

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

EXCISE APPEAL No.40241 OF 2014

(with E/Cross/42183/2014- filed by respondent-assessee)

(Arising out of Order-in-Original No.21/2013 (CE) dated 30.10.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate,, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise, Appellant
Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

Versus

M/s.Indo Tech Transformers Ltd.Respondent
Survey No.51-243 KM-64,
Chennai-Bangalore Highway, Illupatti Village,
Rajakulam Post,
Kanchipuram 631 557.

APPEARANCE :

Sri Rudra Pratap Singh, Additional Commissioner (A.R.)
For the Appellant

Sri T.R. Ramesh, Advocate
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing : 30.10.2023
Date of Decision : 30.10.2023

FINAL ORDER No.40967/2023**ORDER : Per Ms. SULEKHA BEEVI C.S.**

Brief facts are that the respondent is engaged in the manufacture of transformer and their parts falling under Chapter Heading 8504 of the Central Excise Tariff Act 1985. They are registered with the Central Excise department and are availing cenvat credit on various inputs including transformer oil.

2. On perusal of the input invoices, it was noticed by the department that the respondent had paid duty at 14% *advalorem* on transformer oil and had taken cenvat credit of the same. The respondent had cleared the transformer oil 'as such' in barrels separately under different invoices while clearing the final product "transformer". Thus, the respondent had cleared the final product viz. transformer and paid duty on the final product as if the transformer oil has formed part of the value of transformer oil. The department was of the view that such transformer oil is cleared 'as such' and the respondent ought to have reversed the credit availed on the transformer oil as under Rule 3 (5) of Cenvat Credit Rules, 2004. Show cause notice dt. 29.11.2013 was issued for the period 2008-09 to 2012-13 (upto December 2012) alleging that the respondent has to reverse the credit availed on transformer oil and proposing to demand the wrongly availed credit along with interest

and for imposing penalties. After due process of law, the original authority dropped the proceedings and held that the transformer oil is not cleared 'as such' by respondent as alleged in the SCN. Aggrieved by such order, the department is now before the Tribunal.

2. Ld. A.R Sri Rudra Pratap Singh appeared and argued for the Department.

2.1 It is submitted by the Ld. A.R that the respondent had cleared the transformer oil on which credit was taken by them. As the respondent has cleared the transformer oil 'as such', they are liable to reverse the credit as per provisions of Rule 3 (5) of Cenvat Credit Rules, 2004. From the show cause notice, it is clear that the input viz. the transformer oil was cleared separately by the respondent under different invoices 'as such' in barrel, and while availing credit on the oil, the respondent had taken credit of the duty paid @ 14% *ad valorem* whereas at the time of clearance of the transformer oil, as parts of transformer, the respondent was paying duty @ 8% / 10% / 12% as applicable at the relevant point of time, as if the transformer oil cleared by the respondent formed part of the transformers.

2.2 Ld. A.R asserted that the respondent has cleared the transformer oil purchased by them 'as such' and therefore they ought to reverse the credit under Rule 3 (5) of CCR 2004. Ld. A.R adverted to the provisions of Rule 3 (5) of CCR 2004 and submitted that the transformer oil purchased by them has not undergone any change during the process of manufacture and is cleared 'as such' in

barrels along with the transformer. The transformer oil is dispatched along with the transformers depending upon the capacity of the transformer and the remaining quantity is transported in barrels after dispatch of transformer for logistics purpose. This would clearly indicate that the respondent has cleared the transformer oil 'as such'.

2.3 It is further submitted by the Ld. A.R that in the respondent's own case for their other unit situated at Thirumazisai unit, a show cause notice was issued on the very same grounds of clearing the transformer oil 'as such' after availing credit. The adjudicating authority vide Order-in-Original No.13/2007 dated 28.09.2007 held that the respondent has to reverse the credit and confirmed the demand. Against this decision, the respondent filed appeal before Commissioner (Appeals) who upheld the decision of the adjudicating authority. A further appeal was filed before the Tribunal and vide Final Order No.718/2010 dt. 30.06.2010 in Appeal E/557/2009, the Tribunal held against the assessee by upholding the demand. It is thus prayed that this decision of the Tribunal may be followed in the present case also.

