeal No.MRT-EXCUS-000-APPL-MRT-61-2022-23, dated -25/11/2022 passed by Commissioner (Appeals) CGST, Meerut)

M/s Triveni Engineering and Industries Limited
.....Appellant

(Khatauli-Miranpur Road, Tilak Nagar,
Khatauli, Village-Sheikpura,
Muzaffarnagar, Uttar Pradesh 251201)

VERSUS

Commissioner, CGST, Meerut **....Respondent**

(Mangal Pandey Nagar,
Opp. Ch. Charan Singh University
Meerut, Uttar Pradesh-250004)

AND

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APPEARANCE:

Ms. Anjika Chopra, Advocate &
Shri Puneet Chopra, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70266-70267/2025

DATE OF HEARING : 20.02.2025
DATE OF DECISION : 20.02.2025

SANJIV SRIVASTAVA:

These appeals are directed against order in appeal No MRT/EXCUS/000/APPL-MRT/61/2022-23 dated 25.11.2022. By the impugned order following has been held:

"14.5 Thus in light of the foregoing facts and findings, I opine that:

(i) Out of the total CENVAT credit of Rs. 12,12,669/- availed on capital goods, CENVAT credit of Rs.12,12.669/-, CENVAT credit amounting to Rs. 6.09,943/- is admissible to the respondent party and CENVAT credit amounting to Rs, 6,02,726/- is inadmissible to them and is liable to be recovered from them along with accrued amount of interest.

(ii) Out of the total CENVAT credit of Rs. 14,37,634/- availed on inputs the entire amount of CENVAT credit of Rs. 14,37,634/- is inadmissible to the respondent party and the same is liable to be recovered from them along with accrued amount of interest.

(iii) Out of the total CENVA T credit of Rs.35,11,738/- availed on input services, CENVAT credit of Rs.33,26.668/- to be inadmissible to the respondent party and is liable to be recovered from them alongwith accrued amount of interest and CENVAT credit of Rs.1.85.070/- is admissible to them.

Order

Accordingly, the subject Appeals filed by the Principal Commissioner, CGST, Meerut [Appeal No 29-CE/APPL-MRT/2021 and 29A/CE/APPL-MRT/2021, both dated 21.09.2021, respectively corresponding to Orders in Original No 06/AC/MZN-I/2021-22 and 07/AC/MZN-I/2021-22, both dated 15.06.2021, passed by the

Assistant Commissioner, CGST Division-I Muzaffarnagar in the case of M/s Triveni Engineering and Industries Limited, Khatauli, District Muzaffarnagar] are allowed in above terms. The subject Orders in Original No 06/AC/MZN-I/2021-22 and 07/AC/MZN-I/2021-22 both dated 15.06.2021 are modified to the above extent."

2.1 Appellant is engaged in manufacture of cane sugar & molasses falling under chapter 17 of the first Schedule to Central Excise Tariff Act, 1985. They are also availing the facility of the Cenvat Credit as admissible to them on inputs, capital goods and input service as per CENVAT Credit Rules, 2004.

2.2 It was observed that during the periods April 2009 to July 2010 and November 2010 to June 2011 Appellant had availed CENVAT Credit on various inputs, capital goods and input services as detailed below, which was not admissible to them.

(a) Rs.12,12,663/- availed on Capital Goods i.e. Roller Chain,(73121010) M.C.Parts, (35060000), Fire crete Super(38160000), Carrier chain (73151290), Chain spares (731590000), Chain (73151290), Steel Rope (73121010), Casting (73259920), Mill Plate (7285210), CHQ Plate (7204010), Bush chains (7315900), H.R. Sheet (72089090), M.S. Plate (72089090), LPG (27111900), C.I.casting (73259910), and H.R.Coil (72083940).

S No	Description of goods	CENVAT CREDIT
1	H.R.Coil	150082
2	Mill Plate/ M S Plate	136936
3	Chain carrier chain, bush chain, chain spares	599070
4	CHQ Plate.	14816
5	CI Casting	92700
6	Fire Crete Super	14976
7	HR Sheet	148377
8	LPG	6864
9	MC Parts	6144

10	Roller Chain	10873
11	Steel Casting	25080
12	Steel Rope	5188
13	Wire Rope	619
14	Metal Gas	944
	Total	1212669

(b) Rs 14,37,634/- availed on inputs namely HR Coil (72083740), HR Plate (72085110), HR Sheet (72085490), Channels (72169000), Angels (72161000), Joist (72163200), Shape and Section (72169000)

S No	Description of Goods	Amount in Rs
1	Angles	14775
2	Channel	453379
3	H R Plate/ Sheet	64375
4	H R Coil	80398
5	Joist	39935
6	Mill Plate/ Plate	737627
7	Shape/ Section	47145
	Total	14,37,634

(c) Rs 35,11,738/- availed on input services provided by Selling /Commission agent and Pandal Shamiyana as detailed below:

S No	Description of service	Amount in Rs
1	Commission paid to agent	33,26,668
2	Pandal and Shamiana service	1,85,070
3	TOTAL	35,11,738

2.3 Two show cause notices were issued to the Appellant seeking to deny the inadmissible CENVAT credit.

(a) By show cause notice dated 04.01.2011 issued for the period April 2009 to July 2010 Appellant were called upon to show cause as to why:

(i) CENVAT Credit availed by the party Rs. 43,02,417=00 (As mentioned in Annexure-I, I1, I & IV) on ineligible

Capital Items, Inputs and Input Services (all inclusive Ed. Cess & S.H.E. Cess), should not be demanded and recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 11 A of Central Excise Act, 1944.

(ii) Interest at appropriate rate on the amount of above demand should not be (ii) demanded and recovered from them in terms of Rule 14 of CENVAT Credits Rules, 2004 read with Section 11AB of Central Excise Act, 1944.

(iii) A penalty should not be imposed upon them under Rule 15 of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act., 1944 for wrong availment of CENVAT credit on ineligible capital goods

(b) By show cause notice dated 02.12.2011 issued for the period November 2010 to June 2011 Appellant were called upon to show cause as to why:

(i) CENVAT Credit availed by the party Rs.18,59,618/- (as mentioned in Annexure -A & B) on ineligible Capital Items, Inputs and Input Services (all inclusive Ed. Cess & S.H.E. Cess), should not be demanded and recovered from them under Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 11 A of Central Excise Act, 1944.

(ii) Interest at appropriate rate on the amount of above demand should not be demanded and recovered from them in terms of Rule 14 of CENVAT Credits Rules, 2004 read with Section 11AB of Central Excise Act, 1944.

(iii) Penalty should not be imposed upon them under Rule 15 of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act., 1944 for irregular availment of CENVAT credit on ineligible capital goods.

2.4 Show cause notice at (a) above was adjudicated as per order in original No 06/AC/MZN-I/2021-22 dated 15.06.2021, holding as follows:

(i) I drop the demand of Rs.42,92,825/- (Rupees forty two lacs ninety two thousand eight hundred twenty five only) on inadmissible Capital items & inadmissible inputs and input services under Rule 14 of the CENVAT CREDIT Rules,2004 read with Section 11A & 11AA of the Central Excise Act, 1944.

(ii) I confirm the demand of Rs.9,592/- (Rupees nine thousand five hundred ninety two only). of Cenvat Credit availed by the party on LPG/M.C. Parts (Loctite) which is inadmissible, along with interest under Rule 14 of the CENVAT CREDIT Rules,2004 read with Section 11A & 1 1AA of the Central Excise Act, 1944.

