

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.93 of 2011

(Arising out of Order-in-Original No.CCE/BBSR-I/46-47/2010 dated 29.11.2010
passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Balasore Alloys Limited
(Balgopalpur, Balasore-756020, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I

.....Respondent

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

APPEARANCE

Shri Ajay Sanwaria, Chartered Accountant for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75530/2023

DATE OF HEARING : 10 April 2023
DATE OF DECISION : 05 June 2023

Per : P.K. CHOUDHARY :

The present Appeal has been filed by M/s Balasore Alloys Limited ("the Appellant") against Order-in-Original No. CCE/BBSR-I/46-47/2010 dated 29.11.2010 passed by the Commissioner, Central Excise Customs & Service Tax, Bhubaneswar – I, confirming recovery

of inadmissible Cenvat Credit of Rs.1,93,23,062/- availed on Input Services and Capital Goods for the Financial Year 2005-06 to 2009-10.

2. The facts of the case in brief are that the Appellant is a manufacturer of High Carbon Ferro Chrome ("HCFC") falling under Tariff Item 72024100 of the Central Excise Tariff Act, 1985, at its factory at Balgopalpur. The Appellant had been availing CENVAT credit on inputs, input services and capital goods and utilizing the same for payment of excise duty on clearance of HCFC from its factory. For manufacture of HCFC, Chrome Ore is the principle raw material.

3. The Appellant also have a captive Chromite Mine in Kaliapani, Sukinda. Vide order dated 22.05.2000, the Appellant was granted the mining lease by the Government of Odisha (Department of Steel and Mines) subject to the condition that the mine shall be exclusively used for captive purpose to ensure steady supply of Chrome Ore to the Charge Chrome/Ferro Chrome Plant. Within the mining area, the Appellant also has a Chrome Ore Beneficiation Plant ("COB Plant") for upgrading low grade ores to high grade. The COB Plant is separately registered under the provisions of the Central Excise laws.

4. The high-grade Chrome Ores excavated from the mines are directly transferred to the factory for use in the manufacture of HCFC. However, the low-grade Chrome Ores are first transferred to the COB Plant and after its upgradation, it is transferred to the factory in entirety. The Appellant was discharging excise duty on removal of Ores from the COB plant to the factory through its Personal Ledger Account.

5. The Appellant had availed CENVAT Credit of input services received at the mines along with credit of capital goods installed at the COB Plant and no CENVAT Credit was availed by the COB plant at any stage. During the period in dispute, the Appellant was issued Show Cause Notices dated 05.04.2010 and 23.09.2010, alleging irregular availment of CENVAT Credit on input services viz. mining service, cargo handling service etc. and on capital goods installed at the COB plant. According to the department, since COB Plant was separately registered, CENVAT credit of input services is required to be availed

proportionately between the factory and COB Plant based on Ores excavated and dispatched to factory and COB Plant respectively. With respect to capital goods, it was alleged that since the goods are not available for use in the factory of manufacturer of final product, credit would be inadmissible. In other words, CENVAT credit would be admissible in the hands of the COB Plant and not the factory, as both are separately registered under the Central Excise.

6. The Appellant filed detailed reply refuting the allegations in the notice and contending that services and capital goods used at the mines and COB plant are captive in nature and have direct nexus with the manufacturing process at the factory. The Appellant also relied upon several cases to support its contention.

7. The show-cause notices were confirmed by the Adjudicating Authority denying CENVAT Credit on the premise that factory and COB Plant are having separate registration numbers and one cannot take credit of another. Further, credit of input services and capital goods installed at the COB Plant for manufacture of the dutiable products is admissible only in the hands of COB Plant which is an independent entity and such credit cannot be availed by the factory, as per the CENVAT Credit Rules.

8. Aggrieved by the adjudication order passed by the Commissioner, Central Excise Customs & Service Tax, Bhubaneswar – I, the Appellant filed the present appeal before this Tribunal.