2.4 Ld. A.R submitted that one of the reasons for the adjudicating authority to drop the proceedings was that the value of the transformer oil has been included in the cost of transformer. This conclusion arrived by the adjudicating authority is erroneous. The meaning and the scope of the term 'cleared as such' was considered by the Tribunal in the case of *Cummins India Ltd. - 2007 (290) ELT*

911 (Tri.-Mumbai). The Tribunal while explaining the scope of removal of capital goods 'as such' as prescribed under rule held as under :

"The plain and simple meaning of the expression "as such" would be that the capital goods are removed without putting them to use".

It is submitted by the Ld. A.R that the above decision has been followed by the Hon'ble High Court of Bombay. In the present case also, the transformer oil is cleared 'as such' in barrels along with the transformer and therefore Rule 3 (5) of CCR 2004 would apply.

2.5 It is submitted by Ld. A.R that there is no provision under Rule 3 (5) of CCR 2004 providing for an exception for reversal of credit when inputs are cleared 'as such' when the value of the said inputs is included in the value of the final product. In such circumstances, the adjudicating authority ought to have held that the respondent-assessee has to reverse the credit taken on the input viz. transformer oil which has been cleared 'as such'.

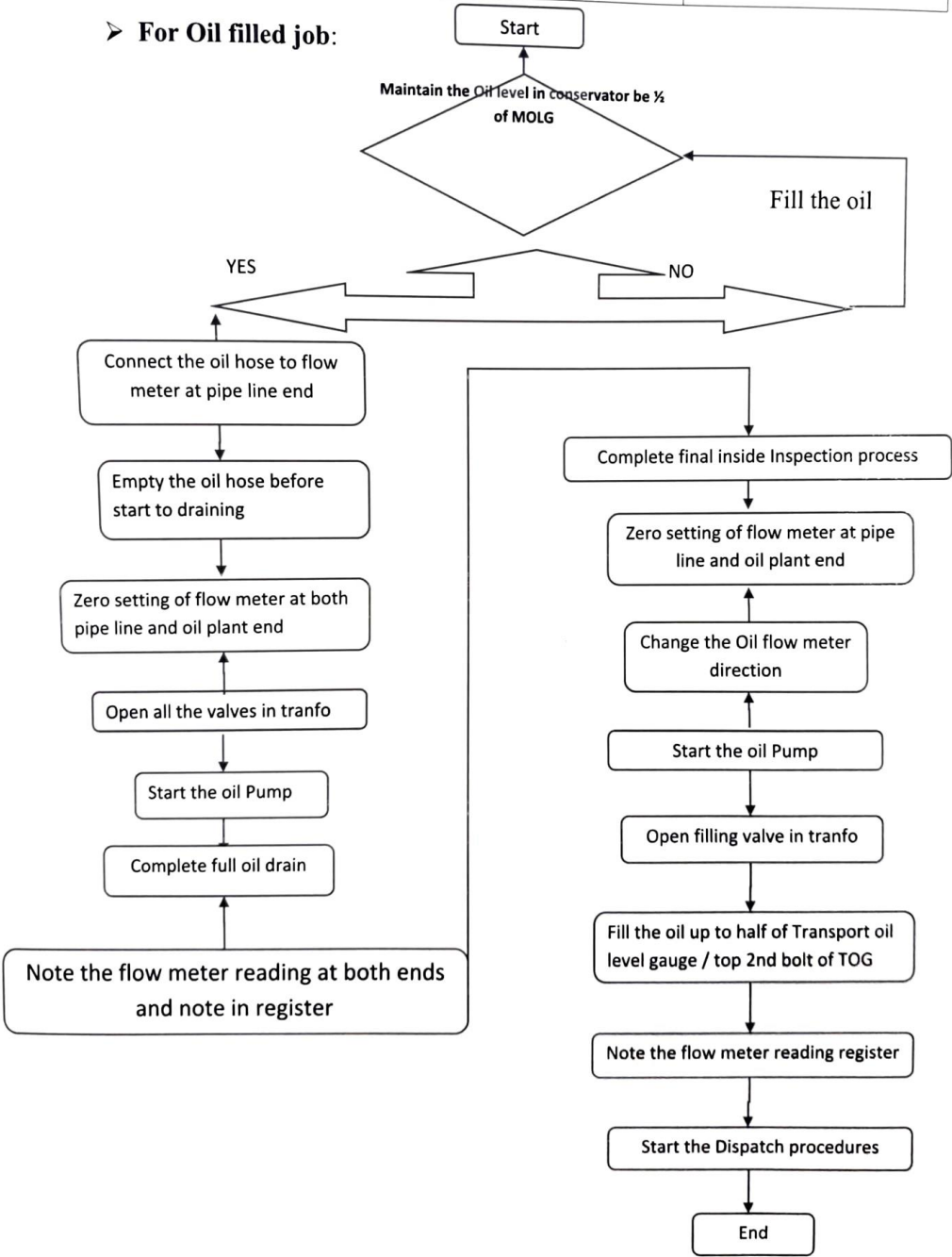
2.6 In the instant case, it is an undisputed fact that the input viz. transformer oil was not manufactured by the assessee. Thus when cleared 'as such' separately in barrels along with transformer, the final order passed by the Tribunal in the respondent's own case (supra) ought to have been followed by the adjudicating authority to confirm the demand raised in the show cause notice. It is prayed that the appeal may be allowed.

3. Ld. Counsel Sri T.R. Ramesh appeared and argued for the respondent.

3.1 Ld. Counsel adverted to the cross objections filed to elaborate his arguments. It is submitted by the learned counsel that the show cause notice proceeds on an erroneous presumption that the transformer oil on which credit has been availed is cleared 'as such'. The adjudicating authority at para-12 of the impugned order has clearly given the finding that the transformer oil received as inputs undergoes necessary inspection and testing. Certain quantity of transformer oil is filled in the transformer when it is cleared from the factory and the remaining required quantity is cleared in barrels for use at the site of the inspection of transformer. Accordingly, the transformer oil has undergone necessary inspection and testing and it cannot be said that the transformer oil is cleared 'as such' by the respondent. It is asserted by the learned counsel that testing is also part and parcel of manufacture of the final product. The process of use of the transformer oil was explained by the respondent in their reply to the show cause notice. Further, the Ld. counsel produced a flow chart of the manufacturing process to substantiate their contentions. The said flow chart gives the procedure for use of the oil in the transformers for testing. It also shows how the oil is cleared along with the transformers as a final product. The said flow chart and details of manufacturing process is reproduced as under :

INDO TECH	Quality Management System	SOP/KQA/14
	LPTP KANCHIPURAM	SHEET 6 OF 7
		REV: 0 DATE:28.07.2021

➤ For Oil filled job:



3.2 The process of Hot Oil Circulation (HOC) is as under :

“Purpose of HOC Process

In transformer manufacturing, the Hot Oil Circulation (HOC) process plays a Vital role in enhancing the Break Down Voltage (BDV), Tan Delta, PI value and Meggar value by removing moisture in transformers (Checklist Format No: F-KTA-013).

Some residual moisture even after this oven process may be present within the tank. The Hot Oil Circulation (HOC) procedure is employed to remove this moisture content. Once the HOC is successfully completed, the heated transformer oil is drained and directed to a filter tank via an Oil Filtration Plant. Subsequently, as the transformer oil gradually cools to ambient temperature (30 to 40 deg C9) **it becomes suitable for reuse in the same transformer or other transformers.**

Testing Process:

After the above process and before offering testing and inspection. Once again, we fill the tank with transformer Oil (in Ambient Temperature).

Dispatch:

After Testing, once the dispatch clearance provided by Customer, we start dismantling the Tank fittings. Meanwhile oil will be drained from the transformer and the same will be filled in the Barrels.”

3.3 Learned counsel thus explained that the oil is filled in the transformer for the purpose of inspection and also to remove the residual moisture, if any. The said oil when cooled is reusable. While dispatching the transformer, the oil is filled in the transformer. Once the dispatch clearance is given by the customer, the oil will be drained from the transformer and the same will be filled in the

barrels. The oil is used in the process of inspection and test which is part of manufacturing process of the final product viz. transformers.

3.4 Ld. Counsel referred to the Board's Circular No.344/60/97-CX dated 22/10/1997. It is submitted that the Board has clarified that manufacture of transformers cannot be treated as complete without transformer oil filled into it. Since the transformer oil acts as a coolant, it is vital for the functioning of the transformers. The transformer oil is thus eligible for input credit without which the manufacture of transformer cannot be treated as complete. Merely because certain quantity of transformer oil, which is used for testing and inspection done at the factory, was transported for logistic purpose, the credit availed on such transformer oil cannot be denied alleging that the transfer oil has been removed 'as such'.

3.5 The argument put forward by the Ld.A.R placing reliance on the decision of the Tribunal in the respondent's own case vide Final order No.718/2010 dt. 30.6.2010 [2010 (262) ELT 561 (Tri.-Chennai)] was countered by the learned counsel by submitting that in the said appeal, the plea that the transformer oil was used for inspection and testing and was not removed 'as such' was not put forward. In the present case, the respondent has substantiated the plea with purchase order and invoices as recorded in the impugned order. The manufacturing process, inspection and testing has also been considered by the adjudicating authority whereas in the said

final order these aspects were not brought to the notice of the different forums by the assessee therein.

3.6 Ld. Counsel adverted to the definition of “inputs” in Rule 2 (k) of Cenvat Credit Rules, 2004 to submit that coolants are eligible for credit and would fall within the definition of “inputs”. The Hon’ble High Court of Madras in the case of *Nilkamal Ltd.* reported in 2016 (335) ELT 220 (Mad.) had occasion to consider the issue whether assessee is liable to reverse the credit on packing material when cleared along with the final product. The Tribunal held the issue against the assessee. The Hon’ble High Court reversed the Tribunal decision after adverting to the definition of “inputs” in Rule 2 (g) of Cenvat Credit Rules, 2002 (erstwhile Rules) which reads as under :

“ ‘Input’ means all goods, except 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 for manufacture of final products or for any other purpose, within the factory of production.

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

Explanation 2 : Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer.”

It was held by the Hon’ble High Court that Cenvat Credit Rules has been introduced to eliminate the cascading effect of tax on the final product. When the packing material is cleared along with the final product, it cannot be said that the credit availed on the packing material has to be reversed. Ld. Counsel prayed that the appeal, may be dismissed.

4. Heard both sides.

5. The issue that has to be decided is whether the respondent has to reverse the credit availed on transformer oil cleared along with final product. In the show cause notice it is alleged that the transformer oil is cleared 'as such'. From the flow chart produced by the learned counsel for the respondent, it is evident that the transfer oil purchased by them has been used for inspection and testing during the process of manufacture. The adjudicating authority in para-12 has considered the use of transformer oil in the inspection and testing stage of manufacture of transformer. We have to say that the transformer oil received as inputs into the factory undergoes necessary inspection and testing by filling the required quantity in the transformer. Later, the transformer oil is drained. While dispatching the transformer, required quantity of transformer oil is filled and the balance required quantity is cleared in barrels along with transformer.

6. It is also required to be stated that the respondent has included the value of the transformer oil in the assessable value for payment of excise duty. The Ld.A.R has vehemently argued that the adjudicating authority has erred in holding that as the value of the transformer oil has been included in the assessable value, it cannot be said that the credit availed on transformer oil cleared 'as such' need not be reversed. On perusal of the impugned order, we find that the reason for holding that the credit need not be reversed is not merely because the value of inputs (transformer oil) has been

included in the assessable value but also upon the fact that the transformer oil is used in the process of manufacture for inspection and testing of transformers and not cleared 'as such'.

7. The Ld. A.R is right in asserting that in the assessee's own case in respect of Thirumazisai unit the very same issue was held by Tribunal against the assessee. On perusal of the said decision reported in 2010 (262) ELT 561 (Tri.-Chennai), we find that it is passed by a Single Member and further the fact that the transformer oil was used in inspection and testing was not at all discussed or adverted to in the said order. The said decision therefore is distinguishable on facts.

8. From the materials placed before us, we are convinced that the transformer oil purchased by the respondent was used inside the factory in the process of manufacture and only for convenience has been transported in barrels along with finished product. The transformer oil is not cleared 'as such'. We therefore find no grounds to interfere with the impugned order. The same is sustained. The appeal filed by the Department is dismissed. The cross objection filed by the respondent is disposed accordingly.

(dictated and pronounced in court)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

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sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)