(iii) I impose penalty of Rs.9,592/-(Rupees nine thousand five hundred ninety two only) upon the party under Rule 15 of the CENVAT CREDIT Rules, 2004 read with Section 11AC of the Central Excise Act, 1944

2.5 Show cause notice at (b) above was adjudicated as per order in original No 07/AC/MZN-I/2021-22 dated 15.06.2021, holding as follows:

(i) I drop the demand of Rs.18,55,2584- along with interest thereon on inadmissible Capital items and input services in respect of the demand notice issued under Rule 14 of the CENVAT CREĐIT Rules,2004 read with Section 1 1A & 11AA of the Central Excise Act, 1944:

(ii) I confirm the demand of Rs.4,360/- of cenvat Credit availed by the -noticee on LPG/ Metal Gas and M.C. Parts- which is inadmissibie, along with interest-thereon on inadmissible Capital items and input services in respect of the demand notice issued under Rule 14 of the CENVAT CREDIT Rules,2004 read with Section 11A & 11AA of the Central Excise Act, 1944;

(iii) *I also impose penalty of Rs.4,360/- upon the party under Rule 15 of the CENVAT CREDIT Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.*

(iv) *I drop the proposal to impose penalty on Sh. Mohinder, Singh (DGM- Finance), of M/s Triveni Engineering & Industries Ltd., Khatauli, Distt.- Muzaffarnagar under Rule 15 of the CENVAT CREDIT Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.*

(v) *The amount confirmed to be paid forth with.*

2.6 Aggrieved by these orders, revenue filed appeals before the Commissioner (Appeal). The appeals filed by the revenue has been disposed of by the impugned order referred in para 1 above.

2.7 Aggrieved Appellant has filed these appeals.

3.1 I have heard Ms Anjika Chopra and Shri Puneet Chopra, Advocate for the Appellant and Ms Chitra Srivastava, Authorized Representative for the revenue.

3.3 Authorized Representative reiterated the findings recorded in the impugned order.

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

4.2 Impugned order records the findings as follows:

"*14.* ***DISCUSSION AND FINDINGS***

I have carefully gone through the facts and records of the case as well as the submissions made by the Appellant. The issue before me to decide is as under

(i) Whether CENVAT taken as capital goods of Rs. 12,12.669/

(ii) Whether CENVAT taken as input of Rs. 14,37,634/- and

(iii) Whether CENVAT taken Rs 35,1 1,738/- on input services is eligible to them or not

14.1 First I take up the issue whether credit of Rs 1212669/- taken on capital goods by the Appellant is admissible to them or not. It has been observed that Appellant have availed this credit on Capital Goods i.e. Roller Chain, (73121010) M.C. Parts, (35060000). Fire Crete Super (38160000). Carrier chain (73 151290). Chain spares (731590000), Chain (7315 1290). Steel Rope (73121010). Casting (73259920). Mill Plate (7285210). CHQ Plate (7204010). Bush chains (7315900). H.R. Sheet (72089090), M.S. Plate (72089090). LPG (27111900). C.I.Casting (73259910). and H.R.Coil (72083940). by alleging that all these goods not covered under the definition of Capital goods under Rule 2(a)(^) of the CENVAT Credit Rules 2004. The have not discussed use of these items in the unit. adjudicating authority has dropped the demand by citing various decisions of various courts. They 1reproduced here the definition of capital goods-

(a) "capital goods" means:

(A) the following goods, namely

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii),

(iv) moulds and dies, jigs and fixtures,

(v) refractories and refractory materials,

(vi) tubes and pipes and fittings thereof,

(vii) storage tank,

used-

(i) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(ii) for providing output service

I observe that one must first look at the items itself and consider what its uses are and whether its only use or its primary or ordinary use as the component part of another item. There can't possibly be any serious dispute that in common parlance. Components are items or parts which are used in manufacture of a final product and without which final product cannot be conceived of. Factually a component part is required to complete a machinery and is therefore, integral to its manufacture and function. A spare part is used replace a worn out of damaged component part. An accessory either improve the efficiency of machinery without changing its basic function or perform a secondary or subordinate function. I have seen the reply of Appellant submitting therein that they are engaged in manufacture of Sugar & Molasses and the various items of machinery parts & accessories as well as items of Iron & Steel have been used in various machine and machinery installed in the factory and used in the manufacture of final product sugar & molasses. It is further stated that items viz. Steel Wire Rope, Steel Tubes/Steel Pipes, Chain block forge, Bagasse Carrier, Jointing sheet Conveyor Belt, Chain are parts of various machines/machinery of Chapter 84. The items Roller Chain Cane Carrier / Parts of Cane Carrier/ Spare Parts of Chain/ Chain Spares/ falling under 73121010,73151290,73159000 are parts of Bagasse Carrier being used as material handling machine classifiable under CH 8428.90 and therefore Chain, simplex chain, carrier chain and Roller chain are eligible for capital Goods in view of board Circular 276/1 10/96 TRU dt 02.12.1996 in their case vide OiO No 16/ADC/MRT-1/2010 DT 17.08.2009. and *recently vide OiO No 37/ADC/MRT-1/2015 and Vide OiO No-42/ADC/MRT-1/2006 DT 30.11.2006 Steel wire Rope has been allowed to them.*

That the Bagasse Carrier chains the part and parcel of Bagasse Carrier falling under Heading 84.28 of CET. With respect to classification of parts, components and accessories of eligible capital goods, it has been clarified by the Board vide circular No 276/110/96-TRU dated 2.12.1996

From the above submission of Appellant considering use of items, I observe that Roller Chain/ Cane Carrier/ Parts of Cane Carrier/ Spare Parts of Chain/ Chain Spares/ are parts of capital goods being used in the industry, ***and hold that CENVAT availed of RS 5,99,070 on Chain, carrier chain, bush chain, chain spares, and Rs 10873 on Roller Chain (Total Rs 6.09,943/-) is eligible as capital goods*** *but as regards other items they were neither falling under any of chapter as specified in the definition of capital goods nor were they component, spare and accessory of said specified items of capital goods. I hold that these items are used for structural support of items of capital goods. In this regard I find support from the decision in case Sarasvati Sugar Mill Vs CCE Delhi 111 [2011 (270) ELT 465 (SC)] and CCE Vs Oudh Sugar Mills Ltd reported in [2017 (319) ELT 118-All |. The Appellant could not show any evidence that these items are parts, component or accessory to capital goods being used in their industry. In view of above, I accept the appeal of the department and confirm the demand of Rs 6,02,726/-*

14.2 Now I take up the issue whether credit of Rs 14,37,634/- taken on inputs namely availed on inputs namely H.R.Coil, H.R. plate, H.R. Sheet, Mill Plate, Channels. Angels. Joist, shape and Section and plates by the Appellant is admissible to them or not. I reproduced here the definition of input:

(2k) "input" means

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or In relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel. or for generation of electricity or steam used In or In relation to manufacture of final products or for any other purpose, within the factory of production

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service

Explanation 1.- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer; but shall not include cement, angles channels. Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;

From above observe that as regards input H.R Coils, H.R sheets, Mill Plate, Channels. Angels, Joist and shapes and sections cannot even be considered to be used in or relation to manufacture of sugar and molasses. It is imperative to examine the purpose served by input before deciding *admissibility of Cenvat Credit as input. I find that these items can't be inputs of sugar or molasses. These are structural items and their use in industry is in making factory sheds or structures for support of Capital goods, hence they cannot be considered to be covered under the definition of inputs specified under Rule 2(k) of CCR, 2004.The party have failed to provide any documentary evidences that these items had been used in the manufacture/ fabrication of capital goods therefore 1 hold that credit is not available on these items.*

In this regard I find support from the decision of the Tri Delhi in case of CCE Noida Vs Kisan Sahkari Chini Mills Ltd reported in [2015(326) ELT333 Tri- Delhi)] where it has been held that

> *"The Cenvat Credit on these items namely HR sheets PMP plate different sheet and steel plate is not admissible 1o the respondent, Consequently, the respondent is directed to reverse the said Cenvat Credit along with interest."*

In view of above, I accept the appeal of the department and confirm the demand of Rs. 14,37,634/

14.3 Now 1 take up the issue of CENVAT credit availed on input services. In this regard, I first take up the issue of availment of CENVAT credit amounting to Rs. 33,26.668/- in respect of service tax paid on commission paid to selling agents.

