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

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.521 of 2007**
(Arising out of Order-in-Original No.332-334/Commissioner/CE/Haldia/Adjn/2006 dated 08.03.2007 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

**Commissioner of Central Excise, Haldia**
(15/1, Strand Road, M.S. Building, Kolkata-700001.)

**...Appellant**

*VERSUS*

**M/s. Indian Oil Corporation Limited**

**.....Respondent**

(Refinery Division, P.O.-Haldia Refinery, Haldia, East Midnapore, West Bengal, Pin-721606.)

**APPEARANCE**

Shri S.S.Chattopadhyay, Authorized Representative for the Appellant (s)
Shri Saurav Gupta, Accounts Officer for the Respondent (s)

**CORAM: HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)**
**HON'BLE SHRI P.DINESHA, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75399/2022**

DATE OF HEARING : 25 July 2022
DATE OF DECISION : 25 July 2022

**SANJIV SRIVASTAVA :**

This Appeal filed by the Revenue is directed against Order-in-Original No.332-334/Commissioner/CE/Haldia/Adjn/2006 dated 08.03.2007. By the impugned order the Ld.Commissioner by following the decision of Hon'ble Apex Court in the case of Indian Oil Corporation Limited Vs. Collector of Central Excise, Baroda [2006 (202) ELT 37 (S.C.)], has dropped the demand raised vide Show Cause Notices detailed in the following table:-

| Sl.No. | Show Cause Cum Demand Notice No. & Date | Period | Amount |
|---|---|---|---|
| 01 | v.Ch.27(15)231/Ch/Hal/ Adjn / 04/ 10216 dated 08.09.2004 | August 2003 to March 2004 | Rs.1,83,99,942.00 |
| 02 | 25/electricity/IFO & Naptha/2003-04 dated 31/10/203 | October 2002 to July 2003 | Rs. 14,93,440.00 |
| 03 | 99/IFO/Elec/2003 dated 04.03.2003 | February, 2002 | Rs. 14,80,494.00 |

| | | | |
|---|---|---|---|
| | | to September 2002 | |
| | | TOTAL | **Rs. 2,13,73,877/-** |

2.1 The Respondent is having a captive power plant for generation of electricity within the refinery. They use furnace oil like diesel oil and reduced crude oil produced by them in the captive power plant for generating electricity. They do not reply the entire quantity of electricity so generated for manufacture within the factory premises. Part of electricity is used in general facilities like pumping oil in pipelines, bunkering installations, workshop, marketing division, laboratory, administration building etc. and partly supplied to M/s. V.I.V. Ltd., Haldia and West Bengal State Electricity Board (WBSEB).

2.2 In respect of electricity so used in a manner other than production of the goods in their factory, three show cause notices as written in Para 1 were issued to the respondents.

2.3 These show cause notices have been adjudicated by the Commissioner vide the impugned order. Aggrieved, Revenue has filed this Appeal on the grounds that the decision of Indian Oil referred by the Ld.Commissioner is distinguishable as the said decision was in respect of Notification No.75/84 and not in terms of Notification No.67/1995-CE dated 16.03.1995.

2.4 Further, as per para 14 of the Hon'ble Supreme Court's judgement relied upon by the Ld.Commissioner the fuel oil must have been consumed for the purpose of production of petroleum products manufactured in the factory and the exemption granted by the Notification No.75/84 shall not be available in respect of electricity generated which is not used in the process of manufacture of petroleum products within the refinery.

3. We have heard Shri S.S.Chattopadhyay, Ld.Authorized Representative for the Revenue and Shri Saurav Gupta, Ld.Accounts Officer for the Respondent.

