IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75336 of 2018

(Arising out of Order-in-Original No.IV(16)28/TECH/COMMR/DIB/2017-18/PART-III/8254 dated 26 October 2017 passed by Commissioner of CGST & Central Excise, Dibrugarh.)

M/s. Brahmaputra Cracker & Polymer Limited
(Main Fire Station Building, 1st Floor,
BCPL Project Site Lepetkata,
Dibrugarh-786007.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise,
Dibrugarh
(Milan Nagar, Dibrugarh-786003.) **.....Respondent**

APPEARANCE

Mr.Z.U.Alvi, Advocate for the Appellant (s)
Mr.K. Chowdhury, Authorized Representative

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO__75077/2020

DATE OF HEARING : 25 July 2019
DATE OF DECISION: 15 January, 2020

PER BENCH:

STATEMENT OF FACTS

1. M/s.Brahmaputra Cracker & Polymer Limited (hereinafter referred to as the 'Appellant'), a public sector undertaking (PSU), filed the present appeal against the impugned order/letter C.No. IV(16)28/TECH/COMMR/DIB/2017-18/PART-III/8254 dated 26.10.2017 issued by the Commissioner of CGST & Central Excise, Dibrugarh

(hereinafter referred to as the impugned letter) refusing to grant registration to the premises of the appellant at Duliajan wherein, according to the appellant, certain activities related to manufacture have been undertaken. As a result, they are unable to avail CENVAT Credit on capital goods – both imported and indigenous installed and services of Erection & Commissioning received and consumed at Duliajan Plant.

2. The Appellant, *inter alia,* manufactures and sells various grades of polypropylene which is dutiable/ taxable under both Central Excise and GST Law. Their main manufacturing unit is in Lepetkata, Dibrugarh, Assam and their associated units are at Duliajan, Lakwa and Tinsukia which carry on certain activities. The units located at Duliajan and Lepetkata fall within the same jurisdiction of the same Central Excise Commissionerate, though under different ranges.

3. Another unit of the Appellant is at Lakwa where C2+Liquid is manufactured and transferred to the Lepetkata for which they have taken separate Excise Registration of Lakwa Unit as dutiable goods are being manufactured.

4. Their Duliajan unit is a gas compression and dehydration unit (hereinafter referred to as 'GDU') where they purchase natural gas from Oil India Ltd, compress it and dehydrate and transfer it to their Lepetkata unit located 48 km away through a 18 inch pipe for use in manufacture of dutiable polymers. The gas which is left after

manufacture (lean gas) is again sent by their manufacturing unit at Lepetkata unit to the Duliajan unit which pumps it back into the Oil India Ltd.

5. Thus, in their Duliajan plant they only compress and dry the gas and do not create any new marketable commodity and they are also not registered with the central excise department. They also receive the lean gas and return it to the Oil India ltd. The appellant wanted their processing plant at Duliajan to be included in the Registration of their Lepetkata unit (where the goods are actually manufactured) so that they can avail CENVAT credit on the capital goods (both domestic and imported)installed at Duliajan and they can also avail CENVAT credit of the service tax paid on input services used in Duliajan.

6. The appellant filed an application with Superintendent CE Dibrugarh dt.25.11.2011 seeking registration under Rule 9 of Central Excise Rules, 2002 and were issued a Registration Certificate No: AADCB2356EEM001 dt.09.12.2011 for the Lepetkata Plant, Dibrugarh Assam as manufacturer of Excisable goods. The certificate of registration was re-issued on 24.07.2012. In their ER-1 Return they claimed CENVAT credit on imported and indigenous capital goods installed not in their factory at Lepetkata but in their processing plant at Duliajan which was not part of their registered premises at all but which was located 48 km away. They also filed a request with the Superintendent of Central Excise seeking to include the following

additional facilities in their Central Excise Registration on the ground that these units are connected by pipe lines to their manufacturing unit at Lepetkata.

(i) LPG recovery plant Kakwa,

(ii) Gas Compressor (GDU) Station Duliajan and,

(iii) Tinsukhiya Rly Sdg,

They further followed up with the Commissioner who, by the impugned letter rejected their request for inclusion of their Duliajan processing plant in their Registration for Lepetkata manufacturing unit. Hence, this appeal. The series of events and dates as submitted by the appellant are as follows.