As regarding the admissibility of CENAVT credit in respect of service tax paid on sales commission. I find that the adjudicating authority has allowed the said credit by placing reliance upon the pronouncements of the Hon'ble Tribunals passed in the case of Triveni Engineering & Industries Ltd., Deoband [Final Order No. A/70470/2017-EX[DB] dated 28.05.2017] and Shimbaoli Sugar Ltd. Vs CCE. Meerut-II [2018 (363) ELT 1172 (Tri-All)]. The respondent assessee has in their rejoinder stated that the service tax paid under Business Auxiliary Service to the commission agents who *procured orders is an input service and is covered in the definition stipulated in Rule 2(l) of the CENVAT Credit Rules, 2004 and have also placed reliance upon the Board's Circular No. 934/04/2011 dated 29.04.2011 and decision in the case of Bajaj Hindustan Ltd. Vs. CCE. Lucknow [2013(30)STR 675 (Tri-Delhi)]*

However. I find that the subject issue of CENVAT credit of service tax paid on sales commission under Business Auxiliary Service has as yet not attained finality in as much as the Hon'ble Gujarat High Court in the case of Astik Dyestuff Pvt. Ltd. Vs. CCE & Customs [2014 (34) S.T.R. 814(Gujarat)] has held that:

> *Cenvat credit of Service Tax - Input service - Sales Commission services - Eligibility - Appellant not entitled for Cenvat credit on Sales Commission services obtained by them - Rule 2(l) of Cenvat Credit Rules, 2004. [2013 (0)_S.T.R. 3 (Guj.) relied on] [paras 4, 7]*

In the cited context, I find that in the matter the appeal has been filed by Astik Dyestuff Pvt. Ltd before the Hon'ble Supreme Court [2015 (39) STR J309 (Supreme Court)| and the said appeal [Civil Appeal Diary No. 22586 of 2014] is still pending before the Hon'ble Apex Court

Further, 1 also find that the Hon`ble High Court Madras in the case of CCE, Chennai-Ill Vs. Intimate Fashions India (P) Ltd. [2017(7)GSTL, 192(Madras)] has set aside the judgment of the Hon'ble Tribunal by holding that the subject issue of CENVAT credit of service tax paid on sales commission has not reached finality and has accordingly remanded the matter back to the Tribunal for reconsideration.

Accordingly, I find that the adjudicating authority has erred in allowing the subject credit. Thus I hold the said credit amounting to Rs.33,26,668/- to be inadmissible to the respondent party."

4.3 On the issue of admissibility of the capital goods (Rs 6,02,726/- denied by the impugned order) I find that the issue is no longer res-integra. Impugned order for denying the said credit has relied upon the decision of Hon'ble Supreme Court in the case of Saraswati Sugar Mills Ltd. [2011 (270) ELT 465 (SC)] wherein following has been held:

> *5. Per contra, Shri. K. Swami, learned counsel for the Revenue, supports the findings and conclusion reached by the Tribunal and the department. He further submits that the Iron and Steel structures which fall under Chapter Heading 73 of the Schedule to the Tariff Act, is neither mentioned in the Notification nor in the Table below Rule 57Q of the Rules. According to learned counsel, the Exemption Notification only exempts the capital goods as defined in Rule 57Q of the Rules. The learned counsel also argues that by applying "user test" theory, the Iron and Steel structures cannot be considered as components of the sugar manufacturing plant. It is also submitted that the Notification requires to be strictly construed and since the assessee does not fall within the ambit of the Notification, it is not entitled for the benefit of the Notification.*
>
> ***The Notification :***
>
> *6. To resolve the controversy, we need to notice the relevant Notification and Rule 57Q of the Rules. The relevant portion of Notification No. 67/95-C.E., dated 16-3-1995 is as under :-*
>
> > *"In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944... the Central Government being satisfied that it is necessary in the public interest so to do hereby exempts*
> >
> > *(i) capital goods as defined in Rule 57Q of the Central Excise Rules 1944 manufactured in a factory and used within the factory of production;*
> >
> > *(ii) ...*

from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).”

The Rules:

Rule 57Q of the Central Excise Rules, 1944 reads :-

“(1) All goods falling under heading Nos. 82.02 to 82.11;

(2) All goods falling under Chapter 84 (other than internal combustion engines falling under heading No. 84.07 and 84.08 and of a kind used in motor vehicles, compressors falling under heading No. 84.14 and of a kind used in refrigerating and air-conditioning appliances and machinery, heading or sub-heading Nos. 84.15. 85.18. 8422.40, 8424.10, fire extinguishers falling under sub-heading No. 8424.80, 8424.91, 8424.99, 84.29 to 84.37, 84.40, 84.50, 84.52, 84.69 to 84.73, 84.76, 84.78, expansion valves and solenoid valves falling under sub-heading No. 8481.10 of a kind used for refrigerating and air-conditioning appliances and machinery);

(3) All goods falling under Chapter 85 (other than those falling under heading Nos. 85.09 to 85.13, 85.16 to 85.31 and 85.40);

(4) All goods falling under heading Nos. 90.11 to 90.13, 90.16, 90.17, 98.22 (other than for medical use), 90.24 to 90.31 and 90.32 (other than of a kind used for refrigeration and air- conditioning appliances and machinery);

(5) Components, spares and accessories of the goods specified against S. Nos. 1 to 4 above.”

Analysis of this material:

7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force.

The Notification No. 67/95-C.E., dated 16-3-1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in the Notification is that the "capital goods' should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 64 = 1995 (17) E.L.T. 3 (S.C.), a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly.

8. Now coming to Rule 57Q of the Rules, these rules are framed under the Statute. While interpreting the Rules, which are framed under the Statute, they should be read as a Part of the Statute itself and require to be interpreted as intra vires to the Act under which they have been issued.

Having said that, now let us consider the submission of learned counsel Shri Lakshmikumaran for the assessee who contends that Iron and Steel structural manufactured by the assessee within its factory used for the purpose of installation of sugar manufacturing plant are components of *the capital goods and therefore, exempt from payment of excise duty by virtue of Notification No. 67/1995-C.E., dated 16-3-1995. However, Shri Swami, learned counsel for the Revenue contends that the items in dispute are independent goods manufactured by the assessee, though in its factory from the goods on which excise duty is paid cannot be construed as component parts of sugar manufacturing plant and therefore, is not entitled for the benefit of Notification No. 67/1995, dated 16-3-1995.*

9. As per Notification No. 67/1995 dated 16-3-1995, capital goods as defined in Rule 57Q of the Rules manufactured in a factory and used within the factory of production are exempt from payment of Excise Duty. Rule 57Q of the Rules, specifies various items of goods falling under different chapter headings and sub-headings of the Tariff Act as capital goods. It is not the case of the assessee that Iron and Steel Structures manufactured by it in its factory are the goods which fall under Items 1 to 4 of Rule 57Q, though sugar manufacturing unit would fall under Item Nos. 2 and 3 of the Table to Rule 57Q of the Rules. It is the specific stand of the assessee that the goods in dispute are components of the goods specified in Items 2 and 3 of the Table to Rule 57Q of the Rules and since the capital goods include components and accessories, the Iron and Steel Structures manufactured within the factory are exempt from excise duty.