9. It has been contended by the Ld. Counsel on behalf of the Appellant that:

- (a) There is no dispute to the fact that mines and COB plant are for captive purpose and together constitute one integrated unit with the factory. It was submitted that the mining lease was assigned to the Appellant by the Government of Odisha on the premise that the Ores extracted from the mines shall be exclusively used for captive purpose to ensure steady supply of Chrome Ore to the Ferro Chrome Plant. The services received

at the mines and capital goods at the COB plant have direct nexus with the manufacturing activity as chrome ores are principle raw material for manufacturing HCFC on which the Appellant was discharging appropriate excise duty. Therefore, there was no justification for the department to deny cenvat credit on input services and capital goods. Reliance was placed on the following decisions:

- *Vikram Cement v. CCE, Indore 2006 (197) ELT 145 (SC)*
- *Madras Cement v. CCE, Chennai 2010 (257) ELT 321 (SC)*
- *National Aluminium Co. Ltd v CCE 2019 (9) TMI 1520 (Tri-Kol)*
- *CCE vs. Shree Cement Ltd. 2018 (16) GSTL 196 (HC – Raj)*
- *M/s Hindalco Industries Ltd v. CCE 2017 (2) TMI 715 (Tri – Del)*
- *Maihar Cement v. CCE 2013(296) ELT 209 (Tri- Del)*
- *CCE v. Neelachal Ispat Ltd. 2022 (11) TMI 1091 (HC-Odisha)*
- *M/s Sanghi Ind. V. CCE 2019 (11) TMI 428 (Tri-Ahm)*

- (b) The definition of input service under Rule 2(l) of the CENVAT Credit Rules is very comprehensive and include services which are used by the manufacturer whether directly or indirectly, in or in relation to manufacture of final product, including services used in relation to procurement of inputs, activities relating to business etc. In the instant case the input services were used at the mines for excavation and handling of high grade and low-grade chrome ores which were ultimately used in manufacture of HCFC, on which appropriate excise duty had been discharged. As such credit of input services cannot be denied

(c) With respect to eligibility to avail CENVAT credit on capital goods, it was contended that COB Plant is an integral part of the factory and it has no separate identity. The invoices were raised in the name of the Appellant and that the payments were made from the factory. To buttress this argument, the Appellant placed strong reliance on Government of Odisha Order dated 22.05.2000 by which it was granted mining lease with the condition that the mine shall be exclusively used for captive purpose to ensure steady supply of Chrome Ore to the Ferro Chrome Plant. It was also argued that site of capital goods outside the factory cannot be the reason for disallowance of credit as long as its use is inextricably connected with the manufacturing process. In this regard, reliance was placed on the following decisions:

- *Birla Corporation Ltd. v. CCE 2007 (3) TMI 10 (SC)*
- *Dakshin Foundry Pvt. Ltd. v. CCE 2017 (5) TMI 137 (Tri-Bang)*
- *CCE v. G.B. Engineering Enterprises 2018(2)TMI 1098 (Tri-Chennai)*
- *M/s OPG Metals Pvt. Ltd v. CCE 2016 (7) TMI 497 (Tri-Chennai)*
- *KLJ Plasticizers v. CCE 2018 (1)TMI 44 (Tri-Ahmd)*
- *JSW Steel Ltd. vs. CCE 2018 (2) TMI 213 (Tri-Chennai)*
- *M/s Bell Ceramics Ltd. v. CCE 2015 (10) TMI 2133 (Tri-Ahmd)*
- *M/s Ambuja Cement Ltd. v. CCE 2019 (9)TMI 1194 (Tri-Mum)*
- *M/s Orient Carbon & Chemicals v. CCE 2017 (1) TMI 360 (Tr- Chan)*
- *M/s Glaxosmith Consumer Health v. CCE 2016 (10) TMI 649 (Tri- Chennai)*
- *SAIL v. CCE 2007(1) TMI 438 (Tri- Del)*

- *NLC Ind. Vs. CCE 2017 (1) TMI 17 (Tri- Hyd)*

(d) Merely because the COB Plant and the factory are separately registered, the CENVAT credit of the input services and capital goods in dispute cannot be denied if the use of goods/services is inextricably connected with the manufacturing process. The Appellant placed reliance on the following decisions:

- (i) *CCE v. Mukund Ltd. 2015 (324) ELT 387 (Kar.)*
- (ii) *CCE v. KLJ Plasticizers 2018 (364) ELT 297 (Tri-Ahmd)*
- (iii) *Sangam Spinners v. Commissioner 2007 (208) ELT 386 (Tri.-Del)*
- (iv) *Mahabir Jute Mills Ltd. v. Commissioner 2007 (220) ELT 121 (Tri.-Del)*
- (v) *Diamond Cements v. Commissioner 2004 (169) ELT 34 (Tri.-Del)*
- (vi) *CCE v Hira Ferrro Alloys Ltd 2022 (9) TMI 267(Tr-Del)*
- (vii) *CCE v Biocon 2014 (309) ELT 66 (Kar)*
- (viii) *M/s Sanghi Ind. V. CCE 2014 (2) TMI 278 (Tri-Ahm)*