List of Dates & Events

Date	Event
30.03.2010	BCPL's order No:BCPL/C&P/MR-5055/SK/2015 for Gas Turbine Package on M/s.BHEL Hyderabad.
26.02.2011 to 20.11.2011	Filing of Bill of Entries by M/s.BHEL Hyderabad towards imported consignment of Gas Turbine Package by BHEL on payment of Basic Customs Duty and CVD.
05.05.2011	Filing of B/E No: 3413437 by BHEL at JNPT for the consignment of Gas Turbine Package imported by them against M/s.BCPL's order dt:30.03.2010 on payment of Customs Duty including total CVD + Addl. Duty Rs.2,10,091/-.
07.07.2011	Filing of B/E No:40080060 by BHEL at JNPT for the consignment of Gas Turbine Package imported by them against M/s.BCPL's order dt:30.03.2010, on payment of Customs Duty including total CVD + Addl.Duty Rs.21,125/-.
30.08.2011	Filing of B/E No:4504712 & 4504801 by BHEL at JNPT for the consignment of Gas Turbine Package imported by them against M/s.BCPL's order dt:30.03.2010, on payment of Customs Duty including total CVD + Addl. Duty Rs.21,125/-.
26.09.2011	Despatch of consignments comprised in B/E NO.:4504581 vide L/R No:71271 ex-JNPT after clearance on payment of Customs Duty and Addl. Duty/CVD.

26.09.2011	Despatch of consignments comprised in B/E No.3413437 dt:05.05.2011, 4008060 dt: 07.07.2011 & 4504712 dt: 30.08.2011 vide L/R No:71272 ex-JNPT after clearance on payment of Customs Duty and Addl. Duty/CVD.
30.09.2011	BHEL's (importer's) invoice No: ID-HY-3010867 for the Gas Turbine Package covered under BCPL's PO dt:10.05.2010 and dispatched ex-JNPT to BCPL Duliajan vide LR No:71271 and 71272 both dated 26.09.2011, involving Addl. Duty/CVD of Rs.18,54,88,945/-.
25.11.2011	Filing of Application by M/s.BCPL for Registration U/r-9 CER 2002 as manufacturer of excisable goods with Superintendent CE Dibrugarh.
27.12.2011	Filing of B/E No: 5576147 by BHEL at JNPT for the consignment of Gas Turbine Package imported by them against M/s.BCPL's order dated 30.03.2010, on payment of Customs Duty including total CVD + Addl.Duty Rs.1,15,41,437/-.
09.12.2011	Registration Under Central Excise Rules as manufacturer of Excisable goods by M/s.BCPL Lepetkata Dibrugarh Assam and issuance of Registration Certificate No:AADCB2356EEM001.
January 2012	Filing of ER-1 Return by M/s.BCPL Lepetkata Dibrugarh Assam exhibiting availment of Credit on imported Capital Goods amounting to Rs.18,48,35,920/- on imported Capital Goods and Rs.29,70,57,181/- on indigenous Capital Goods.
03.03.2012	Filing by M/s.BCPL Lepetkata Dibrugarh Assam application vide BCPL/Tax/ED/2011-12 to Superintendent CE Dibrugarh for inclusion in the Registration of the connected Plants/Installations at: (i) GAIL – LPG Recovery Plant Lakwa Distt.Sibsagar, (ii) BCPL – Compressor (GDU) Station Duliajan Distt.Dibrugarh. (iii) BCPL – Railway siding Lalmati Distt. Dibrugarh.
24.07.2012	Issuance by Superintendent CE Dibrugarh of amended Registration Certificate U/r 9 CER 2002 to BCPL Lepetkata Dibrugarh.
March 2012 to January 2014	No response from the Department as regard BCPL's request dt:03.03.2011 for inclusion in the Registration as Manufacturer of Excisable goods U/r 9 CER 2002 of three installations including the connected Compressor (GDU) Station Duliajan.
22.01.2014	Email from acesadmin@icegate.gov.in (Assistant Commissioner C.E.) for physical verification of the sites of the connected installations for inclusion in the Registration U/r 9 CER 2002 of BCPL Lepetkata Dibrugarh.
03.02.2014	BCPL's letter to Superintendent CE Dibrugarh furnishing 2 sets of requisite documents namely application for amendment to the CE Registration for inclusion of the three installations at Lakwa, Duliajan and Tinsukhia Rly. Sdg. And other financial documents.