10. The expression "components" is not defined under the Act. Therefore, reference can be made to dictionaries to understand the meaning of the expression "components". In Webster Comprehensive dictionary, it is defined as "Constituent part'. In Oxford Advanced Learner's Dictionary, Volume 1, International Edition, the word "component" means a "constituent part'. Further, "constituent' means "serving to form or compose as a necessary part'. In Advanced Law Lexicon, 3rd Edition 2005, (by P. Ramanatha

Aiyar), the word "component part' is defined as 'something which becomes an integral part of the goods in question by losing its physical and economic distinctiveness'. It defines 'constituent' (of a component) as 'that helps make up or complete a unit or a whole's one part of something that makes up a whole'. Encyclopaedic Law Lexicon, Volume 2008-09 Edition, by Justice C.K. Thakkar, describes the "components' as : It appears, therefore, that for an article to be called a component part, it is not necessary that even it becomes part of another article, it should still retain its identity. All that is necessary to make an article, a component part is that it goes in to the composition of another article. If an article is an element in the composition of another article made out of it, such an article may well be described as a component part of another article. It may be that the final product made may be in the nature of a compound in which case, the elements forming component parts may not be capable of any more separate identification. Equally, it may be that when a machinery is assembled out of several parts forming that machinery, those machinery, those parts, even after there being filled may retain their individuality or identity.'

11. The meaning of the expression 'components' as defined in the dictionary is accepted and adopted by this Court in the case of Star Paper Mills v. Collector of Central Excise - (1989) 4 SCC 724 = 1989 (43) E.L.T. 178 (S.C.); and the same is quoted with approval in CCE v. Allied Air Conditioning Corporation - 2006 (202) E.L.T. 209 (S.C.).

12. In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. One must first look at the article itself and consider what its uses are and whether its only use or its *primary or ordinary use is as the component part of another article. There cannot possibly be any serious dispute that in common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.*

13. The meaning of the expression 'component' in common parlance is that 'component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.

14. This Court, in Star Paper Mills (supra) has made a settled distinction while considering whether paper cores are 'components' in the manufacture of paper rolls and manufacture of paper sheets. It is stated that 'paper cores' are component parts in so far as manufacture of roll is concerned, but it is not 'component part' in the manufacture of sheets. It is useful to quote the observations made by this Court :-

> *"... paper core would also be constituent part of paper and would thus fall within the term "component parts" used in the Notification in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part. We are conscious that the relevant tariff item uses the word "paper" but since paper in rolls and paper in sheets are nothing but different forms of paper, both of them would be excisable goods as paper under the relevant tariff item."*

15. In Modi Rubber Ltd. v. Union of India, (1997) 7 SCC 13 = 1997 (94) E.L.T. 439 (S.C.), the Appellant had set up tyre and tube manufacturing plant and imported various plants and machineries. While using the plants and machineries, PPLF (Polypropylene Liner Fabric) was used as a device in the form of liner components to various machinery units to protect the rubber-coated tyre fabric from atmospheric moisture and dust. This Court held that the PPLF was not a *component of the machine itself. It was not a constituent part. It was used as a Liner Fabric not only in tyre production but also in similar other industrial processes.*

16. In Hindustan Sanitaryware & Industries Ltd. & Lakshmi Cement v. Collector of Customs, (2000) 10 SCC 224 = 1919 (114) E.L.T. 778 (S.C.), this Court while drawing a distinction between component and spare parts observed :

> *"It pertains to the meaning of the phrase "component parts". The Tribunal, in the impugned order, drew a distinction between component parts and spare parts, following its earlier decision in the case of Vaz Forwarding (P) Ltd. v. Collector of Customs. Component parts, according to it, were those which were initially used in the assembly or manufacture of a machine and spare parts were those parts which were used for the subsequent replacement therein of worn-out parts. The decision in Vaz Forwarding (P) Ltd.l and other decisions of the Tribunal were considered by a Larger Bench of the Tribunal in Jindal Strips Ltd. v. Collector of Customs. The Larger Bench took the view that a spare part was a replacement part to replace a damaged or worn-out component but it was, nevertheless, a component part. "Component" was the genus and "spare" was a species thereof; it was a component which was used for replacement. The Larger Bench judgment found that the distinction drawn in Vaz Forwarding (P) Ltd. was a distinction without a difference.*
>
> *2. The Larger Bench decision followed decisions of this Court, and we are of the view that its view is correct. A spare part, though fitted into a machine subsequent to its manufacture, to replace a defective or worn-out part becomes a component of the machine. It is a component part."*

17. The issue for our consideration, as we have already noticed, is whether the Iron and Steel Structures are components of the Capital Goods specified in the Table *below Rule 57Q of the Rules. This issue can be resolved by looking into the literature which gives some glimpse how sugar is manufactured in a sugar industry and what is the essential machinery for manufacture of sugar.*

18. The process of making sugar commences from the stage of collecting the harvest, cleansing and grinding, juicing, clarifying, evaporation, crystallization, refining and lastly separation and packing. For the purpose of manufacturing cane sugar in a sugar industry, the essential machineries that are required are sugar presses, diffusers, vaccum pans, evaporators and sugar handling equipments, crystallizers, sugar grader, elevator and cooling tower. We can call these machineries as essential items in a sugar manufacturing plant. The assessee also fabricates Iron and Steel Structures for installation of the aforementioned equipments. Even according to learned senior counsel Sri Lakshmikumaran, these Iron and Steel Structures are used for effective functioning of Sugar Manufacturing Plant. Under the Notification, the Central Government had exempted duty in respect of "capital goods", as defined in Rule 57Q of the Rules if they are utilized in a place where such goods are manufactured and used within the factory of production. The Notification specifically states that what is exempted under the Notification are "capital goods" as defined in Rule 57Q. Rule 57Q specifies five categories of items as capital goods. It is not the case of the assessee or its learned counsel that the exemption claimed was on Items 1 to 4 of the Table to Rule 57Q but as components which would fall under item No. 5 of the Table to Rule 57Q. Therefore, in order to get the benefit of non-excise duty on Iron and Steel Structures, it had to be established by the assessee that. Iron and Steel Structures are utilized as component parts for the finished products, viz. vacuum pan, crystallizers, sugar grader, elevator, cooling tower etc.

Our Analysis and Conclusion:

19. It appears to us, in the light of the meaning of the expression 'component parts' that the iron and steel structures are not essential requirements in the sugar manufacturing unit. Anything required to make the goods a finished item can be described as component parts. Iron and Steel structures would not go into the composition of vacuum pans, crystallizers etc. If an article is an element in the composition of another article made out of it. such an article may be described as a component of another article. Thus, structures in question do not satisfy description of components'. Therefore, in our opinion, the Tribunal was right in the view it took.

20. Sri V. Lakshmi Kumaran, learned senior counsel, submits that the Iron and Steel structures are fabricated at the site of the work for use in the construction of the various machineries and, therefore, can be classified under sub-heading 7308.50 under Chapter 73 of the Schedule to the Act, which attracts nil rate of duty. Therefore, it is contended that even if his other contention is not accepted, the assessee should not be fastened with any duty liable under the Act. This issue was neither raised nor canvassed by the assessee before the Tribunal. Therefore, we cannot permit the learned counsel to argue this issue before us for the first time. Therefore, this contention of the learned counsel is rejected.

