# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# REGIONAL BENCH AT HYDERABAD

DIVISION BENCH – COURT NO. 1

**Excise APPEAL No. 424 of 2011**

(Arising out of **Order-in-Original** No. 35/2010-(MP), dated 27.10.2010 passed by Commissioneer of Customs, Central Excise & Service Tax, Visakhapatnam-I Commissionerate)

**Rashtriya Ispat Nigam Limited** .. **APPELLANT**
(Unit-I, Visakhapatnam Steel Plant),
VISAKHAPATNAM – 530 031.
Andhra Pradesh

*VERSUS*

**The Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I,** .. **RESPONDENT**
Central Excise Building,
Port Area,
VISAKHAPATNAM – 530 035.
Andhra Pradesh

**Appearance**
Shri G. Prahlad, Advocate for the appellant

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

**Coram:** **Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**
**Hon'ble Ms. RACHNA GUPTA, MEMBER (JUDICIAL)**

**FINAL ORDER No.A/30610/2019**

Date of Hearing: 07.06.2019
Date of Decision: 07.06.2019

**[ORDER PER: Mr. P.V. Subba Rao)**

**1.** This appeal is filed against Order-in-Original No. 35/2010, dt. 27.10.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I. The facts of the case in brief are that the appellant is a Public Sector Undertaking engaged in manufacture of steel and steel products. During the year 2005-06, an expansion programme to enhance the capacity from 3 M.T to 6.3MT was approved by the Government. One part of the expansion was Seemless Tube Mill Project. In order to execute this project, the appellant awarded the consultancy and engineering contract to M/s Dastur & Company covering the activities of basic and detailed engineering, approval of drawings etc. They engaged some engineering firms for site levelling, filing and structural works of the project. For these services, they paid the engineering firms an amount of Rs. 10.86 Crores and took CENVAT Credit of Rs. 1,13,14,936/- on the services which they have availed. Subsequently, they decided to abandon the project insofar as Seemless Tube Mill Project is concerned. In other words, no production whatsoever was done under this project. A show cause notice dated 11.09.2009 was issued for this CENVAT Credit availed during the period February 2007 to April 2008 seeking to deny and recover the aforesaid CENVAT Credit along with interest under Rule 14 of CCR 2004 read with proviso to Section 11A of Central Excise Act, 1944 and Section 11AB of Central Excise Act, 1944. It was also proposed to impose a penalty on them for contravention of the provisions of CCR 2004 under Rule 15. The show cause notice alleged that as per Rule 2(l) of CCR 2004, the term ' input service' means any service-

i) Used by a provider of taxable service for providing an output service, or

ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises or provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market search etc.

**2.** As far as the Seemless Tube Mill Project is concerned, the services used in relation to this project were not used either for providing any output service or for manufacture of any products. In fact, no goods were produced at all from this Seemless Tube Mill Project because the project was abandoned. Therefore, the assessee is not entitled to CENVAT Credit of the services used in setting up of the Seemless Tube Mill Project. After following due process, the Ld. Commissioner disallowed the credit as proposed in the show cause notice and confirmed the demand for recovery of the same as per Rule 14 of CCR 2004 read with Section 11 of central Excise Act, 1944. He also proposed recovery of interest at applicable rate, as per Rule 14 of CCR 2004. Further, he imposed a penalty of Rs. 5.00 lakhs under Rule 15(1) of CCR 2004 on the appellant. It is his finding in the order that the nexus has to be established between the services rendered and the business carried on by the assessee and the services rendered in relation to modernization proposal which was dropped had no nexus whatsoever to the manufacture of the goods or rendition of services by the appellant. The assessee has never declared to the department that they have abandoned the Seemless Tube Mill Project in any manner whatsoever. They have filed periodical ER-1 returns but that does not come to their rescue as taking input services related to unimplemented expansion programme, was not revealed at any stage. They have taken credit on such ineligible services suppressing the fact that Seemless Tube Mill Project had been abandoned. They ought not to have taken such credit since it is not covered by the definition of input service. The assessee cannot claim ignorance because it is a very large firm and had several expert staff dealing with Excise matters for a long time. The assessee has never disclosed to the department that they had abandoned the project in March 2008 itself and has not reversed the credit which they have already availed on the abandoned project. Thus, they have wilfully suppressed the facts with an intent to avail the CENVAT Credit fraudulently, resulting in loss of revenue to the Exchequer. Thus holding, he confirmed the demand along with interest and imposed penalties as above.