01.03.2014	Query from Sr. Manager Finance BCPL about modus-operandi for availment of credit of CVD on consignment imported by BHEL, B/E being in the name of BHEL who raised importer invoice on BCPL.
04.03.2014	Email from Sr. Manager Finance BCPL to GM (PE) GAIL about admissibility of Credit to BCPL on imported Capital goods.
22.04.2015	BCPL's letter to Assistant Commissioner CE Dibrugarh further to their initial request dt:03.03.2012 and communication dt:03.02.2014 to Superintendent C.E. Dibrugarh for inclusion in C.Ex Registration of BCPL Lepetekata amongst three connected installations of the Compressor (GDU) Station Duliajan. Requisite clarification furnished to ACCE Dibrugarh.
18.05.2015	Filing in the office of Commissioner CE Dibrugarh by BCPL (in furtherance to initial request dt:03.03.2012 and further clarifications dt:03.02.2014 and 22.04.2015) of the letter furnishing documents about commonality of work force, management, Sales Tax & Income Tax Assessment and Connectivity of operations of the three sites/ installations at Lakwa, Duliajan and Lalmati Rly. Sdg.. Copies of the letters marked to Addl. Commissioner C.E. Dibrugarh.
17.12.2015	Assistant Commissioner, O/o Commissioner C.E. Dibrugarh's letter to BCPL Lepetkata referring their letter dt:18.05.2015 and communicating that Commissioner C.E. rejected the request for common C.Ex. Registration for three Addl. premises purportedly on the ground of segregation by public road/Railway Line and non satisfaction of conditions vide para-6 Chapter-2 of C.Ex. Manual.
18.12.2015	BCPL's letter to the Department regarding confirmation as to whether the activity undertaken at Duliajan Installation of compressing Natural Gas into CNG constituted manufacture U/S 2(f), CNG becomes an intermediate product for the main Installation of Cracker and Polymer Plant.
2015-2016	Availment of Credit amounting to Rs.11…… Crores by BPCL on Capital goods received in Duliajan Installation.
2016-2017	Reversal of the credit entry of Rs.11……. Crores by BPCL on the apprehension lest the availment of credit BCPL on the Capital goods installed in Duliajan Installation may be deemed as irregular.
08.07.2016	BCPL's request to Chief Commissioner C.CE & ST Shillong for Single Registration for whole of Assam under BCPL being. BCPL being a joint venture Public Sector Company with Share holding of GAIL (CPSU) 70%, OIL (CPSU) and Numaligarh Refinery Ltd. (NRL), Govt. of Assam (PSU) engaged in the manufacture of HDPE, LLDPE AND PPLE of capacity 0.28 Million Ton per year usi9gn Natural Gas, Naptha & Butene-1. The main Cracker Plant being located Lepetkata Dibrugarh while case sweetening and C2 + recovery Unit at Lalwa and (intake of Natural) Gas de-hydration & Compression at Duliajan. Tinsukhia Rly. Sdg. Serving as facility unloading Naptha, one of the three main inputs.