(e) It was also argued that assuming without admitting that COB Plant is a distinct entity, it may still qualify as Job-worker and CENVAT credit of capital goods used at job-worker's premise would still be available in the hands of the Appellant in accordance with Rule 4(5) of the Cenvat Credit Rules. Further, it is a settled principle of law that substantive benefit cannot be denied for procedural lapses, if there is no loss of revenue to the Government exchequer. Reference was made to the following decisions:

- M/s Alkem Laboratories v. CCE 2014 (TMI) 686 (Tri-Ahm)

(f) Use of the input services and capital goods for the purpose of manufacture of dutiable intermediate goods and its use thereafter in manufacture of HCFC by the factory is not in dispute. Further, the entire exercise is revenue neutral, as COB Plant could have availed CENVAT credit on input service and capital goods and utilized the same for payment of excise duty on clearance of concentrated ores instead of making payment from PLA. Hence, no prejudice is caused to the revenue.

(g) Extended period of limitation cannot be invoked as there was no suppression with an intention to evade duty and the entire exercise being revenue neutral. Further, credit was availed based on judicial precedents on the subject issue. The Appellant placed reliance on the following decisions:

(i) Pushpam Pharmaceuticals Co. v. CCE 1995 (78) ELT 401 (SC)

(j) CCE v. SSV Coal Carriers (P) Ltd. 2016 (41) STR J304 (SC)

(k) Penalty is not sustainable for aforesaid reasons.

10. The Ld. Counsel also submits that the Department is not disputing the eligibility to avail CENVAT Credit on input services and capital goods in the hands COB Plant; albeit in the hands of factory for the reasons that COB Plant is an independent legal entity. This finding of the Department is factually incorrect as COB Plant is part of the factory and after beneficiation of Ores, the same is used for manufacture of HCFC, in the factory.

11. The Ld. Authorized Representative appearing for the Revenue justified the impugned order and submits that the Appeal being devoid of merits may be rejected. The Ld. Authorized Representative placed reliance on the decision of this Bench in the case of Brahmani River Pellets Ltd. Vs, CCE [2015 (40) S.T.R. 471].

12. In reply to the above contention of the Revenue, the Ld. Counsel for the Appellant submits that the above case of Brahmani River Pellets Ltd. (supra) is clearly distinguishable from the facts of the present case of the Appellant, in as much as, there is a clear finding that beneficiation plant was not the captive plant of the factory. Further, no input service or input or capital goods were ever used by them in any of their captive mines or in any process of manufacture. Moreover, the plant was manufacturing and clearing ores at a later date after claiming exemption Notification No. 4/2006-C.E., dated 01-03-2006, and the Department sought reversal of CENVAT Credit under Rule 6 of the Cenvat Credit Rules on the premise that the assessee was engaged in manufacture of exempted goods. However, in the present case of the Appellant, the mines, COB plant and the Factory are under the captive arrangement, the process of mining, beneficiation and use of ores in the factory are interlinked and inter dependent and concentrated ores are cleared on payment of duty for use in manufacture of HCFC at the factory and there is no loss of revenue as the Appellant had availed CENVAT Credit only once at the factory after payment of duty.

13. Heard both sides and perused the appeal records.

14. We have carefully gone through the relevant documents and cases relied upon. We find that the issue required to be decided in the present Appeal is whether the CENVAT credit on services availed at the mines and capital goods installed at the COB Plant would be an eligible credit in the hands of the factory. We find that the mines and COB Plant at Sukinda and factory at Balgopalpur are integral part of the same captive arrangement which is evident from Government of Odisha Order dated 22.05.2000, whereby mining lease was granted

with a condition that it shall be exclusively used for captive purpose to ensure steady supply of Chrome Ore to the Ferro Chrome Plant.

15. As it is seen from the submission of the Appellant that the services of mining, cargo handing etc. were used for excavation and transportation of ores to the factory. While the high grade Ores were directly transferred to the factory for use in manufacture of HCFC, the low grade Ores were first transferred to the COB Plant and after its beneficiation transferred to the factory. We find that low grade Ores cannot be used in the blast furnace directly and it needs to be beneficiated before it can be used in manufacture of HCFC. In both the cases, the services were used in relation to manufacture of dutiable final product on which appropriate excise duty was paid at the time of clearance of final product from the factory. Since, a clear nexus has been established between the services availed and goods manufactured at the factory, CENVAT credit on input services cannot be denied. Revenue's objection is that since factory and COB Plant and separately registered, CENVAT credit would be admissible in the hands of the COB plant and not the factory. We find that similar issue came for consideration before this Bench in the case of National Aluminium Co. Ltd (supra), wherein on similar facts, CENVAT credit was allowed on input services received at power plant and used by different manufacturing units under a captive arrangement. We also find that the department has not disputed the nature of service being an input service, payment of duty by the factory, its ultimate use in the manufacture of dutiable final products. Under such circumstances. We find no justification to deny the credit on input services availed by the Appellant.

