

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I**

Appeal No: E/30197/2018

(Arising out of Order-in-Appeal No: GUN-EXCUS-000-APP-134-17-18, dated 30.11.2017
passed by CCT&C-Appeals, Guntur)

SENTINI CERAMICA PVT. LTD	..	Appellant
Vs		
CCT, Guntur GST	..	Respondent

Appearance

Shri G. Prahlad, Advocate for the Appellant.

Shri Guna Ranjan, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 28.06.2018

Date of Decision: 28.06.2018

FINAL ORDER No. A/30648/2017

[Order per: Mr. P.V. Subba Rao]

1. This appeal has been filed by the appellant against Order-in-Appeal No. GUN-EXCUS-000-APP-134-17-18, dated 30.11.2017.

2. Heard both sides and perused the records. The issue in brief is that the appellant is the manufacturer of ceramic glazed tiles and is paying

Central Excise Duty. He had also availed CENVAT credit on various raw materials used in the manufacture of ceramic glazed tiles. For manufacturing these items, the appellant also needs natural gas which is available at ONGC well which is located 30 K.M. away from their factory. The appellant pumps the gas from the gas well into tankers and these tankers are driven to appellant's factory for use in manufacturing the tiles. The appellant purchased a compressor in the month of July 2013 which has been lying in their factory and availed 50% credit of CENVAT credit, treating the same as capital goods. In October 2013, they shifted the compressor from their factory (compressor was never used within the factory) to the gas well located 30 K.M away, after intimating the department. Since then, the compressor is being used to pump the gas into tankers which are then driven to the factory and the gas is used to manufacture the final products. When it was pointed out by the department that they are ineligible to avail CENVAT credit on the compressor, the appellant reversed the same in Feb. 2014 and again took credit of the same amount in March 2014 and intimated the department. Thereafter, in April 2014 and they took credit of the balance 50% of CENVAT credit also. Show Cause Notice was issued to the appellant alleging irregular availment of CENVAT credit as the compressor was moved out of the factory and asking them to reverse the credit in terms of Rule 3(5) of CENVAT Credit Rules, 2004. The Show cause notice also proposed imposition of penalty and recovery of interest.

3. After following due process of law, Ld. Lower authority has confirmed the demands along with interest and penalty. Aggrieved, the appellant approached Commissioner (Appeals) who, vide impugned Order-in-Appeal dated 30.11.2017 upheld the Order-in-Original dt. 22.07.2015 in toto and rejected the appeal.

4. Ld. Counsel for the appellant argues that their final products cannot be manufactured without gas and the only way to get the gas is by pumping it from well which is 30 KM away from their factory. Hence they used the compressor to pump the gas into the tankers and bring it to the factory. In that sense, he argues that the gas well should be treated as an extension of their factory premises and hence the compressor used in the gas well is eligible for capital goods credit. He requested that the credit may be allowed and the Order-in-Appeal may be set aside. He relied on the following case laws:

- (a) *Glaxo Smithkline Consumer Health Limited vs. CCE, Chandigarh [2017 (348) E.L.T. 328 (Tri.-Chan)]* wherein it is held that Bulk Milk Coolers and DG sets installed away from factory in milk collection centres were treated as integral part of the unit and availment of CENVAT credit was allowed on the capital goods installed at such centres.

- (b) *Reliance Industries Limited vs. Union of India [2018 (360) E.L.T. 244 (Bom)]* in which credit was allowed on Single Point Mooring (SPM) though the system was not specifically within the factory.
- (c) *Lakshmi Gayatri Iron & Steel Pvt. Ltd vs. CCE, Hyderabad-III [2016(340) E.L.T. 724 (Tri.-Hyd.)]* wherein the CENVAT credit of capital goods was allowed on boilers and water plant system installed in neighbouring unit.
- (d) *Vikram Cement vs. CCE, Indore [2006(194) E.L.T. 3(S.C)]* wherein Hon'ble Supreme Court has allowed credit on inputs viz; explosives used for blasting mines to produce limestone for use in the manufacture of cement by the assessee.
- (e) *CCE, Madurai vs. India Cements Ltd. [2002(150)E.L.T. 341 (Tri.-Chennai)]*.
- (f) *Synthetic Packers Pvt. Ltd. vs. CCE (Appeals-I), Bangalore [2009(240)E.L.T. (Tri.-Bang.)]*
- (g) *Jaypee Bela Plant vs. CCE, Bhopal [2005(180)E.L.T 31 (Tri.-Del.)]*