21. Now coming to the last contention canvassed by the learned counsel that the Tribunal is not correct in holding that the assessee failed to establish that the steel structures are components of the capital goods as specified in the Table below Rule 57Q of the Rules and, therefore, are not eligible for exemption under the notification. This issue requires to be answered with reference to Circular No. 276/110/96-TRU, dated 2-12-1996 issued by the C.B.E.C. The relevant portion of the Circular is as under :-

"3. The matter has been examined. With effect from 23-7-1996, capital goods eligible for credit under Rule 57Q have been specified either by their classification or by their description. Clauses (a) to (c) of Explanation (1) of the said rule cover capital goods by their classification whereas clause (d) covers goods by their description viz, components, spares and accessories of the said capital goods. It may be noted that there is a separate entry for components, spares and accessories and no reference has been made about their classification. As such, scope of this entry is not restricted only to the components, spares and accessories falling under Chapters 82, 84, 85 or 90 but covers all components, spares and accessories of the specified goods irrespective of their classification. The same was the position prior to amendment in Rule 57Q (i.e. prior to 23-7-1996) when credit was available on components, spares and accessories of the specified capital goods irrespective of their classification.

4. Accordingly, it is clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any chapter heading are eligible for availment of Mod vat credit."

22. The period in dispute is July 1999 to September 1999. The Circular is dated 2-12-1996. Therefore, it was applicable to the disputed period. It is not disputed and it cannot be disputed that the Circular provides that all parts, components, accessories, which are to be used with the capital goods of Clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any Chapter heading are eligible for availing of MODVAT Credit. However, while denying exemption under the notification, the Tribunal has concluded that the goods in question, which comes under Chapter Heading 73 of the Tariff Act has not been specified in the table below Rule 57Q. We do not find fault with the *reasoning of the Tribunal, since the Circular, on which reliance is now placed by the learned counsel, was not produced before the Tribunal and. therefore, going by the language employed in Rule 57Q, there is justification for the Tribunal for coming to the aforesaid conclusion. Since in view of the circular, which is now brought to our notice, the Tribunal was not correct to reject the claim of the assessee on the aforesaid ground. However, this finding of ours will not assist the assessee, since we have held that Iron and Steel structures are not the components of machineries used in the installation of Sugar Manufacturing Plant.*

23. Before we conclude, we must further observe that Shri Lakshmikumaran drew our attention to the judgment of this Court in CCE v. Rajasthan Spinning and Weaving Mills Ltd. - 2010 (255) E.L.T. 481 (S.C.) where the appeal preferred by the Revenue is dismissed. The facts in the said case were that the respondent-assessee availed MODVAT credit on steel plates and M.S. channels, as capital goods in terms of Serial No. 5 of the Table given below Rule 57Q, used for erection of the chimney for the diesel generating set. The parties were ad idem that diesel generating set falls under chapter Heading 85 which is mentioned at Serial No. 3 of the Table and also the chimney is an accessory in terms of Serial No. 5 of the Table given below 57Q. The issue which was agitated before the Court was whether the Steel plates and MS Channels used in the fabrication of chimney are capital goods in terms of Serial No. 5 of the Table below Rule 57Q. This Court, whilst applying the user test, had held that the steel plates and MS Channels used in the fabrication of chimney are capital goods as contemplated by Rule 57Q as the chimney is not only an accessory but also an integral part of the diesel generating set in the light of the Pollution Control laws mandating that all plants emitting effluents should be equipped with apparatus to reduce or get rid of effluent gases. We are afraid that this decision would assist the Appellants in support of the contention *canvassed. In this instant case, the Court was considering whether steel plates and M.S. Channels used in fabrication of chimney for diesel generating sets are entitled to avail of MODVAT credit by treating them as capital goods in terms of Rule 57Q of the Central Excise Rules. This Court, applying 'user test', has arrived at a conclusion that Steel Plates and MS Channels are used in the fabrication of chimney which is an integral part of the diesel generating set. Therefore, the test applied by this Court is whether the items that were at issue were integral part of a machinery. If that test is satisfied, there will not be any difficulty to hold a particular item of the machinery is a component part and therefore, will fall within the ambit of the expression 'capital goods'.*

24. In Simbhaoli Sugar Mills Ltd. v. Commissioner of Central Excise, Meerut, 2001 (135) E.L.T. 1239 (Tri.-Del.), the Appellant is a manufacturer of sugar and availed a MODVAT credit on the joints, channels, angles and MS Beams used in fabricating supporting structures for installation of equipments such as vacuum pan, crystallizers, sugar grader, elevator, etc., HR plates (black steel) are used in boiler of sugar plant to keep temperature high, MS bars, shapes and sections are used for erection of new cooling tower, chequred plates and ITR plates are used to construct the platforms, the cane carrier chain and spares are used to transfer the raw material/semi processed material from stage to other, as the capital goods in the terms of Rule 57Q, treating these items as the parts and components of the plant. The question which arose before the Tribunal was that whether these items used for fabricating structures to support and install various machineries of the sugar plant are capital goods in terms of the Rule 57Q. The Tribunal while allowing the MODVAT credit found that these items, except MS sections and shapes, used for raising structure to support the various machines, parts of machineries of the plant would be covered by the explanation to Rule 57Q as a capital goods.

The Tribunal referred to its own decision in Malvika Steel Limited's case [1998 (97) E.L.T. 530 (Tribunal)] and without semblance of any discussion, has partly allowed the assessee's appeal. In view of our findings and the conclusion in the earlier part of the judgment, we cannot agree with the reasoning of the Tribunal."

4.4 I find that the issue under consideration of the Hon'ble Supreme Court was in respect of similar goods as in dispute in the present case and it was considering admissibility of the Modvat Credit on these goods in terms of Rule 57Q of the erstwhile Central Excise Rules, 1944. Hon'ble Supreme Court held that the Modvat Credit would not be admissible in respect of these goods. I find for the issue under consideration the definition of capital goods as per Rule 2 (a) of the Cenvat Credit Rules, 2004 and 57 Q of the erstwhile Central Excise Rules, 1944 is in pari materia and therefore this judgement applies on all the four to fact of the present case. Hence the impugned order denying the credit in respect of these goods under the category of capital goods cannot be faulted with.

4.5 In respect of the admissibility of CENVAT credit on various items like H.R Coils, H.R sheets, Mill Plate, Channels, Angels, Joist and shapes and sections I find that these goods have been excluded from the definition of input by insertion of Explanation 2 to the definition of input with effect from 07.07.2009. Except for the following credits which has been taken prior to July 2009, as per Annexure III to the show cause notice dated 04.01.2011, all other credit has been taken after the insertion of the said exclusion clause and hence has been rightly held to be inadmissible.

