

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/41117/2018

[Arising out of Order-in-Appeal No.21/2017-2018 (Audit-I), dated 12.02.2018 passed by the Commissioner of GST & Central Excise (Appeals-II), Chennai]

M/s. BANNARI AMMAN SUGARS LTD.

APPELLANT

Versus

COMMISSIONER OF GST & CENTRAL EXCISE, CHENNAI RESPONDENT

Appearance:

For the Appellant Shri P.C. Anand, Cons.

For the Respondent Shri L. Nanda Kumar, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Judicial Member

Date of hearing/decision **02-01-2019**

FINAL ORDER NO. **40028 / 2019**

Brief facts are that the appellants are manufacturers of 'sugar' and 'molasses' and are availing the facility of Cenvat credit on MS angles, Channels etc. During the period 2008-09 and 2009-10, they availed Cenvat credit on MS angles, Channels etc., under the category of capital goods, which were used in the fabrication of storage tanks used in the factory. Credit was also availed on services such as, Port Services and CHA Services which according to department was not eligible. On being pointed out by audit officers, the appellants reversed the credit on 31.10.2012 and paid interest of Rs.2,08,945/- vide Challan dated 08.11.2012. Thus, the total Cenvat credit along with interest was paid. On 09.11.2012, the appellant filed protest letter to the department informing that the said payment is made "under protest". Thereafter, on realising that the credit is

actually eligible, they filed a refund claim on 24.06.2016 for refund of the credit along with interest. After due process of law, the original authority rejected the refund claim holding that the credit is ineligible. In appeal, the Commissioner (Appeals) upheld the rejection. Aggrieved, the appellants are now before the Tribunal.

2. The learned consultant Shri P.C. Anand appeared on behalf of the appellants. He submitted that the Commissioner (Appeals) has rejected the refund claim on the sole ground that the credit is not eligible and, therefore, the appellants are not entitled for refund. He explained that the appellants had availed the credit on MS angles, Channels etc., which were used for fabrication of storage tanks. Referring to Rule 2 of Cenvat Credit Rules, he submitted that the definition of 'Capital Goods' includes storage tanks. These storage tanks are used in the factory for storage of inputs and finished products. These storage tanks are huge in size and are fabricated at the site within the factory. For such fabrication of storage tanks, MS Sheets, MS Angles, Channels are used. The frame of the tanks is fabricated using MS Angles and Channels and thereafter, MS Sheets are fabricated so as to form the shape of huge tanks. The credit availed on MS Angles and Channels have been rejected by the department alleging that these cannot be classified as capital goods. When storage tanks are capital goods as per the definition, the MS Angles and Channels used for fabrication of capital goods ought to have been allowed. Without such storage tanks the manufacturing activity cannot be carried out. He relied upon the decision of the Hon'ble jurisdictional High Court in the case of *M/s. Thiru Arrooran Sugars Vs CESTAT, Chennai* reported in 2017 (355) E.L.T.373 (Mad.)

as well as *M/s. Covalent Laboratories Pvt. Ltd., Vs Commissioner of Central Excise, Hyderabad-I reported in 2016 (344) E.L.T.641 (Tri.-Hyd.)* to argue that the credit availed on such items used for fabrication of capital goods are eligible for credit.

3. The credit with regard to Port Services and CHA Services have been disallowed alleging that these have no nexus with the manufacturing activity. The appellant exports the finished product and these input services were used for export of finished products.

4. Heard both sides.

5. The issue is whether the appellants are eligible for credit on MS Angles and Channels used for fabrication of storage tanks and also on input services like Port Services and CHA Services. On intimation from the department, the appellants had reversed credit and filed 'protest letter'. Thereafter, they have filed the present refund claim which has been rejected by the authorities below. The definition of 'Capital Goods' includes storage tanks used in the factory of the manufacturer of final product. It is not disputed that the storage tanks are used within the factory of the appellants. So also, it is not disputed that the MS Angles and Channels were used for fabrication of such storage tanks. It is not possible for the appellants to carry out manufacture of finished products without use of such storage tanks. It is also not possible for the appellants to fabricate such storage tanks without using MS Angles and Channels. In such circumstances, the credit availed on MS Angles and Channels for fabrication of storage tanks, in my view is eligible for credit. The decision of the jurisdictional High Court in the case of *M/s. Thiru Arooran (supra)* and *Commissioner of Customs, Central Excise & Service Tax, Bilaspur Vs*

Singhal Enterprises Pvt. Ltd. reported in 2018 (359) E.L.T.313 (Chhattisgarh) supports my conclusion that credit is eligible on these items.

6. Following the above said decision and appreciating the facts of the case, I am of the view that the rejection of refund claim is unjustified. The impugned order rejecting the refund claim is set aside. Appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

	DRAFT			Remarks
	I	II	III	
Date of dictation	02.01.2019			
Draft Order - Date of typing	03.01.2019	07.01.2019		
Fair Order Typing	08.01.2019			
Date of number and date of dispatch	09.01.2019			