(h) *CCE Salem vs. Bharath Sanchar Nigam Ltd. [2017(7)G.S.T.L. 129 (Mad.)]*

5. Ld. DR vehemently opposed the appeal and reiterated the arguments made in the Order-in-Original and Order-in-Appeal. It is his submission that credit can be allowed as per the definition of “capital goods” under Rule 2 (a) of CENVAT Credit Rules 2004. This rule allows credit in respect of capital goods used “in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in office or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory or for providing output service”. He argued that in the present case, the capital goods are not used for production and they are also not used within the factory of manufacture, the gas well where the compressor has been installed, cannot be called the factory of the manufacturer simply because the raw material which is sourced there will ultimately be used in the factory of the manufacturer. He draws my attention to the definition of “Factory” in the Central Excise Act, 1944 which applies all the rules including CENVAT credit rules, which reads as follows:

“Section 2(e) in the Central Excise Act, 1944

“factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or

wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.”

6. He relied on the following case laws:

- (i) Rajhans Metals Pvt. Ltd. vs CCE Rajkot [2007-TIOL-1491-CESTAT-AHM)]
- (ii) Atul Auto Limited vs. CCE, Rajkot [2009(237)E.L.T 102 (Tri.-Ahmd)]
- (iii) Rajshanti Metals Pvt. Ltd. vs. CCE, Rajkot [2015(39)S.T.R. 875 (Tri.-Ahmd.)]
- (iv) Leamak Healthcare Pvt. Ltd. vs. CCE, Ahmedabad [2017(49) S.T.R. 605 (Tri.-Ahmd.)]

7. There are a number of cases where the CENVAT credit has been disallowed to the appellants when the capital goods were used in places such as wind mills which are located far from the factory of the manufacturer, although the electricity so generated is ultimately provided to the factory for use in manufacture of final products. He argues that the ratio of these cases applies to the instant case.

8. Heard both sides and perused the records. I find that the definition “Capital goods” under Rule 2(a) of CCR 2004 specifically requires the goods to be used in the factory of the manufacturer of the final products subject to some exceptions. The current case does not fall in those exceptions. Therefore, the capital goods in this case i.e. compressor must be used in the factory of the manufacturer of the final products if CENVAT credit must be allowed. The next question is whether the compressor used

at the gas well to pump gas into tankers which is about 30 K.M. away from the manufacturer can also be considered as a part of the factory premises of the appellant. The definition of "Factory" has been given in Central Excise Act and this clearly does not cover the gas well where the compressor has been installed. I understand that there were cases where, based on the facts of each case, the credit was allowed treating the some premises as part of the factory by the Tribunal and Courts and there are also cases where such remote locations were treated as not part of the factory. In this case, I find that there is no reason for me to conclude that the gas well from where gas has been pumped is to be treated as a part of the factory of the manufacturer. It is true that the goods are finally required for the manufacture and so are many other raw materials sourced from various places without which the manufacture cannot take place. All these places from where raw materials are sourced, cannot be treated as part of the factory of the manufacturer. There is nothing on record to show that the well is part of the registered premises of the factory of the manufacturer. I, therefore, find that the demand is sustainable and CENVAT credit is inadmissible. It needs to be reversed along with interest. However, in view of the cases cited by the appellant, I find that he has enough reason to suspect that they were entitled to the credit and hence I cannot attribute any malafide intent and therefore, I set aside the penalty imposed on them. The appeal is allowed partly to the extent of setting aside the penalties imposed in the Order-in-Original.

9. The appeal is allowed to the extent of setting aside the penalties.
The demand along with interest is confirmed.

(Dictated and pronounced in open Court

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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