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

Excise APPEAL No. 31224 of 2018

(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-001-APP-118 TO 121-18-19, dated 30.07.2018 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

Divis Laboratories Ltd., .. **APPELLANT**
(100% E O U), Chippada Village,
Annavaram, Bhimunipatnam Mandalam,
Bhimunipatnam,
Andhra Pradesh – 531 163.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Visakhapatnam - GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Excise APPEAL No. 31230 of 2018

(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-001-APP-118 TO 121-18-19, dated 30.07.2018 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

Divis Laboratories Ltd., .. **APPELLANT**
(100% E O U), Chippada Village,
Annavaram, Bhimunipatnam Mandalam,
Bhimunipatnam,
Andhra Pradesh – 531 163.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Visakhapatnam - GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Excise APPEAL No. 30209 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-001-APP-118 TO 121-18-19, dated 30.07.2018 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

Divis Laboratories Ltd., .. **APPELLANT**
(100% E O U), Chippada Village,
Annavaram, Bhimunipatnam Mandalam,

Bhimunipatnam,
Andhra Pradesh – 531 163.

VERSUS

Commissioner of Central Tax, .. RESPONDENT
Visakhapatnam - GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

AND

Excise APPEAL No. 30210 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-001-APP-118 TO 121-18-19, dated 30.07.2018 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Visakhapatnam)

Divis Laboratories Ltd., .. APPELLANT
(100% E O U), Chippada Village,
Annavaram, Bhimunipatnam Mandalam,
Bhimunipatnam,
Andhra Pradesh – 531 163.

VERSUS

Commissioner of Central Tax, .. RESPONDENT
Visakhapatnam - GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

Appearance

Shri B. Venugopal, Advocate for the appellant.

Shri C. Mallikarjun Reddy, Superintendent for the Respondent.

Coram: Hon’ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30495-30498/2019

Date of Hearing: 30.04.2019
Date of Decision: 30.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO]

1. Heard both sides and perused the records.

2. All these appeals arise from the common impugned order and hence are being disposed of together.

3. The issue which falls for consideration in these appeals is whether the appellant, who is a manufacturer of bulk drugs, is entitled to cenvat credit on MS items such as plates, angles, channels and sheets falling under chapter heading: 72, 73 and 74 as inputs. Initially, the appellant had taken cenvat credit on these items as capital goods which was questioned by the department and in response to the appellant admitted that they do not qualify as capital goods because they were materials which were used for repair and maintenance of their machinery. However, he claimed that all these materials were used within the factory after 01.04.2011 when the definition of inputs under the Cenvat Credit Rules, 2004 has been modified under Rule 2(k) including "all goods used in the factory by the manufacturer of the final product" excluding certain items. The relevant portion of the definition is reproduced below:

(k) - input means –

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; Or

(iv) all goods used for providing any output service,

but excludes –

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;

(C) capital goods, except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

They, therefore, claimed that they are entitled to cenvat credit on these items as inputs. Not agreeing with the contention of the appellant, four show cause notices were issued to them seeking to deny cenvat credit on these items as inputs and proposing to recover the irregularly availed cenvat credit under Rule 14 of CCR, 2004 read with Section 11A of the Central Excise Act along with interest. It was also proposed to impose penalties under Rule 15 of the CCR, 2004.

4. After following due process, the lower authority confirmed the demands and the assessee's appeal before the First Appellate Authority was rejected in respect of all four show cause notices. Hence these appeals.

5. Learned Counsel for the appellant submits that it is not in dispute that the goods in question were used by the manufacturer within the factory of their manufacture as can be seen from the findings of both the lower

authorities. It is also not in dispute that these materials were used for repair and maintenance of their machinery which were, in turn, used for manufacture of their final products. Credit was denied by both the lower authorities on the ground that there is no relationship whatsoever of these goods with the manufacture of the final product because these materials were not going into manufacture of the final product. Learned Counsel for the appellant submits that the machinery was used for manufacture of final product and the goods in question were used for maintenance of machinery. Therefore, it is incorrect to say that the goods in question having relationship whatsoever with the manufacture of final products. Therefore, they are entitled to cenvat credit as per the modified definition of inputs with effect from 01.04.2011. He further submits that both the lower authorities relied upon the judgments and decisions of the Tribunal for the period pre 01.04.2011 which are not applicable in view of the definition of inputs with effect from 01.04.2011. He relies on the case laws of judgment of the Hon'ble High Court of Bombay in the case of CEAT Ltd., [2019-TIOL-906-HC-Mum-CX] in which the Hon'ble High Court held in favour of the assessee and against the Revenue regarding entitlement of cenvat credit on angles, beems, channels during the period April 2015 to September 2015 under CCR, 2004 as inputs. However, the Hon'ble High Court remanded the matter to the Tribunal for the limited purpose of finding out whether these materials were used for maintenance and repair of machinery or for other purposes. He would submit that in their case there is no doubt whatsoever that all the materials in question were used for maintenance and repair of their machinery as has been correctly recorded by the lower authority in the impugned order. He further relies on the case laws in the following cases:

(i) Hindustan Petroleum Corporation Ltd., [2016 (338) ELT 308 (Tri-Hyd)}

(ii) Jindal Stainless Ltd., [2016 (343) ELT 527 (Tri-Bang)]

He would further submit that CBEC vide Circular No. 943/4/2011-CX dated 29.04.2011 at serial no.3 clarified as follows:

S.No.	Issue	Clarification
3.	How is the "no relationship whatsoever with the manufacture of a final product" to be determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.

He would submit that even as per the clarification by the Board only such materials which have no co-relation with the manufacture of the final product but which are used in the factory such as furniture, stationery, etc., are not entitled to the cenvat credit as inputs whereas in their case they were using the materials for maintenance of machinery which have a direct relationship with the manufacture of final products. Therefore, the impugned order is unsustainable and needs to be set aside. Learned DR reiterates the findings of the lower authority.

6. I have considered the arguments on both sides and perused the records. The definition of inputs under Rule 2(k) of CCR, 2004 has been amended with effect from 01.04.2011 to include all materials of goods used in the factory of the manufacture of the final products. It is not in dispute

that the goods in question were used in the factory of manufacture by the manufacturer. The only question which remains is only whether they get excluded by the exclusion part of the definition as materials which have no relationship whatsoever to the manufactured final products. It is not in dispute that the materials in question were used for repair and maintenance of the machinery which were used for manufacture of final products. I therefore, find that there is a direct relationship between goods which were used and the manufactured of final products and therefore they were not excluded by clause (f) of the Rule 2(k). I also find that the same issues in the case laws of CEAT Ltd., (supra), Jindal Steel Ltd., (supra) and HPCL (supra) credit of cenvat as inputs was allowed on the material used in maintenance and repair of the machinery. In view of the above, I find that the impugned order is unsustainable and needs to be set aside and I do so. Appeals are allowed and the impugned order is set aside with consequential relief.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya