

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21847 of 2014

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-
MS-009-13-14 dated 03/02/2014 passed by the
Commissioner of Central Excise and Service Tax, Mangalore]

**Mangalore Refinery and
Petrochemicals Limited**
Kuthethoor P.O, Via Katipalla,
Mangalore – 575 030

Appellant

VERSUS

C.C.E. & S.T., Mangalore
7th Floor, Trade Centre
Bunts Hostel Road
Mangalore – 575 003

Respondent

APPEARANCE:

Mr. Rajesh Chander Kumar, Advocate
Mr. H. Jayathirtha, AR for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER
(TECHNICAL)**

Final Order No. 20701 / 2023

Date of Hearing: 06/07/2023

Date of Decision: 06/07/2023

Per: D.M. Misra

This appeal is filed against the Order-in-Original No. MLR-EXCUS-000-COM-MS-009-13-14 dated 03/02/2014 passed by the Commissioner of Central Excise and Service Tax, Mangalore.

2. Briefly stated, the facts of the case are that the appellants, an oil refinery, engaged in the manufacture of various petroleum products falling under Chapter 27 of Central Excise Tariff Act, 1985. A show-cause notice for the period April 2010 to June 2012 was issued to them alleging that they have wrongly availed and utilized cenvat credit on MS Plates, HR Plates, Steel Plates etc. which are used for the fabrication of huge storage tanks hence not admissible to credit. Accordingly, the cenvat credit availed on inputs are irregular and in violation of Rule 3(1) of CCR. Consequently the total cenvat credit of Rs. 2,83,73,710/- (Rupees Two Crore Eighty Three Lakhs Seventy Three Thousand Seven Hundred and Ten only) was demanded with interest and proposal for penalty invoking extended period of limitation. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned Advocate for the appellant submits that admissibility of cenvat credit on various inputs used in the fabrication of storage tanks in the manufacturing premises

has been settled by the Hon'ble High Court of Karnataka in a series of judgments. In support he has referred to the judgments of the Hon'ble Karnataka High Court in the case of **Commissioner of Central Excise, Mysore Vs. ICL Sugars Ltd. - 2011 (271) E.L.T. 360 (Kar.)**, **Commissioner of Central Excise, Bangalore-II Vs. SLR Steels Ltd. - 2012 (280) E.L.T. 176 (Kar.)** and **Commissioner of Central Excise, Belgaum Vs. Hindalco Industries Ltd. - 2012 (286) E.L.T. 503 (Kar.)**. Further, he has submitted similar view was also expressed by the Hon'ble Madras High Court in the case of **Commr. of C. Ex. & S.T, Tiruchirapalli Vs. CESTAT, Chennai - 2017 (356) E.L.T. 201 (Mad.)** and **Thiru Arooran Sugars Vs. CESTAT, Chennai - 2017 (355) E.L.T. 373 (Mad.)**. He has also submitted that the decision of **Vandana Global Ltd. Vs. Commissioner of C. Ex., Raipur - 2010 (253) E.L.T. 440 (Tri.-LB)** referred to and relied upon by the adjudicating authority is no more a good law as the same has been set aside by the Hon'ble Chhattisgarh High Court reported at **2018 (16) G.S.T.L. 462 (Chhattisgarh)**. He submits that also the demand is barred by limitation as no information was concealed or suppressed from the knowledge of the Department as they have been filing periodical returns and credit taken on various inputs reflected in the returns.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records. We find that the short question involving in the present case is whether the cenvat credit is admissible on inputs viz. MS Plates, HR Plates, Beams etc. used in the fabrication of storage tanks installed in the manufacturing premises during the period April 2010 to June 2012? We find that the issue is no more res integra and decided by the jurisdictional High Court in the case of Commissioner of Central Excise, Mysore Vs. ICL Sugars Ltd. Their Lordships observed at Para 4 of the said judgment as follows:

“4. The learned counsel appearing for the revenue assailing the impugned order contended that as per the definition of Rule 57Q there was no storage tank included in the definition of capital goods. It is only by Notification dated 1-3-2001 in the definition of capital goods the storage tank is inserted. Therefore, for the period anterior to the said amendment the Cenvat credit could not have been given on the inputs used in the manufacture of storage tanks. Even otherwise though the water stored in a storage tank is used in the manufacture of sugar, the syrup and molasses stored in

the storage tank are not used in the manufacture of sugar, on the contrary it is derived in the course of manufacture of sugar and therefore the assessee is not entitled to the benefit of Cenvat credit. Though in the definition of Rule 57Q the storage tank was not included, it is clear from the aforesaid definition that the tubes, pipes and fittings thereof used in the factory were included in the definition of capital goods. The storage tank has been held to be a component to the main machinery namely, boiler and the benefit is extended to the inputs used in the construction of the storage tank though it is also embedded to the land. On the same reasoning the assessing authority ought to have extended the benefit to the syrup and molasses storage tank also, as they are bye-products in the course of manufacturing activity which are also excisable at the time of selling the same to the assessee. It appears even when the storage tanks if specifically mentioned in the definition of capital goods by liberally incorporating these provisions the benefit was extended to the assessees. However the controversy remains. In order to set right this controversy by a Notification, specifically storage tank is introduced within the definition of capital goods. The

said insertion is clarificatory in nature. Under these circumstances even though the said insertion was in the year 2001 we are concerned with the period anterior to the said insertion.”

The said principle was later followed by the Hon'ble High Court in the case of SLR Steels Ltd. and Hindalco Industries Ltd. (supra). Following the ratio laid down in the aforesaid cases, and also by other High Courts, impugned order deserves to be set aside and accordingly, the order is set aside and the appeal is allowed with consequential relief, if any as per law.

(Operative portion of the order was pronounced
in open court on 06/07/2023)

(D.M MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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