27.09.2016	Assistant Commissioner CGST Excise & Service Tax Dibrugarh's letter in response to BCPL's 8/07/2016 to BCPL rejecting U/Not:19/2016-CE(NT) dt:01.03.2016 the request for Single Registration for whole of Assam purportedly on the ground of installation of plant at different locations.
10.03.2017	BCPL's letter dt:10.03.2017 to Addl.Commissioner GST, C & CE in response to Commissioner rejection dt:27.09.2016 of Single Registration clarifying the position as regards intertwined operations of the three installations at Duliajan, Lakwa and Lapetkta.
06.04.2017	BCPL's letter to Commissioner Dibrugarh emphasizing the inseparable integrity of the intertwined operations of the three installations and pressing their request for inclusion of the operationally interconnected installations within the registration for Lepetkta Plant.
06.07.2017	Former meeting in the office of Commissioner CGST C, & CE OF BCPL's representative with Chief Commissioner CGST, C & CE on the issue of Single Registration for the four integrated installations and admissibility of the credit on the capital goods installed therein.
11.07.2017	BCPL's letter (pursuant to the meeting dt:06.07.2017) praying for carry forward of the CENVAT Credit on Capital goods installed at: -Lakwa (Gas Sweetening & C2+Recovery Plant), -Duliajan (intake of Natural Gas and de-hydration Compression and Pumping the main CNG inputs directly to Lepetkta Plant), -Lepetkta Plant turning out the final products, HDPE, LLDPE and PPE. -and Tinsukia Rly. Sidg. (uploading Naptha input and pumping the same to Lepetkta Plant). -The request was accompanied with Diagrammatic representation of integrated manufacturing processes spread over the four installations and justification for Single Registration.
15.07.2017	BCPL's letter to Commissioner CGST, C & CE Dibrugarh, referring to the deliberations of the meeting dt:06.07.2017 emphasizing the factors justifying single registration namely, (i) All installations were under jurisdiction of CE Range. (ii) Processes undertaken at each installation inseparably intertwined and interconnected with the other. (iii) None unit operating under any area based exemption. (iv) Entire accounting movement and record keeping relevant for the purpose being at one place – Lepetkta. And offering further justification for Single Registration and consequent availment of credit on capital goods and its carry forward from pre-GST Regime to the post regime.
21.07.2017	BCPL's letter to the Assistant Commissioner Dibrugarh highlighting the problem and difficulty on the part of BCPL in taking two registration and pressing for confirmation of Single Registration in order to enable to BCPL to carry forward the credit on capital goods installed at Duliajan plant, purportedly relying upon CESTAT's ruling in Adani Gas Vs. CCE dt:30.01.2017.

25.09.2017	BCPL's representative meeting with Chief Commissioner GST C & CE Shillong.
27.09.2017	BCPL's letter in continuation to their representative meeting with Chief Commissioner GST Shillong urging him to supersede the decision dt:26.09.2017 of Joint Commissioner CGST & CE purportedly denying single registration, admissibility of credit on Capital goods and carrying forward in the new GST Regime.
20.10.2017	BCPL's letter to Commissioner GST Dibrugarh and Chief Commissioner CGST Shillong urging for superseding the negative decision of JCE-CGST dt:26.09.2017.
25.10.2017	Addl. Commissioner CGST & CE Shillong's letter to BCPL in reply to their representation dt:27.09.2017 suggesting filing of appeal against Commissioner CGST & CE Dibrugarh's decision before Hon'ble CESTAT.
26.10.2017	Commissioner CGST, C & CE letter referring interalia to Chief Commissioner letter dt: 25.10.2017 besides other correspondence to the Commissionerate Dibrugarh's letter dt: 26.09.2017 and reaffirming the decision and basis thereof for non-acceptance of request for single registration of the Duliajan premises and Lepetkta/Lakwa premises and consequent ineligibility to avail CENVAT Credit on Capital goods installed at unregistered premise of Duliajan.
02.02.2018	Filing of appeal against Commissioner CGST & CE's order dt:26.09.2017 before Hon'ble CESTAT Kolkata.

7. Ld. Counsel for the appellant submits that the following are the two issues to be decided:

a) Whether they are eligible for common registration for their Duliajan plant and Lepetkata plant by inclusion of the former in their registration certificate already issued for the latter.

b) Admissibility of CENVAT credit on the capital goods received in their Duliajan plant based either on common registration or irrespective of the registration.

8. He asserts that the Duliajan plant only provides inputs for further manufacture in their Leptkata plant and both are connected through their own 48 km pipeline and hence both should be given one

registration regardless of the fact that they are located far from each other and they are also located in different range offices of the Commissionerate. He relies on the CBEC's manual chapter2 para 3.2 of which reads as follows:

> *"3.2 Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked) but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:*
>
> *(1) Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.*
>
> *(2) Large number of raw materials are common and received/proposed to be received commonly for both/all the premises.*
>
> *(3) Common electricity supplies.*
>
> *(4) There is common labour/work force.*
>
> *(5) Common administration/work management.*
>
> *(6) Common sales tax registration and assessment.*
>
> *(7) Common Income Tax assessment."*

9. He would urge that both their plants are only separated by their pipeline and hence they squarely fall under this para and hence are eligible for a single registration.