S No	Invoice No	Date	Credit taken during	Amount in Rs				Description of Goods	Chapter Sub Heading
				Duty	Ed Cess	S & H Cess	Total		
1	327	5.21.2009	June 2009	39808	796	398	41002	H R Coil	72083740
2	335	5.22.2009	June 2009	16736	335	167	17238	H R Coil	72083740

3	336	5.22.2009	June 2009	8701	174	87	8962	H R Plate	72085110
4	337	5.22.2009	June 2009	21513	430	215	22158	H R Coil	72083740
5	123	5.22.2009	June 2009	31841	637	318	32796	H R Sheet	72085490
				118599	2372	1185	122156		

Further in respect of these credits also impugned order records the finding that the Appellant has failed to establish that these items were used in or in relation to manufacture of the finished goods namely sugar and molasses. Reliance has been placed upon the decision of the Kisan Sahkari Chinni Mills Ltd. [2015 (326) ELT 333 (T-Del)] wherein following has been held:

> *"5. I have perused the impugned order. In the impugned order Ld. Commissioner (A) has examined the usage of the items in question and have given the following findings at para 4.2 which are reproduced as under :*
>
> > *"4.2 HR Sheets, PMP Plate Mill Plates & Steel Plates/Jointing sheets and Paints,*
> >
> > *With regard to usage of these items, the Appellants have submitted that the various items of capital goods including staging / supporting structure were fabricated out of these items of iron and steel; the items in question were used in the factory for general maintenance, roofing purposes and used in erection of factory and store which in turn were used in the manufacture of the final products and therefore, I am of the opinion that all these items in question may be treated as 'input' used for manufacture of capital goods and hence eligible for Cenvat Credit under Explanation of Rule 2 of the Cenvat Credit Rules because the said explanation 2 reads as 'input' include goods used in the manufacture of capital goods which are further used in the factory of manufacture."*
>
> *6. After going through the above said findings I found that the usage of these items includes staging supporting structures and factory for general maintenance, roofing*

purpose and used in erection of capital stock admittedly the usage of these items which have been recorded by the Ld. Commissioner (A) in the impugned order are not in nature of usage of fabrication of capital goods. Therefore, the Cenvat Credit on these items namely HR sheets PMP plate different sheet and steel plate is not admissible to the respondent. Consequently the respondent is directed to reverse the said Cenvat Credit along with interest. As the issue is of deciding whether they are admissible to the Cenvat Credit on these items was in dispute during the relevant period."

4.6 Appellant have relied in their appeal on the definition of input as amended with effect from 01.03.2011 to buttress their argument in respect of admissibility of the CENVAT Credit on these items. They have also relied upon the circular dated 18.05.2012 and certain case laws. I do not find any merits in the submissions made. The definition of the input has to be considered as it existed during the relevant period. The circular was in respect of the specifically structural components of the boiler and would not be applicable to the facts of the case where in the use of the items could not have correlated with the specific capital good, plant or machinery. Similarly the use of the of the goods in the process of manufacture of the finished goods has to be examined in the facts of each case and there cannot be general law in this respect. I do not find any merits in the submissions made in this regard.

4.7 In respect of the denial of the CENVAT Credit on input services, i.e. sales commission paid to the selling agent, I find that basic reason for disallowing the credit that the appeal filed in the case of Astik Dyestuff against the order of the Hon'ble Gujarat High Court is still pending and the issue has not acquired finality. In case of Astik Dyestuff Hon'ble Gujarat High Court has observed as follows for denying the credit in respect of sales commission:

"4. Heard Shri S. Suriyanarayan, learned advocate for the Appellant. At the outset, it is required to be noted that issue involved in the present appeal i.e. whether the Appellant would be entitled to Cenvat credit on Sales Commission Services obtained by them is now not res integra in view of the decision of this Court in the case of Cadila Healthcare Limited (supra). At this stage, it is required to be noted that while passing the OIO the department relied upon and followed the decision of the jurisdictional High Court in the case of Cadila Health Care Limited (supra). The Appellant has heavily relied upon the C.B.E. & C. circular dated 29-4-2011 and according to the Appellant, as per the C.B.E. & C. circular dated 29-4-2011, the Appellant shall be entitled to Cenvat credit on Sales Commission Services obtained by them. As contended/submitted on behalf of the Appellant, C.B.E. & C. circular dated 29-4-2011 is binding to the department and therefore, while passing OIO the adjudicating authority ought not have taken a contrary view/decision then the C.B.E. & C. circular. On interpretation of the relevant provision of law in the case of Cadila Healthcare Limited (supra) jurisdictional High Court has held that on Sales Commission Services obtained by them, Cenvat credit is not permissible. It appears that while issuing the circular dated 29-4-2011, C.B.E. & C. has not considered the decision of this Court in the case of Cadila Health Care Limited (supra). In any case, the decision of the jurisdictional High Court is binding to the department rather than the circular issued by the C.B.E. & C. If there is any conflict between the jurisdictional High Court and the C.B.E. & C. circular, the decision of the jurisdictional High Court is binding to the department rather than C.B.E. & C. circular. Under the circumstances, the contention on behalf of the Appellant that the department has erred in taking contrary decision then the C.B.E. & C. circular, cannot be accepted. As such the adjudicating authority rightly relied

upon and followed the binding decision of this Court in the case of Cadila Healthcare Limited (supra).

5. Now, so far as request made by Shri S. Suriyanarayan, learned advocate for the Appellant that in view of the contrary decision of the Punjab and Haryana High Court in the case of Ambika Overseas (supra) matter may be referred to the Larger Bench as there would be discrimination amongst the similar unit is concerned, the said cannot be accepted. At the outset, it is required to be noted that decision of the jurisdictional High Court - this Court in the case of Cadila Health Care Limited (supra) is challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court is seized with the matter. It is reported that judgment and order passed by this Court in the case of Cadila Health Care Limited (supra), has not been stayed. The decision of the jurisdictional High Court is binding to the department rather than decision of the other High Court. When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court is binding to the department and not the decision of another High Court. Under the circumstances, while passing OIO and while passing the impugned judgment and order, the learned CESTAT has rightly relied upon the binding decision of the jurisdictional High Court in the case of Cadila Healthcare Limited (supra).

6. Now, so far as request made by Shri S. Suriyanarayan, learned advocate for the Appellant to refer the matter to the Larger Bench in view of the two contrary decisions - one of this Court in the case of Cadila Healthcare Limited (supra) and another of Punjab and Haryana High Court in the case of Ambica Overseas (supra) is concerned, the same also cannot be accepted. As stated above, appeal against the decision of this Court in the case of Cadila Healthcare Limited (supra) is pending before the Hon'ble

> *Supreme Court and the Hon'ble Supreme is seized with the matter. Under the circumstances, it will not be proper on our part to refer the matter to the Larger Bench. Even otherwise, we see no reason to take a contrary view then the decision of this Court in the case of Cadila Healthcare Limited (supra). Merely because, there might be a contrary decision of another High Court, is no ground to refer the matter to the Larger Bench against the decision of this Court, to which, as such we are in agreement. Under the circumstances, the request made by Shri S. Suriyanarayan, learned advocate for the Appellant to refer the matter to the Larger Bench is hereby rejected.*
>
> *7. As stated above and as such it is not disputed by the learned advocate for the Appellant that as such issue whether the Appellant would be entitled to Cenvat credit on Sales Commission Services obtained by them is squarely covered against the Appellant by the decision of this Court in the case of Cadila Healthcare Limited (supra). No error has been committed by the learned CESTAT in relying upon the decision of this Court in the case of Cadila Healthcare Limited (supra) and allowing the appeal preferred by the revenue and in restoring the order passed in OIO and in holding that the Appellant would not be entitled to Cenvat credit on Sales Commission Services obtained by them."*

The decision of the Hon'ble Gujarat High Court in case of Cadila Healthcare has been set aside by the Hon'ble Supreme Court in the case of Zydus Life Sciences [2024 (80) G.S.T.L. 338 (S.C.)] observing as follows:

> *"Being aggrieved by the judgment dated 7-11-2012 passed by the Division Bench of the High Court of Gujarat in Tax Appeal Nos. 353/2010 and 204/2011 [2013 (30) S.T.R. 3 (Guj.)] insofar as the controversy relating to the claim of Input Tax Credit on commission paid to the*

foreign agent is concerned, the Appellant-assessee had preferred these appeals.

