

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]**

Appeal No.: E/40520/2018

[Arising out of Order-in-Appeal No.460/2017(CTA-I)
dated 12.12.2017 passed by the Commissioner of G.S.T. &
Central Excise (Appeals-I), Chennai.]

M/s. Cetex Petrochemicals Ltd., : **Appellant**
Manali,
Chennai – 600 068

Versus

The Principal Commissioner of G.S.T & C.Ex., : **Respondent**
Chennai North Commissionerate

Appearance:-

Shri. V. Ravindran, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 26.11.2018

Date of Pronouncement: 04.12.2018

Final Order No. 43052 / 2018

This appeal is filed by the assessee against the Order-in-Appeal No. 460/2017 (CTA-I) dated 12.12.2017 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai and the only issue involved is the denial of CENVAT Credit of

duty paid on MS Angles, Channels and HR Plates, Signal Cables and Seamless Pipes.

2.1 Entertaining a doubt that the above goods on which the appellant had availed CENVAT Credit were capital goods ineligible for such Credit, a Show Cause Notice dated 13.07.2016 was issued *inter alia* on the ground that the goods in question were used in the new unit established in the other place and not in the appellant's manufacturing unit; that the above goods were used only as a supporting structure for the working platform; that the goods in question were not covered in the listing under Tariff Heading A(i) of the definition of "capital goods", nor were they covered under Tariff Heading A(iii), nor were they inputs, etc., and thereby demanding a duty of Rs. 25,10,716/- being the ineligible CENVAT Credit together with appropriate interest and penalty.

2.2 The adjudicating authority vide Order-in-Original dated 14.03.2017 confirmed the above proposals, aggrieved by which the appellant preferred an appeal before the Commissioner (Appeals), Chennai, who vide impugned Order confirmed the demand of Rs. 2,64,092/- plus interest, reduced penalty to 50% of the above amount and for the balance amount of Credit in

dispute, the issue was remitted back to the file of the adjudicating authority to examine the eligibility of the impugned goods. This appeal is therefore filed by the assessee.

3. Today when the matter came up for hearing, Ld. Advocate Shri. V. Ravindran appeared for the assessee while Ld. DC (AR) Ms. T. Usha Devi represented the Department.

4. I have heard the rival contentions, perused the documents placed on record and have also gone through the judicial pronouncements referred to during the course of arguments.

5. The adjudicating authority in the Order-in-Original after observing that the appellant had availed Credit of duty paid on the impugned goods has referred to Rule 2(a) of the CENVAT Credit Rules, 2004 and has concluded that the impugned goods were intended to be used at the new unit; that the Registration Certificate of the assessee had not been amended to include the new unit being established. He thus concluded that the Credit on the impugned capital goods was ineligible under Rule 2(a) *ibid*.

6. I find that the CENVAT Credit Rules do not envisage the use of input services only at the manufacturing unit and this has been held so by the Hon'ble High Court of Karnataka in the case of *Commissioner of C. Ex., Bangalore-I Vs. ECOF Industries Pvt.*

Ltd. – 2011 (271) E.L.T. 58 (Kar.). Thus, there can be no denial citing this reason as long as the Revenue does not dispute the existence of the new unit relating to the appellant's manufacturing business.

7. During the course of hearing, Ld. Advocate pointed out that there is no requirement under the statute to obtain a separate registration for the new unit as has been held by various High Courts. He also pointed out that the impugned goods which are used as support structures have been held to be eligible by this very Bench of the Tribunal in the case of *Commissioner of G.S.T. & Central Excise, Trichy Vs. M/s. Shree Ambika Sugars Ltd. – 2018 (6) T.M.I. 733 – CESTAT Chennai* wherein this Bench has followed the decision of the Hon'ble jurisdictional High Court in the case of *M/s. Thiru Arooran Sugars Vs. CESTAT, Chennai – 2017 (355) E.L.T. 373 (Mad.)*. The relevant portion of the findings of this Bench is as under :

“5. The issue is whether the MS angles, MS channels, HR coils etc. used for support structures and fabrication of worn out molasses tank, operational platform is eligible for credit. Similar issue was considered by the jurisdictional High Court in the case of *India Cements Ltd. - 2015 (321) ELT 209 (Mad.)*. Further, in the recent decision, in the case of *Thiru Arooran Sugars (supra)*, the Hon'ble High Court has considered the very same issue and held that credit is eligible. The High Court in the said judgment has referred and taken note of the decision of the Larger Bench of the Tribunal in *Vandana Global Ltd. - 2010 (253) ELT 440 (Tri. LB)*. In the case of *Vandana Global Ltd.*, it held that after fabrication when the goods are attached to earth, they become immovable property and therefore credit is not eligible. Arguing

on the same line, the ld. AR has relied upon Tower Vision India Pvt. Ltd. (supra). The decision rendered in Tower Vision India Pvt. Ltd. was with regard to inputs used for providing output services. In the present case, the respondent is engaged in manufacturer of final products and there is very close nexus with the inputs (MS channels etc.) as they were used for fabrication of support structures for the reason that without such support structures the manufacturing activity cannot be carried out as they become integral part of the machineries after fabrication. Thus, the decision relied upon the ld. AR in Tower Vision India Pvt. Ltd. (supra) is not applicable to the facts of the present case."

8. *Per contra*, Ld. AR relied on the decision of the Hon'ble Allahabad High Court in the case of *M/s. Rathi Steels and Power Ltd. Vs. Commissioner of Central Excise – 2015 (328) E.L.T. 9 (Allhd.)*. In this case, the Hon'ble High Court observed that the appellant therein was unable to produce any supporting evidence in spite of giving full opportunities and for lack of credible evidence, the Hon'ble High Court dismissed the assessee's appeal. Here in the case on hand, however, I note that the only allegation for denial is the non-registration of ISD and nothing else.

9. I am therefore of the considered opinion that the remand Order passed by the Commissioner (Appeals) being contrary to the ratio laid down by this Bench in the case of *M/s. Shree Ambika Sugars Ltd.(supra)* following the binding decision of the Hon'ble High court, is unsustainable since there can be no question with regard to the ineligibility of the same.

9. For the above reasons, the impugned Order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Pronounced in open court on 04.12.2018)

(P. Dinesha)
Member (Judicial)

Sdd