10. As an alternative argument, he states that even if they are not granted a single registration, CENVAT credit on the capital goods used

in their processing plant at Duliajan should also be allowed to be taken and used in their Lepetkata plant.

11. Ld. DR opposes the claim of the appellant and supports the impugned letter. He also asserts that the appellant is not entitled to CENVAT credit on capital goods not used in the manufacture of their final products.

12. We have considered arguments on both sides and perused the records. The two issues in this case have been accurately put forth by the Ld Counsel for the appellant (para 7 above) which we now proceed to decide.

Registration

13. The first issue which falls for our consideration is whether the appellant's Duliajan plant where the gas is merely dried and compressed for supply to their manufacturing facility at Lepetkata located 48 km away should be considered as part of the same manufacturing facility and included in their registration or otherwise. It would be profitable to examine the relevant legal provisions as applicable during the relevant period. Article 246 of the Constitution gives the Parliament exclusive jurisdiction to legislate on matters included in List I to the Seventh Schedule to the Constitution. Entry 84 of this list reads as follows:

> *"Duties of excise on tobacco and other goods manufactured or produced in India except-*

(a) Alcoholic liquor for human consumption;

(b) Opium, Indian help and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph(b) of this entry."

14. Central Excise Act, 1944 pre-dates the Constitution but continues to be in force as per Article 372 of the Constitution. Nevertheless, this Act is squarely covered by the aforesaid entry 84 of List I of the Seventh Schedule.

15. Section 3 of the CE Act is the charging section and the other sections are the machinery sections which provide the modalities for giving force to the charging section (including the provisions for registration). It reads as follows:

"***Section 3.*** *Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -*

(1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT)] on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods excluding goods produced or manufactured in special economic zones specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

Provided *that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,-*

(i) Omitted.

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975)."

16. From this section, it is evident that there must be goods which are excisable goods and which must be either manufactured or produced for this charging section to apply. If these elements are missing, the activity falls outside the scope of this Act. The key terms used in the charging section are 'excisable goods', 'manufacture' and 'production'. 'Excisable goods' is defined in Section 2 (d) and 'manufacture' in section 2 (f). The term 'production' is not defined in the Act and neither is the term 'goods'. **Sections 2 (f) and 2(d)** are as follows:

*"**Section 2(d):** "excisable goods" means goods specified in the First and Second Schedules of Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt;*

Section 2(f): *"manufacture" includes any process, -*

i) incidental or ancillary to the completion of a manufactured product;

ii) which is specified in relation to any goods in the Section or Chapter notes of the First and Second Schedules to Central Excise Tariff Act, 1985 as amounting to manufacture;

iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

17. The term 'goods' itself is not defined and hence, through a series of judicial decisions, it is now well settled that 'goods' is understood as having the same meaning as in the **Sale of Goods Act section 2 (7)** of which defines 'goods' as follows:

> *"goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;*

18. Thus, for the excise duties to apply, they must be "goods" in terms of the above definition and the goods must be "excisable goods"

and they must be either manufactured or produced. The definition of 'manufacture' in section 2(f) is an inclusive definition indicating what all elements need to be included in the manufacture. Through a series of judicial decisions, it is now well settled that every processing of goods does not amount to manufacture and only such processes which result in emergence of new distinct, marketable goods amount to manufacture. Else, excise duty cannot be levied as mere processing does not amount to manufacture. It is not open for the officers to treat any odd process as manufacture and to compel the processor to obtain registration and pay excise duty. Conversely, it is not open to the processor to say that he wants to call his process as manufacture even if it is not and to ask for central excise registration and pay excise duty. However, the definition of 'manufacture' under the Central Excise Act includes any activity which is incidental or ancillary to manufacture. For instance, 'packing' (except in respect of some goods where a legal fiction is created), does not amount to manufacture. However, if the factory is manufacturing the product and then packing and dispatching it, the packing becomes included in the manufacture. The manufacturer cannot exclude the packing value while paying the central excise duty. On the other hand, if A manufactures the product and sells it to B who only packs or repacks and sells it/ transfers it further, B is not a manufacturer and is not liable to excise duty.

