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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.116 of 2010

(Arising out of Order-in-Original No.CCE/BBSR-I/37/2009 dated 26.11.2009 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. National Aluminium Company Limited
(NALCO Bhawan, P/1, Nayapalli, Bhubaneswar-751061, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Orissa.)

WITH

(i) Excise Appeal No.179 of 2011 (M/s.National Aluminium Company Limited); (ii) Excise Appeal No.70196 of 2013 (M/s.National Aluminium Company Limited); (iii) Excise Appeal No.71340 of 2013 (M/s.National Aluminium Company Limited); (iv) Excise Appeal No.75089 of 2018 (M/s.National Aluminium Company Limited);

(i) (Arising out of Order-in-Original No.CCE/BBSR-I/52/2010 dated 28.12.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar.)

(ii) (Arising out of Order-in-Original No.CCE/BBSR-I/11/2012 dated 07.12.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(iii) (Arising out of Order-in-Appeal No.38/CE/BBSR-I/2013 dated 17.09.2013 passed by Commissioner(Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.)

(iv) (Arising out of Order-in-Original No.41-43/CCE/CEX/RKL/2017-18 dated 29.11.2017 passed by Commissioner of GST & Central Excise, Rourkela Commissionerate, Rourkela.)

APPEARANCE

Shri S.C.Mohanty, Advocate for the Appellant (s)
Shri K.Chowdhary, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 77072-77076/2019

DATE OF HEARING : 27 September 2019
DATE OF DECISION : 27 September 2019

P.K.CHOUDHARY :

The present appeals have been filed by the appellant M/s.NationalAluminium Co. Ltd., Corporate Office, NALCO BHAWAN, Bhubaneswar against the captioned orders passed by the Commissioner, Central Excise, Bhubaneswar, Commissioner (Appeals) Central Excise Bhubaneswar and Commissioner, GST & Central Excise, Rourkela. Due to change of jurisdiction, the Commissioner, Central Excise, Rourkela is the respondent in respect of all the appeals, filed by the appellant. Issue in dispute being common in all the appeals, these are taken up for disposal together.

2. The facts of the case in brief are that the appellant, a Central Government Public Sector Undertaking, under the Ministry of Mines, Govt. of India, is engaged in manufacture of Aluminium metal falling under chapter 76 of the Central Excise Tariff Act,1985, in its smelter plant located at Angul in the State of Odisha. For manufacture of Aluminium metal, Alumina falling under chapter 28 of the said Tariff Act, is the principal raw material. Alumina is manufactured by the appellant at its mines and refinery complex located at Damanjodi in the District of Koraput, Odisha. The said Alumina is transported to the appellant's Smelter plant at Angul in specially designed tank wagons for captive consumption, on payment of central excise duty under CAS-4 procedure.

3. For manufacture of Alumina, Bauxite ore is the principal raw material. The appellant owns Bauxite Mines at Damanjodi and the Bauxite Ore raised from the mines is exclusively used for captive consumption in the manufacture of Alumina.

4. The appellant owns a thermal based Captive Power Plant (CPP), at Angul having 1200 MW capacity. The electricity generated at the CPP is consumed in the Smelter Plant, Angul for manufacture of Aluminium metal and a portion of the said electricity is transmitted/wheeled out from the CPP to the refinery complex, Damanjodi, for use in manufacture of Alumina.

5. The appellant avails cenvat credit on ‘input’, and ‘input services’, used for generation of electricity, which in turn, is used in both the manufacturing units i.e. at the Smelter Plant, Angul and the M&R Complex, Damanjodi, for manufacture of Aluminium Metal and Alumina respectively.

6. It is pertinent to state that a part of the electricity generated in the CPP is also supplied/consumed in the township, schools and the hospital. For such electricity, the appellant does not avail any input and input service credit, which fact has been accepted by the department.

7. The Central Excise Department raised dispute by issuing show-cause-notices, seeking denial of input and input service credit, used in the generation of electricity, which was supplied to the appellant’s Damanjodi unit, for consumption in manufacture of Alumina. According to the department, since the electricity is supplied to the sister unit at Damanjodi, which is having separate registration under Central Excise, the input and input service, used for generation of such electricity, are not eligible for cenvat credit. In other words, the electricity generated in the CPP and used in the Smelter Plant, Angul for manufacture of

Aluminium Metal, is eligible for credit, and not for the electricity which is wheeled out/supplied to the appellant's Damanjodi unit.

8. The dispute in the present case, relates to the period March,2005 to September,2014. The show-cause-notices issued by the department were adjudicated by the authorities, denying cenvat credit on the input and input services used for generation of electricity supplied to the appellant's Damanjodi unit, for manufacture of Alumina. In support of denial of credit the authorities, relied upon the decision of the Hon'ble Supreme Court, in the case of Maruti Suzuki Ltd. Vs. CCE, Delhi-III, reported in 2009 (240) ELT – 641 (SC), wherein vide para 20, it was held as under:

> *To sum up, we hold that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose. The important point to be noted is that, in the present case, excess electricity has been cleared by the assesse at the agreed rate from time to time in favour of its joint ventures, vendors etc., for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assesse was not entitled to CENVAT credit. In short, assesse is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price.*

Aggrieved by the adjudication orders passed by the Commissioner, Central Excise, Bhubaneswar/Rourkela, and the orders of the appellate authority, the appellant filed the present appeals before this Tribunal.

9. The appeals were posted for hearing on 27.09.2019. Sri S. C. Mohanty, learned advocate for the appellant appeared. Besides reiterating the submissions vide the appeal memorandum, the learned Advocate filed an additional written note which is taken on records.

10. The learned Advocate submits that in the present case, the Bauxite Mines and the Alumina plant at Damanjodi, and the Smelter plant and the CPP at Angul, are captive arrangements, for manufacture of Alumina and Aluminium. The electricity generated in the CPP is used in both the manufacturing units for manufacture of excisable goods i.e. Alumina and Aluminium. Therefore, there is no justification for the department to deny the cenvat credit in respect of the electricity transferred and used in the Alumina plant at Damanjodi.

11. The learned Advocate further submits that the processes, starting with raising of bauxite ore, manufacture of Alumina and Aluminium metal, and generation of electricity in the CPP are integrated, inseparable and interlinked processes, which was conceived under one feasibility report, and the industrial licence was accordingly granted by the Govt. of India.

For denying cenvat credit in respect of the electricity supplied to Damanjodi unit, the learned Commissioner relied upon the decision of the Hon’ble Supreme Court in the case of Maruti Suzuki Ltd. Vs. CCE, Delhi – III (supra). The learned Advocate further submits that the said decision is not applicable to the facts of the present case, in as much as, in that case the electricity generated, was consumed for manufacture of excisable goods. The excess electricity was cleared by the assessee to its joint ventures/vendors for a price and also cleared in favour of the grid for distribution. The Hon’ble Apex Court held that the assessee is not entitled to cenvat credit to the extent of excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price. The learned Advocate submits that in the present case, electricity generated in the CPP, is not sold to its Damanjodi plant but captively consumed in the manufacture of Alumina, and the processes are integrated and interlinked. In view of the above position the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. (supra) is clearly distinguishable.

12. It is further submitted by the appellant that in the case of Sanghi Industries Ltd. Vs. CCE, Rajkot = 2014 (302) ELT – 564 (Tri-Ahmd), it was held that it is economical in the modern competitive working to have a large power plant catering to power requirements of various units of the same group of companies, rather than having small power plants, for each unit. As such, electricity used for manufacture in the cement plant and also used in the de-mineralised water plant, cenvat credit is admissible. The above decision was relied upon by the Hon'ble Tribunal, Ahmedabad Bench, in the case of Bilag Industries Pvt. Ltd. Vs. CCE, Daman = 2014 (310) ELT – 533 (Tri-Ahmd).