**3.** Aggrieved by the above order of the Commissioner, the present appeal is filed. Ld. Counsel for the appellant argued on the following.

(a) The appellant is eligible for CENVAT Credit for the services rendered because the project was in relation to their business and can be held as in relation to production of the goods which they are manufacturing although no goods were manufactured whatsoever from the abandoned project itself on which they have availed CENVAT Credit. He relied on the decision of Hon’ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. [2009(15)STR 657 (Bombay)] in which it was held that the usage of term ' means' and includes and ' such as' are very wide in nature. He would argue that therefore they are entitled to the benefit of CENVAT Credit on the abandoned project. He also relied on the judgment of Hon'ble High Court of Bombay in the case of Ultratech Cement Limited [2010(20)STR 577 (Bom.)] to ascert that the term input service covers in the services used directly in relation to manufacture but also various services in relation to the business of manufacture whether prior to manufacture or thereafter.

(b) The extended period of limitation cannot be invoked because they filed ER-1 returns regularly. He also prayed that no penalty may be imposed upon them.

**4.** Ld. DR reiterates the findings of the impugned order and asserts that the appellant is not entitled for the benefit of CENVAT Credit which was wrongly availed and the same needs to be recovered.

**5.** We have considered the arguments on both sides and perused the records. The facts are not in dispute. The appellant availed CENVAT Credit on the services used in relation to setting up of Seemless Tube Mill Project which was abandoned without even producing one ounce of product. Input services or services which are used in or in relation to manufacture of final products including the business related to the final products, the entire project has been abandoned and there is no manufacture whatsoever. It would have been a different case if the project had run for some time and some goods were manufactured and thereafter the project was abandoned. In this case the appellant decided to abandon the project before it is even set up. Under these circumstances, we find that by no stretch of imagination can the services on which CENVAT Credit has been availed, be related to the manufactured final products either directly or indirectly or any business related to such manufactured products. We are unable to agree to Ld. Counsel that they are also entitled to CENVAT Credit of services used in abandoned project. A plain reading of CENVAT Credit Rules 2004 does not show that they are so entitled to this credit. The statutes must be read and interpreted and there cannot be any intendment in taxing statute. In the absence of any explicit provision for allowing CENVAT Credit for the abandoned projects from which no goods were ever manufactured and no services were ever rendered, we find that the appellant assessee is not entitled to CENVAT Credit. The credit was taken between February 2007 and April 2008. There is nothing to show that after they have decided to abandon the project in February-March 2008, they have either reversed the CENVAT Credit or informed the department. In the regime of self assessment, the assessee is required to take reasonable precautions to take credit and pay duty etc. as per law. When there is no explicit provision which entitles them to continue using CENVAT Credit on the abandoned project, the least that could have been expected from the assessee was to inform the Department that they have abandoned the project even if they were under the impression that they were entitled to CENVAT Credit. The assessee cannot also plead ignorance. They are a very large Public Sector

Undertaking in operation for several decades and have been handling the matters of indirect taxation. Under these circumstances, we find that the assessee has suppressed the information that they have abandoned the Seemless Tube Mill Project on which they have already availed the CENVAT Credit. The extended period of limitation has been rightly invoked in this case and penalty has been correctly imposed. The amount of penalty which has been imposed is Rs. 5.00 lakhs which is not very large considering the amount of CENVAT Credit wrongly availed by the assessee.

**6.** In view of the above, we find that the impugned order is correct and calls for no interference.

**7.** The impugned order is upheld and the appeal is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

**(P. VENKATA SUBBA RAO)**
**MEMBER (TECHNICAL)**

**(Ms. RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

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