19. Unlike Income Tax, Central Excise Law is focused on the manufacturing facility or the factory and not on the corporate entity. If

a corporate entity has several manufacturing facilities and some other offices and establishments, a separate registration has to be obtained for each of the manufacturing facilities and none for the other establishments and offices. If one of the other facilities undertakes some processing which is clearly not manufacturing, it is not open either for the Revenue or for the Assessee to treat it as manufacture. The test of manufacture must pass. Conversely, it is not open to either side to say that although some activity amounts to manufacture, they want to treat it as "not manufacture".

20. The relevant provisions regarding Central Excise Registration are as follows:

Section 6 of the Central Excise Act, 1944

> *"SECTION 6. Registration of certain persons. -*
> *Any prescribed person who is engaged in-*
> *(a) the production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or*
> *(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall get himself registered with the proper officer in such manner as may be prescribed."*

Rule 9 of the Central Excise Rules, 2002

"Rule 9 Registration. –

(1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:

Provided *that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No. 2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.*

(2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board."

CBEC's manual chapter2 para 3.2 as applicable during the period:

"3.2 Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked) but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

(1) Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.

(2) *Large number of raw materials are common and received/proposed to be received commonly for both/all the premises.*

(3) *Common electricity supplies.*

(4) *There is common labour/work force.*

(5) *Common administration/work management.*

(6) *Common sales tax registration and assessment.*

(7) *Common Income Tax assessment."*

21. As can be seen from the above, Central Excise Registration is required for a manufacturing facility and not for any facility owned by the manufacturer. If there are more than one manufacturing facilities, each of these require a separate registration. In fact, the appellant themselves have two registrations. There are cases where the same factory is split on to opposite sides of a road or pipeline or railway track. In such cases, effectively, it is the same factory with different parts of it working on either side. For such cases, CBEC's manual instructs that a single registration may be given.

22. The present case is not one such. It is case where the assessee has a registered manufacturing facility and a facility 48 km away where no manufacturing but only some processing (which undisputedly does not amount to manufacture) takes place and the two facilities have a common pipe through which the processed gas is transported to the manufacturing facility. The appellant's argument is that since the gas is transported through the pipeline (and not through trucks, etc.) and the pipeline is connected to both the processing unit and the manufacturing facility, both should be treated as a single unit and they should be

given a single registration. It is their assertion that this is covered by the CBEC's manual. We do not agree with this assertion for following reasons:

a) The CBEC's manual dealt with cases where the factory is split by the intervening road, railway line or pipe etc. and not cases where two units, located far from each other, are merely connected by pipes.

b) Central Excise Registration has a specific requirement and it is not open for either the assessee or the Revenue to register or not register any premises beyond the legal provisions.

c) The Duliajan plant in this case is merely processing the gas and is not engaged in any manufacture and therefore, it cannot be treated as a part and parcel of the manufacturing facility at Lepetkata.

d) Conversely, it is also not open to the Revenue to compel registration of premises of any assessee where no manufacturing takes place even if such places are connected by pipes to a manufacturing facility. It is also not open to the Revenue to demand duty on the processing activities carried out at such premises even if they are connected by a pipe to actual manufacturing unit.

e) The provisions relating to the Registration are in the CE Act and Rules and it is not open to this Tribunal to modify them or enlarge or constrict their scope.

23. **In conclusion, we find in the given factual matrix that the appellant is not entitled to get their Duliajan processing plant included in their registration for Lepetkata manufacturing plant.**

CENVAT Credit.

24. The second issue to be considered is whether the appellant is entitled to the CENVAT credit on the capital goods and services received at their Duliajan plant even if it is not part of their registered premises. CENVAT credit is governed by the Cenvat Credit Rules, 2004 framed under Section 37 of the Central Excise Act, 1944 and Section 94 of the Finance Act, 1994. Both these sections empower the Central Government to frame Rules under the respective Acts. Thus, CCR, 2004 is a delegated legislation. Whenever the Parliament delegates powers to make Rules, it always does so to some arm of the State which is answerable to it such as the Government. The Rules which are notified are then placed by the Government before the Parliament where the Committee on Subordinate Legislation and at times the rules are changed on the directions of the Committee to bring them in conformity with the legislative intent.

25. It is now settled by a five member Constitutional bench of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) Mumbai vs Dilip Kumar and Company [2018 (361) ELT 577(SC)] that where the words in a statute are clear and plain and unambiguous and only one meaning can be inferred, Courts are bound

to give effect to the said meaning irrespective of the consequences. Their Lordships were seized of the question of whether an exemption notification should be construed strictly or liberally. In that background, their Lordships examined the core principles of interpretation of statutes, especially fiscal statutes in various judicial pronouncements dating back as far as 1890 till that date and held as follows in paras 19, 20, 25 & 26 of the judgment.

> *"**19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences**. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*
>
> ***20. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes.** Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC*

355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.

25. *We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute.* ***Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.***

26. *Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p-879) after referring to Re, Micklethwait, (1885) 11 Ex 452; Partington v. A.G., (1869) LR 4 HL 100; Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur, (2014) 11 SCC 672, State Bank of Travancore v. Commissioner of Income*

Tax, (1986) 2 SCC 11 and Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, summed up the law in the following manner -

*"A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose : and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words: "**In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."***

26. This judgment of the five member Constitutional bench of the Supreme Court, which prevails over any contrary decisions of the lower courts or smaller benches leaves us with no option but to interpret the

Act and Rules as they were framed and applicable during the period without any intendment and regardless of the consequences.

27. Our role is to apply the Rules as they existed during the relevant period. Rule 2(a) of the CCR 2004 defines capital goods as below:

"(a) "capital goods" means:-

(A) the following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 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;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;"

28. Input service is defined in Rule 2 (l) of the CCR, 2004 as follows:

"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 upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

29. A plain reading of the above Rules makes it clear that there is no room in them to provide for Capital Goods credit on capital goods used in a processing facility outside the factory which does not manufacture any goods but only supplies the processed goods as inputs to the manufacturing facility. Similarly, there is no scope in the Rules to allow CENVAT credit of service tax paid on services used not in the manufacturing facility itself but elsewhere in a processing facility owned by the same legal entity.

30. Learned Counsel for the appellant relied upon the case of the case of the Vikram Cement vs CCE Indore [2006 (194) ELT 3 (SC)] in

which the Hon'ble Apex Court allowed MODVAT credit/ CENVAT credit on inputs, viz., explosives used for blasting mines to produce limestone for manufacture of cement/ clinkers even though these inputs were not used in the factory of manufacture. A perusal of this judgment shows that their Lordships interpreted the erstwhile MODVAT Rules under which Rule 57J provided for credit of duty in respect of inputs used in an intermediate product which, in turn, is used for manufacture of final products. The CENVAT Credit Rules which replaced the MODVAT Rules did not have a provision corresponding to Rule 57J. Their Lordships held that there is no difference between the CENVAT and MODVAT Rules and even in the absence of an explicit provision, credit of CENVAT of explosives is still available. The present case is completely different as the question is not with respect to MODVAT Credit/ CENVAT Credit on inputs but is the question of CENVAT Credit on capital goods.

31. Learned counsel also relied upon the judgement of the Apex Court in the case of Vikram Cement [2006 (197)ELT 145] in which it was held that MODVAT /CENVAT credit on capital goods used in captive mines which form an integrated unit with the factory is available. The ratio of this judgment does not apply to the present case as we have specifically examined the facts of this case and ruled that the processing plant at Duliajan is a separate processing plant and is not part of the manufacturing unit at Lepetkata. Further, we are also bound now by the five member Constitutional bench of the Supreme Court in the case of Dilip Kumar & Company (supra) which categorically

held that fiscal statutes must be interpreted applying the Rule of plain meaning without any intendment and regardless of any consequences or hardships caused.

32. **For these reasons, we find that the appellant is not entitled to CENVAT credit on the capital goods installed and the services used in their processing plant in Duliajan.**

33. The appeal is rejected.

(Order pronounced in the open court on …15 January, 2020….)

Sd/-
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P.V.SUBBA RAO)
MEMBER(TECHNICAL)

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