13.*In the result, the impugned judgment and order of the High Court dated 7-11-2012 as well as of the CESTAT dated 3-8-2009 [2010 (17) S.T.R. 134 (Tri. - Ahmd.) = [2009] 30 STT 224 (Ahd. - CESTAT)] are set aside to the extent of observations of the High Court as well as the CESTAT on the point of commission paid to the foreign agent only and the matters are remanded to the concerned CESTAT for a fresh adjudication on the point in controversy*."

4.8 From the decision of the Hon'ble Gujarat High Court it is evident that Hon'ble Punjab and Haryana High Court has in case of Ambika Overseas [2012 (25) S.T.R. 348 (P & H)] has held in favour of admissibility of the CENVAT Credit observing as follows:

8. The Tribunal while affirming the order of Commissioner (Appeals) and adjudicating the issue in favour of the respondent had come to the conclusion that the activities in respect of which cenvat had been filed, were pre-removal activities and the same could not be held to be post-removal. It was further observed that canvassing and procuring orders were in relation to 'sales promotion' and would fall under sales promotion activities. These activities were, thus, included in the definition of input services and the assessee was entitled to benefit of cenvat credit of service tax. It would be advantageous to notice here the findings recorded by the Tribunal in para 6 of its order which are to the following effect :

"I have carefully considered the submissions from both sides. The canvassing and procuring orders are activities preceding removal of the goods by the manufacturers. Without the firm order, the respondents were not expected to remove the goods to a foreign destination. Therefore, the submission of the learned DR that these activities are

post-removal activities cannot be accepted. Further, the definition of the 'input services' includes services used in relation to 'sales promotion' and these activities can rightly be described as sales promotion activities. Sales promotion activities undertaken at given point of time also aims at sales of goods which are to be manufactured and cleared on future. Any advertisement given as a long term impact cannot be treated as post- clearance activities and, therefore, sales promotion has been specifically included in the definition of input services. As regards the other contention that the documents on which the respondent has taken the credit is not the prescribed document, it is to be noted that the respondent is not a service provider per se. They are basically the service recipients. They are required to pay service tax as a deemed service provider. Under these circumstances, the respondents have paid service tax using TR-6 challans and taken credit treating the said documents as documents covered by Rule 9(1) of the Cenvat Credit Rules, 2004. There is nothing irregular about it."

9. In the light of the aforesaid finding, learned counsel for the revenue was unable to justify that the claim of cenvat credit by the assessee was erroneous in any manner. No perversity or illegality could be shown by the learned counsel in the order passed by the Tribunal which may call for any interference by this Court.

4.9 Hon'ble Calcutta High Court has in case of Himadri Speciality Chemical Ltd. [2022 (66) G.S.T.L. 264 (Cal)] observed as follows:

"9. As pointed out earlier, the basis for issuance of the show cause notice was the decision in the case of Cadila Health Care Limited. The said assessee was engaged in the manufacture of medicaments and had availed Cenvat credit on service tax paid on the technical and analysis service, commission paid to the foreign agents, courier service etc.

The revenue took a stand that Cenvat credit of service tax paid on the above services is not admissible. Challenging the findings of the adjudicating authority, appeal was filed before the Tribunal. Ultimately the matter travelled to the High Court. The High Court held that in the absence of any material on record, there is nothing to indicate that commission agent were involved in the activities of sales promotion and that the claim of the assessee was accordingly rejected. Thus, the Court took note of the factual position in the case that there was nothing to indicate that the commission agents were involved in the sales promotion activities, contrary to the case on hand where agreements were produced before the authority to show what is the nature of services rendered by those commission stockists.

10. Mr. Bhattacharyya referred to the sample invoices and submitted that in the invoices, it has been stated under the column description "commission for sales". The correctness of such an identical submission made before the Tribunal was tested and after considering all the facts, the terms and conditions of the agreement and the nature of services rendered by the commission stockist the Tribunal recorded an independent finding that the activities of the commission stockist is towards sales promotion as well. Therefore, the reliance placed on the decision in the case of Ambika Overseas by the respondent assessee was well justified. Further, on and after the insertion of the explanation in Section 2(l) vide notification dated 3-2-2016, the position has become much clearer. The explanation seeks to clarify the intention of the legislature with a view to extend the benefit of credit on services of commission agent as was indicated in the circular dated 29-4-2011 which is to the following effect.

B.30 - Meerut Zone - Cenvat Credit - Admissibility of Cenvat Credit on Service Tax Paid on Sales Agency Commission Service :

Issue :

C.B.E. & C. Vide its Circular No. 943/4/2011-CX., dated 29-4-2011 at point No. 5 [2011 (267) E.L.T. (T19)] has clarified that credit of service tax paid on sales commission services (Business auxiliary services) used in relation to manufacture/sale of finished goods is admissible under Cenvat Credit Rules, 2004. However, there are conflicting judgments of Hon'ble High Courts in this regard. Hon'ble High Court of Gujarat in case of Cadila Health Care [2013 (30) S.T.R. 3] has disallowed the said Cenvat credit whereas Hon'ble Tribunal in case of Birla Corporation Ltd. [2014 (35) S.T.R. 97] followed the judgment of Hon'ble High Court of Bombay and allowed the credit. Board may be requested by the conference to issue necessary clarification on the subject to avoid further litigation and to achieve uniformity in the practice of assessment.

Discussion & Decision :

The conference discussed the issue in detail and the facts of both the cases where apparently conflicting judgments have been delivered. It was noted that the judgment of Hon'ble High Court of Gujarat was in a very specific set of circumstance where the sales commission agent seemed to be only trading in the goods i.e. buying and selling the goods without undertaking any sales promotion or advertising. In the said judgment, Hon'ble Court noted that "there is nothing to indicate that such commission agents were actually involved in any sales promotion activities as envisaged under the said expression. Obviously, commission paid to the various agents would not be covered in this expression since it cannot be stated to be a service used directly or indirectly in or in relation *to the manufacture of final products or clearance of final products from the place of removal". Board Circular No. 943/4/2011-CX., dated 29-4-2011 at point no. 5 on the other hand has explained the situation where the commission agent renders the service of sales promotion in following words"………Moreover the activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale……..". Board circular directs that input service credit would be available when there is an element of sales promotion as sales promotion is a service. Thus, the conflict between the judgment and the circular is not as large as is perceived. Both the Board circular and case laws on the subject allow credit of input service, when the activity of the sales commission agent involves an element of sales promotion.*

11. As could be seen from the above clarification, the decision in Cadila Health Care was also taken note of by the department and the position stood clarified that sales promotion would include services by way of sale of goods on commission basis. As pointed out by the Hon'ble Supreme Court in Commissioner of Income Tax v. Vatika Township Private Limited [(2015) 1 SCC 1] that if a legislation confers the benefit on some persons but without inflicting the corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the object of the legislature, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. In Commissioner of Income Tax v. Archean Granite Private Limited [(2020) 117 taxmann.com 977 (Madras)] amendment made to Section 40(a)(ia) of the Finance Act, 2010 inserting proviso therein was held to be retrospective with effect from the assessment year 2005-06 and the Court followed the decision in the case of Commissioner of Income Tax v. Calcutta Export Company

[(2018) 93 taxmann.com 51]. Therefore, we find that the approach to the issue in the manner done by the Learned Tribunal cannot be faulted.