4.1 Ld.Authorized Representative for the Revenue submits that the issue has not been considered in right perspective by the

Ld.Commissinoer in as so much as Para 14 of the Hon'ble Supreme Court's in the case of Indian Oil Corporation Limited (supra), provides as follows:-

> ***"14.*** *For the reasons stated above, these appeals are accepted; order under appeal is set aside and it is held that the assessee would be entitled to the benefit of exemption Notification No. 75/84 in terms of entry 34 read with clarificatory circular which covers such captive consumption of the fuel for the purpose of petroleum products manufactured in the refinery. The exemption shall not be available in respect of RCO/LSHS used in the generation of electricity which in turn is not used in the process and manufacture of petroleum products within the refinery area."*

4.2 Further, he relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of Maruti Suzuki India Limited Vs. Commr. of Central Excise, Delhi-III [2017 (5) G.S.T.L. 18 (P & H)], in para 15 & 16 of which, the Hon'ble High Court has held as follows:-

> ***"15.*** *It was contended that the electricity that was wheeled out was used by the third parties for the purpose of manufacturing components for the assessee and these components were used by the assessee for the manufacture of its final product. The assessee's case, therefore, is this. Service tax was paid in respect of inward transportation of LNG by GAIL through its pipeline to the assessee; the LNG was used for the production of electricity; the electricity was wheeled out to third parties; the third parties used the electricity to manufacture final products for sale to the assessee and the assessee used these final products purchased from the third parties in the manufacture of its final product. Accordingly, the input service that was originally routed to the assessee found its way back to the assessee. This, according to the appellant, constitutes indirect use of the LNG by it.*
>
> ***16.*** *As we mentioned earlier, the use of the input service must be by the manufacturer who claims the CENVAT credit i.e. the assessee. The use may be direct or indirect. It must, however, be used by the manufacturer concerned. It cannot be the use of another unless such use is for or on behalf of the assessee. The definition of "input service"*

*in Rule 2(l)(ii) expressly states that "input service" means any service used by the manufacturer i.e. the assessee whether directly or indirectly in or in relation to the manufacture of the final product and clearance of the final product from the place of removal. Thus, the use of the input service must be by the manufacturer i.e. the assessee. The words "whether directly or indirectly" cannot be extended to the use of such input services by third parties in circumstances such as those in the present case. In this case, the input services (transport of LNG by GAIL to the assessee) constituted components of products sold by the assessee to the third parties (electricity) which the third parties used in their own right for the manufacture of their final products which in turn they sold to the assessee and the assessee used for the manufacture of its final product."*

4.3 He also relied upon the decision of Tribunal in the case of Chennai Petroleum Corporation Ltd. Vs. Commr. of C.Ex., Chennai-I [2018 (359) E.L.T. 538 (Tri.-Chennai)].

5. Shri Saurav Gupta, Ld.Accounts Officer for the Respondent asserts that a portion of electricity was used within the premises in the general facilities available. However, he admits that certain portion of electricity has been wheeled out. However, it is to be noted that against the electricity wheeled out, they are procuring electricity from Electricity Board.

6.1 Considered the impugned order along with the submissions made in Appeal and during the course of argument.

6.2 We find that the electricity generated by the Appellant in the captive power plant is used for both production of the finished goods within the refinery and for other purposes including the electricity wheeled out. In such circumstances we find that Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court referred to by Ld.Authorized Representative have clearly held that in respect of electricity wheeled out, the benefit would not be available. In the case of Maruti Suzuki Ltd. v. Commissioner [2009 (240) E.L.T. 641 (S.C.)], the Hon'ble Supreme Court has held as follows:-

> ***"20.*** *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 assessee 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, assessee was not entitled to CENVAT credit. In short, assessee 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."*

6.3 The case needs to be re-examined in the light of the above referred judgement and complete view taken in the matter. Accordingly, the matter needs to be remanded back to the original authority for re-consideration and re-quantification.

6.4 The Appeal filed by the Revenue is allowed to this extent and matter is remanded to the original authority for re-consideration. As the matter is substantially old (2007), the Commissioner is directed to decide this matter within a period of 3 (three) months from the date of receipt of this order.

(Dictated and pronounced in the open Court.)

Sd/
**(SANJIV SRIVASTAVA)**
**MEMBER (TECHNICAL)**

Sd/

**(P. DINESHA)**
**MEMBER (JUDICIAL)**

**sm**