13. The learned Advocate for the appellant further submits that the dispute stands finally settled by the Hon'ble Rajasthan High Court in the case of CCE Vs. Shree Cement Ltd. = 2018 (16) GSTL – 196 (Raj.). After taking into consideration and analyzing various decisions rendered by the judicial forums, including the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki, the Hon'ble High Court, came to the conclusion that input/input services used in captive power plant for generation of electricity and excess electricity cleared by the appellant in favour of their sister concern units, without there being any sale in view of the captive arrangement, cenvat credit is admissible in case of such captive arrangement. The decision in the case of Maruti Suzuki was distinguished. The case of the appellant is fully covered by the above decision of the Hon'ble Rajasthan High

Court, in as much as, the electricity supplied by the appellant's CPP to Damanjodi unit for captive consumption in the manufacture of Alumina, without involving any sale.

14. The learned Authorized Representative, appearing for the Revenue submits that the Alumina Plant at Damanjodi is separately registered under the Central Excise and situated more than 400 km away from the CPP and, therefore, the credit in respect of the electricity wheeled out to Damanjodi Plant is not admissible. The learned AR placed reliance on the decision of the Hon'ble Gujarat High Court in the case of Sintex Industries Ltd. Vs. CCE = 2013 (287) ELT - 261 (Guj), wherein it was held that two units situated within the common boundary wall owned by the assessee, or a single legal entity, holding two separate registrations – Assessee was entitled to credit on eligible inputs utilized for generation of electricity to the extent to which it was used to produce electricity within its factory registered for that purpose but not to the extent it has supplied to the factory registered as different unit.

15. In reply to the above contention of the Revenue, the learned Advocate for the appellant submits that the above case of Sintex Industries (supra) is distinguishable from the facts of the present case of the appellant, in as much as, electricity is not produced/generated within the factory i.e, the Smelter plant, as the CPP is located at a different place and catering to the needs of both the manufacturing units. Secondly, in the above case of Sintex India (supra) out of the two units, one unit was manufacturing textile product and the other unit was manufacturing plastic articles. The above products are two distinct and separate items and the processes are not interlinked or inter-dependent. The two units do not constitute any captive arrangement. In the present case of the appellant, the unit at Damanjodi manufacturing Alumina and the unit at Angul manufacturing Aluminium, the processes are interlinked/

interdependent, since Alumina is an intermediate product for manufacture of Aluminium, and the arrangements are captive arrangements.

16. Heard both sides and perused the appeal records.

17. We have carefully gone through the relevant documents and taken into consideration the principles of law decided by the Hon'ble Supreme Court in the case of Maruti Suzuki Vs. CCE = 2009 (240) ELT – 641 (SC) and the decision of the Hon'ble Rajasthan High Court in the case of CCE Vs. Shree Cement Ltd. = 2018 (16) GSTL 196 (Raj). We find that the Alumina Plant at Damanjodi, the Aluminium metal plant at Angul and the captive power plant, are integral parts of the same captive arrangement. Electricity, generated in the CPP, is captively used by both the units for manufacture of excisable goods. There is no sale of electricity by the appellant to its Damanjodi unit. Therefore, the ratio of decision of the Hon'ble Supreme Court, in the case of Maruti Suzuki (supra) is not applicable to the facts of the present case. In the case of Shree Cement Ltd (supra), the Hon'ble High Court of Rajasthan, after elaborate discussions, have distinguished the case of Maruti Suzuki (supra) and held that input, input services used in captive power plant for generation of electricity and the excess electricity cleared by the appellant in favour of their sister units, without there being any sale in view of captive arrangement, i.e. electricity generated in one unit being consumed in the other unit of the same company in addition to its being consumed in the same unit also, cenvat credit on inputs and input services is eligible in terms of Rule 2(k) and 2(l) of the Cenvat Credit Rules,2004.

18. In our considered view the above decision in the case of CCE, Jaipur Vs. Shree Cement Ltd. (supra) is squarely applicable to the present case. Accordingly, we hold that credit of duty/taxes paid on

inputs/input services used in the generation of electricity consumed at the Koraput Plant, is eligible. To that extent, the appeals are allowed.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(C.J.MATHEW)
MEMBER (TECHNICAL)

sm