12. Mr. Bhattacharyya's reliance was on the decision of the Hon'ble full Bench of this Court in the case of Prabhat Pan and Others v. State of West Bengal & Others [(2015) Calcutta 112 (FB)] for the proposition that the decision in the case of Cadila Health Care Limited being the latest decision with the same Bench composition as that of the other Division Benches of the High Court, the same should be followed.

13. Firstly, the decisions of one other High Court in all cases will not bind another High Court and such decisions were held to be of persuasive value. In any event on facts in Cadila Health Care Limited, the Court found no material on record to indicate that commission agents were involved in the activities of sales promotion. Therefore, the decision in the case of Prabhat Pan does not render any assistance to the revenue. Further it is seen that the commission paid by the respondent to the commission stockist is included in the assessable value of the goods on which excise duty has been paid by the respondent on the final products namely carbon black. In fact, this has been noted by the adjudicating authority. While on this issue, it would be relevant to take note of the decision in the case of Coca Cola India Private Limited wherein it was held as follows :

- *It is therefore clear that the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. manufacturer or service provider. In order to avoid the cascading effect, the benefit of Cenvat credit on input stage goods and services must be ordinarily allowed as long as connection between the input stage goods and services is established. Conceptually as well as a matter of policy, any input service that forms a part of* *the value of the final product should be eligible for the benefit of Cenvat credit.*

- *Service tax therefore, paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. In other words, credit of input service must be allowed on expenditure incurred by the assessee which form a part of the assessable value of the final product. If the above is not done, as sought to be done by the department in the present case, it will defeat the very basis and genesis Cenvat i.e. value added tax.*
- *What follows from the above discussion is that credit is availed on the tax paid on the input service, which is advertisement and not on the contents of advertisements. Thus it is not necessary that the contents of the advertisements must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. The manufacture thereby can avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion.*

14. The respondent had also resisted the show cause notice by contending that extended period of limitation could not have been invoked. On plain reading of the show cause notice, it is clear that except for the use of the word *"suppression of material facts", that there is nothing on record to indicate as to on what basis the adjudicating authority invoked the extended period of limitation. More so, when the assessee had disclosed all the materials in their returns and the assessee was also subjected to audit earlier and there was no objection raised by the audit department. Therefore, on the said ground also the assessee is entitled to succeed.*

4.10 In the case of Birla Corporation Ltd., [2014 (35) S.T.R. 977 (Tri. – Del)] Delhi Bench held as follows:

7. The only point of dispute in this case is as to whether the service of procuring sales orders of cement through commission agents i.e. business auxiliary services being received by them is covered by definition of "input service" or not. On this issue, while there is a direct judgment of Hon'ble Punjab & Harayana High Court in the case of Ambika Overseas (supra), which is in favour of the Appellant, there is another judgment of the Hon'ble Gujarat High Court in the case of Cadila Health Care Ltd. (supra), wherein in para 5.2, a contrary view has been taken and in that judgment, Hon'ble Gujarat High Court after discussing in detail has held that the service of commission agent for procuring sales orders is neither covered by the expression "sales promotion" nor by the expression "activities relating to business". Hon'ble High Court in this judgment has observed that the term, "activities relating to business" in the definition of "input service" has to be interpreted on the basis of the activities mentioned after the words "such as" following this expression and that the activities covered by this expression must be similar to the activities which are mentioned as illustrative activities and on this basis, Hon'ble High Court has given a finding that procuring sales orders through commission agents is not an activity, which is similar to the activities mentioned as illustration of the "activities relating to business".

7.1 However, I find that the Hon'ble Bombay High Court in the case of Ultratech Cement reported in 2010 (260) E.L.T. 369 (Bombay) = 2010 (20) S.T.R. 577 (Bom.) in para 28 and 29 has given the following interpretation of the expression "activities relating to business" :-

> *"28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research, etc.) and includes services rendered in relation to business such as auditing, financing………..etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product."*
>
> *28. The expression "activities in relation to business" in the definition of "input service" postulates activities which*

are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2(l) of the 2004 Rules."

7.2 Thus in paras 28 and 29 of the above judgment, Hon'ble Bombay High Court has in clear terms held that the expression "activities relating to business" in the definition of "input service" in Rule 2(l) covers all the activities which are integrally connected with the business of the manufacture of final product and only an activity which is not connected with the business of manufacture of final products would not qualify as the "input service" under Rule 2(l). In para-28 of this judgment, Hon'ble Bombay High Court has emphasized 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 the manufacture of final products, but also includes various services used in relation to the "business of manufacture of final products", be it prior to the manufacture of final products or after the manufacture of final products and that the definition of "input service" is not restricted to the services used in or in relation to manufacture of final products. Same view has been taken by Hon'ble Bombay High Court in para 25 of its judgment in case of Coca Cola India Pvt. Ltd. v. CCE, Pune-II reported in 2009 (242) E.L.T. 168 (Bom.) = 2009 (15) S.T.R. 657 (Bom.). The "business of manufacture of final product", without any doubt, would include the sales of final product and hence, procuring of sales through commission agents would be covered by the expression "activities related to business". These judgments of the Hon'ble Bombay High Court have not been considered in the judgment of Hon'ble Gujarat High Court in case of Cadila Health Care Ltd. (supra).

7.3 In any case, when the judgment of two High Courts, on this issue, are in favour of the Appellant and besides this, a number of judgments of the Tribunal, as mentioned above, are also in favour of the Appellant, it is those judgments which have to be followed.

8. Rule 2(l) of Cenvat Credit Rules, 2004 was amended w.e.f. 1-4-2011 and by this amendment, the expression "activities related to business" in the inclusive portion of the definition of 'input service' was excluded. However, the expression "advertisement or sales promotion" was retained. The Board vide Circular No. 943/4/2011-CX., dated 29-4-2011 (S. No. 5 of the Table) in respect of the question "Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business", clarified as under "The definition of input service allows all credit on services used for clearance of final products upto the place of removal. Moreover, activity of sale promotion is specifically allowed and on many occasions, the remuneration for the same is linked to actual sale. Reading the provision harmoniously, it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis."

Thus according to this circular, the service of commission agents (Business Auxiliary Service) is covered by the term "advertisement or sales promotion". In my view, there is nothing in this circular which is contrary to the provisions of law and hence the same would be binding on the Departmental officers. Thus, in view of this circular also, though it is in respect of definition of "input service" during period w.e.f. 1-4-2011, commission agents service would be cenvatable as the term "advertisement and sales promotion" was there in the definition of input service even during period prior to 1-4-2011."

This decision was followed by the Delhi bench again in the case of Carrier Air conditioning & Refrigeration Ltd. [2016 (41) S.T.R. 1004 (Tri. - Del.)].

4.11 Thus I do not find any merits in the observations made in the impugned order for confirming the demand in respect of sales Commission.

4.12 The demand of interest in the respect of the amount of CENVAT Credit being denied and confirmed as per 4.4 and 4.6 will be a natural corollary as per the Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Centarl Excise Act, 1944 and is upheld

4.13 Summarizing:

- Demand made in respect of the denial of CENVAT Credit under the category of Capital Goods and Inputs is upheld. (para 4.4 & 4.6)
- Demand made in respect of denial of the CENVAT Credit on input services namely service tax paid on the sale commission is dropped. (para 4.11)
- The demand of interest on the amounts confirmed is upheld. (para 4.12)

5.1 Appeal partly allowed as indicated in para 4.13 above.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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