

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

**Excise Appeal No.E/53057/2018-EX [SM]**

[Arising out of Order-in-Appeal No.582 (CRM)/CE/JDR/2018 dated 14.06.2018 passed by the Commissioner (Appeals), CE & CGST, Jodhpur]

**C.E. & S.T., Udaipur**

**...Appellant**

**Vs.**

**Hindustan Zinc Ltd.**

**... Respondent**

Present for the Appellant : Ms.Tamanna Alam, D.R.

Present for the Respondent: Mr.Dhruv Tiwari, Advocate

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing/Decision: 03/12/2018**

**Final ORDER NO. 53506 /2018**

**PER: RACHNA GUPTA**

The present appeal is filed by the Department against the order-in-Appeal No. 582 (CRM)/CE/JDR/2018 dated 14.06.2018 passed by the Commissioner (Appeals), CE & CGST, Jodhpur. The period of dispute is January 2013 to September 2013.

2. Brief facts of the case are that the Respondent are engaged in the manufacture of lead and zinc concentrates, falling under Chapter 26 of the First Schedule to the Central

Excise Tariff Act, 1985. Respondent is procuring cement and availing credit of the duty paid on the cement. During audit, it was observed by the Department that the Respondent used cement for treatment and disposal of the hazardous industrial waste generated, i.e. Jarofix, by mixing cement and lime into said Jarofix at secured land fill during the zinc smelting operations, in order to pre-empt and stop its adverse impact on the environment as per the direction of the Ministry of Environment and Forests as a pre-condition to the operations of the Plant.

3. Department was of the view that since the cement is used after the process of manufacture and is in no way connected with the manufacturing activities of the final products of the assessee, thus, it does not qualify as an input under Rule 2(k) of Cenvat Credit Rules, 2004 for the manufacture of final products. Department further alleged that cement is not used, directly or indirectly, in or in relation to the manufacture of their final products.

4. Accordingly, show cause notice was issued and adjudicated against the Respondent. However, Commissioner (Appeals) held in favour of Respondent. Being aggrieved, Department has filed the present appeal.

5. With this background, we have heard Ms. Tamanna Alam, Id. AR for the Revenue and Mr. Dhruv Tiwari, Id. Advocate for the Respondent.

6. After hearing both sides and on perusal of material available on record, it is observed that the cement is used for treating the waste generated during the process of manufacture. Thus, though it is used at post manufacture stage but apparently this activity is a statutory mandate of Ministry of Environment and a precondition for the operation of plant. Thus, it becomes clear that manufacture of final product cannot take place unless the plant is operational. Further, it appears that the identical issue has come up before the Tribunal in assessee's own case for the earlier period reported as **2015-TIOL-2075-CESTAT-DEL** dated 13.08.2015 where it was observed that –

*"6. In the case of Indian Farmers Fertilisers Coop. Ltd. (supra), the issue came up before the Hon'ble Apex Court for directions to agricultural plant wherein the Apex Court has held that the apparatus used for treatment of effluent in a plant manufacturing a particular end-product is a part and parcel of the manufacturing process of end-product.*

We further find that Hon'ble Apex Court has observed as under:

*"6. The excise authorities and the appellants filed appeals before the Tribunal. The Tribunal reversed the decision of the Collector insofar as it held that the off-site plants, other than the effluent treatment plant, were a part of the process of manufacture of fertilisers. The Tribunal held that ammonia was used for the maintenance of the plant and equipment meant for testing and commissioning the plant and could not be said to be utilised in manufacture. Similarly, the purpose of the water treatment being essential for the protection of the boiler and other process equipment from corrosion, formation of scales, etc., the ammonia used for the purpose could not be said to be used in the manufacture of fertilisers. The view of the Collector, insofar as the effluent treatment plant was concerned, was upheld."*

*8. For our conclusion we draw support from the judgment of this Court in Collector of Central Excise, Calcutta-II v. Eastend Paper Industries Ltd. - 1989 (43) E.L.T. 201 = 1989 (4) SCC 244, where it was held, Where any particular process.....is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression in the manufacture of goods. This was a reiteration of the view expressed in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Another - 1965 (1)*

*SCR 900. It was there held, The expression in the manufacture" takes in within its compass, all processes which are directly related to the actual production". In Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. - (1984) 4 SCC 566, it was held:*

*"9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption"*

7. Further, the Hon'ble Madras High Court in the case of CCE, Coimbatore vs. Madras Aluminium Company Ltd. [2008 (226) ELT 342 (Mad)] has held as under:

*2. The primary contention of the revenue in this case is that the items are not used in or in relation to the manufacture of final product. The first of the items is*

*Hydrochloric Acid (HCL). According to the department, HCL was used to treat the effluent which was a wastage obtained and hence it was not used in or in relation to the manufacturing process. This issue is no longer res integra as it has already been considered by the Supreme Court in the case of Indian Farmers Fertiliser Co-operative Ltd. v. C.C.E., Ahmadabad, 1996 (86) E.L.T. 177 (S.C) = AIR 1996 SC 2542.*

8. Further, this Tribunal in the case of **Monarch Catalyst Pvt. Ltd. vs. CCE, Thane I [2013-TIOL-780-CESTAT-MUM]** has observed as under:-

*"The appellants are the manufactures of various chemicals viz. Nickel Catalyst, Activated Alloy Catalyst, Noble Metal Catalyst, Nickel Aluminium Alloy etc. While producing these chemicals, certain gases effluents emerges which are injurious to health. Therefore, as per Central Pollution Control Board, a manufacturer of these chemicals is essentially required to install effluent treatment plant at their unit. Without installing effluent treatment plant and treating the gases effluents which emerges during the manufacture of these chemicals, the manufacturing process cannot take place. Therefore, treatment of gases effluents is essential part of manufacturing of these chemicals. As appellant has used sulphuric acid as input for treatment of these gases effluents in the effluent treatment plant, which is a process of manufacturing of final product (directly or indirectly), therefore, same is entitled for input credit as per Rule 2(K) of the CENVAT Credit Rules, 2004. Therefore, the appellant has rightly taken the input credit on sulphuric acid for treatment of effluents arising during the manufacture of final product.*

9. Admittedly, in this case, the appellant has used cement for stabilization of hazardous waste jarofix as toxic effluent at secured land fill which is part and parcel of their manufacturing activity. From the above discussion, it stands clear that treatment of effluents from a plant is an essential and integral part of the process of manufacture in the plant. The cement herein had admittedly been used to treat the affluent/waste called Jerofix. We therefore are of the opinion that cement herein is used, though indirectly, but in relation to the manufacture of final product i.e. lead & zinc concentrates. Zinc cathodes & sulphuric acid all produce effluent as may have adverse effect on the environment.

10. Thus, we hold that appellant has correctly taken cenvat credit and consequently, they are not required to reverse the same. With these observations, we set aside the impugned order and allow the appeals with consequential relief, if any”.

11. In the result, appeal filed by the Department is dismissed.

[Operative part pronounced in the Open Court]

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita