# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## <u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

**Excise Appeal No. 53389 of 2018 [SM]**

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-153-18-19 dated 31.05.2018 passed by the Commissioner (Appeals), Indore]

**M/s.Olam Agro India Private Limited** **...Appellant**
Narmada Nagar, Village Ghatwa Tehsil Thikri,
Distt. Barwani, Madhya Pradesh-451660.

**Vs.**

**Commissioner of Customs,**
**CGST & Central Excise, Indore(M.P.)** **...Respondent**
Manik Bagh Place, Post Box No.10,
Indore (M.P.) – 452001.

**<u>APPEARANCE:</u>**

Shri Kashish Kumar Gupta &
Mr. Gazal Gupta, Advocates for the Appellant
Smt. Tamanna Alam, Authorised Representative for the Respondent

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

**FINAL ORDER No. 50666/2019**

DATE OF HEARING : 07/02/2019
DATE OF DECISION: 10/05/2019

**<u>RACHNA GUPTA</u>**

The appellants are engaged in manufacture of "Cane Sugar and molasses". They are availing facility of Cenvat Credit. During the course of the audit, the Internal Audit Wing of Central Excise Department noticed that the appellant had purchased staging structure falling under chapter heading No.73089090 from M/s. Uttam Industrial Engineering Ltd. and have availed Cenvat Credit thereupon treating the said goods as capital goods. The Department alleged that the goods being falling under Chapter 73 are not covered under the definition of capital goods, nor they appeared to be the inputs for the appellant. Resultantly, the availment of Cenvat Credit during the period from July, 2011 to October, 2011 amounting to Rs.36,74,010/- was objected. Resultantly, a show cause notice No.922 dated 11.04.2016 proposing the recovery of the aforesaid amount of Cenvat Credit availed was issued, simultaneously, proposing the interest on the said amount and penalty upon the appellant. The said proposal was initially confirmed vide the Order in Original No. 02/AC/17-18 dated 16.10.2017. Being aggrieved, the appeal was preferred, which was also dismissed vide Order-in-Appeal No. 153/18-19 dated 31.05.2018. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Kashish Kumar Gupta & Shri Gazhal Gupta, learned Counsels for the appellant and Smt. Tamanna Alam, learned Authorised Representative for the Revenue.

3. It is submitted that to implement the Energy Efficient Expansion of the Sugar Mill of the appellant that the appellant purchased the impugned structures to be installed for the fabrication of plant and machinery and thus, the structures purchased were not merely the staging structures, but was actually the sugar machinery, and thus, were falling under Chapter 84. The structure purchased being the capital goods that the appellant has rightly availed the Cenvat Credit. It is submitted that the adjudicating authorities below have overlooked that the impugned structures are the components/ spares/ accessories of the sugar machinery of the appellant. The Circular No.964/07/2012 dated 2

April, 2012 has also been absolutely ignored by the adjudicating authorities. The authorities have also failed to consider the Chartered Engineers Certificate. The case law as relied upon by the adjudicating authority is impressed upon to be not applicable to the facts and circumstances of the present case. The order under challenge is therefore, prayed to be set aside. Appeal is prayed to be allowed.

4. While rebutting these arguments, it is admitted on behalf of the Department that the Adjudicating Authorities below have relied upon the decision of the Larger Bench in the case of **M/s.Vandna Global Ltd. vs. CCE reported in 2010 (253) E.L.T. 440,** wherein it was held that foundations and supporting structures embedded to Earth though "can be categorized as capital assets, but do not qualify to be called as capital goods. The structures herein are also the supporting structures. Hence, there is no infirmity in the order under challenge. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties and perusing the entire record, we are of the opinion as follows:-

> **"7.** The present dispute revolves around the question whether Cenvat credit is allowable on various structural items such as M.S. Angles, M.S. Channels, CTD Bar, TMT Bar, etc. and welding electrodes which were used for making structures for support of capital goods. To consider this question, we give below the definition of the term "Inputs" in the Cenvat Credit Rules under Rule 2(k) at the relevant time.
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> **8.** The definition of inputs has been given in Rule 2(k) of the Cenvat Credit Rules at the relevant time was as follows :-
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> "(k) "input" means
>
> (i) all goods, except light diesel oil, 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 stream used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

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

*Explanation 2. - Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer.*"

W.e.f. 7-7-2009, the Explanation 2 was amended to include as follows :-

but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making or structures for support of capital goods;

Further, the term Capital Goods has been defined in Rule 2(a) of the Cenvat Credit Rules, 2004, which reads as under :

"(a) "Capital Goods" means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service,".

6. In the present case from the purchase order, it is apparent that a purchase order was placed as per the technical specifications. Keeping in view the scope of work required for the Energy Efficient Expansion of the Sugar Mill of the appellant. It stands clarified from the purchase order itself that existing sugar mill was proposed to be modified and for the said modification, the apparatus was purchased. It is also apparent that:

(i) The staging structure are a combination of various systems such as Hydrolic Piping and Lubrication System, TURF, Bottom Roller of GRPF, tubular heater, vertical molasses conditioner, centrifugal machinery, tube plate, shell plate etc. All these systems work in tendem to make a modern sugar machinery. These systems comprise of many parts including structural components which are essentially the part of Sugar Machinery by way of technical specifications.

Further, it is apparent from the Chartered Engineers Certificate that:

(i) Various items of machinery and equipment in a sugar factory are installed at varying heights to avail the benefit of gravity for transferring the semi-processed material, which is in liquid form, through pipelines for one processing site to another.

(ii) The structural staging is build to place the machinery and equipment at the required height and to make it possible for the workers to access the machines for operating them and for their maintenance and repair.

(iii) The plant and machineries will be incomplete without these structures and staging.

(iv) The body of boiler works in 24 inch vaccum and to seal/neutralize the vaccum and free drawl of condensate from the body, staging structure is essential. If the staging structure will not be there then it would become impossible to release condensate from one pipeline to another.

Technological structures and staging are part of the machineries, in the sense that different equipment and plant like Pans, Crystallizers, Tank etc. are erected at a given height, and base which is provided by these technological structures and staging. The plant and machineries will be incomplete without these structures and staging.

9. Keeping in view the same, the principal of user test as has been held by Hon'ble Apex Court in the case of ***CCE, Jaipur* v. *Rajasthan Spinning & Weaving Mills Ltd.,*** **2010 (255) E.L.T. 481 (S.C.),** wherein the Hon'ble Supreme Court has considered an identical issue of steel plates and MS channels used in the fabrication of chimney for diesel generating set. The credit stands allowed in the light of Rule 57Q of the erstwhile Central Excise Rules, 1944. In the said judgment, the Apex Court has referred to the "user test" evolved by the Apex Court in the case of ***CCE,***

***Coimbatore* v. *Jawahar Mills Ltd.,* 2001 (132) E.L.T. 3 (S.C.),** which is required to be satisfied to find out whether or not particular goods could be said to be capital goods. When we apply the "user test" to the case in hand, we find that the structural steel items have been used not merely for the fabrication of support structures for capital goods, but for making the equipment to function technically. Thus, these structures are actually the component of sugar mills without which it cannot give the output efficiently.

10. It is apparent from the submissions of the appellant that the impugned articles were required to suitably support and facilitate the smooth functioning of the machines of the sugar mill and as such, while applying the above principle of user test such structures have to be considered as the part of the relevant machines. Since the definition of capital goods includes components, spares & accessories of such capital goods, we have no hesitation in holding that the impugned structural items would fall within the ambit of capital goods as contemplated under Rule 2 (a) of the Cenvat Credit Rules. Hence, appellant is held entitled to avail the Cenvat Credit.

11. In addition, the Department's own Circular No. 964/07-2012 dated 2nd April 2012 supports the appellant's case and also the Circular No. 966/2009 dated 18 May, 2012 come to the rescue of the appellant which contained clarification regarding classification of structural components and admissibility of Cenvat credit Cenvat Credit there upon. It was clarified in the said Circular that Cenvat Credit is available in support of such structural components, which though are used for laying foundation or for making structural

support, but if the machine cannot work without such support, these become the accessories / components thereof and as such, classified to be called as capital goods.

12 In view of above discussion, we hold that the adjudicating authorities below have ignored the Chartered Engineers Certificate, which is the most relevant document to form an opinion about the user test principle held by the Hon'ble Supreme Court and which was utmost relevant to distinguish the fact of the present case from that of **Vandna Global** (supra) case. The said decision of Larger Bench has been set aside by the Hon'ble High Court of Chhattisgarh in the case titled as **Vandna Global vs. CCE, Raipur reported as 2018 (16) GSTL 462 (Chattisgarh**).

13. The department's appeal before Hon'ble Apex Court though has been filed, but no stay to the decision has been announced. Thus, till any further orders, the decision of Chattisgarh High Court has to stand. Also Department's own Circular has also not been relied upon. Resultantly, we hereby set aside the order under challenge. Appeal, accordingly, stands allowed.

[Order pronounced in the open Court on 10.05.2019]

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

Anita