16. With respect to eligibility to avail CENVAT credit under captive arrangement with different registered factory, we find that Hon'ble Karnataka High Court in the case of CCE v. Mukund Ltd. (supra) held as under:

10. *The law on the point is no more res integra. In the light of the decision rendered by the Principal Bench of this Court in CEA No. 42/2011 referred to supra, which we respectfully agree, it is*

well settled that a manufacturing unit can have one or more units to manufacture intermediary raw materials to manufacture a final product. In the instant case, by the Strategic Alliance Agreement, the corporate entities had entered into a joint venture agreement to manufacture steel products. The records disclose that whatever was manufactured by M/s. Kalyani Steels Limited in the ratio agreed to between the parties was finally made over to the respondent herein for manufacture of final product. Therefore, it appears, the companies joined hands to manufacture the final products in terms of the Strategic Alliance Agreement. In the circumstances, we hold that Cenvat cannot be deemed on the ground that credit is being availed by one factory and material inputs are used by three factories, because the Cenvatable input is being used for common share and continuous purpose of manufacturing dutiable goods. Though there are three separate units with separate registrations, the entire raw material is being converted into final dutiable product in continuous, interconnected and integrated process conforming to the definition of a single factory under Section 2(f) of the Central Excise Act.

17. Further, the principle of law allowing CENVAT credit when use of goods and services are inextricably connected with the manufacturing process have been well settled in the decisions:

- CCE vs. v. Shree Cement Ltd. 2018 (16) G.S.T.L. 196 (Raj.)

18. In our considered view the above decisions are squarely applicable to the facts of the present case and CENVAT credit of input service would be admissible in the hands of the factory. The case of Brahmani River Pellets Ltd. (supra) as relied by the revenue is completely distinguishable as the issue considered therein was pertaining to reversal of CENVAT credit by a manufacturer engaged in manufacturing dutiable and exempted goods under Rule 6 of the

CENVAT Credit Rules and is different from the facts under consideration as in the instant case concentrated Ores are cleared on payment of duty. Moreover, this Bench also observed that there was no captive arrangement between the manufacturing units. Therefore, such decision would not be applicable.

19. With respect to eligibility to avail CENVAT Credit on capital goods, we find that the primary reason for dispute is that goods are not used in the factory and both COB Plant and factory are separately registered. We find that this issue is no more *res integra* and stands settled by the decision of Hon'ble Supreme Court in the case of Vikram Cement (supra) wherein it was held as under:

5. As regards the Modvat/Cenvat credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue.

20. A similar issue came for consideration before the co-ordinate Bench of the Tribunal in the case of OPG Metals Pvt. Ltd (supra), relevant part of which is as under:

The short-question for decision is whether or not the appellants are eligible for Cenvat credit on capital goods in respect of boilers and others procured by the appellant and used for generation of electricity using the waste heat recovery process of already existing generator sets in the premises of the sister Unit. The admitted facts of the case are that the capital goods have been procured on

payment of duty by the appellants. They have been put into use for generation of electricity in Waste Heat Recovery System. The electricity so generated is indisputably used by the appellant in their manufacturing process. These being admitted facts, Revenue's case that the capital goods are installed in the adjacent premises of sister concern who are engaged in power generation, cannot be valid reason for denial of such credit. It is seen that the capital goods now in dispute are for generation of electricity out of Waste Heat Energy System which arise out of three generator sets using natural gas as fuel. The exhaust heat given out during the course of production of electricity in these generators is being used by the Waste Heat Recovery Power Plant. It necessarily follows that such Waste Heat Recovery Power Plant is to be integrated to the original power generation process, so that waste energy by way of exhaust can be put into beneficial use of further power generation. Keeping these factual details in mind, we find no justification to deny the credit on these capital goods only on the ground that these are installed in the premises of sister Unit.

7. *Hon'ble Supreme Court in the case of Vikram Cement v. Commissioner of Central Excise, Indore reported in 2006 (194) E.L.T. 3 (S.C.) examined the terms "within the factory of production", though in connection with entitlement of credit for inputs. The Hon'ble Supreme Court held that the term means only such generation of electricity or steam which is used within the factory would qualify as an intermediate product. In Steel Authority of India Ltd. v. Commissioner of Central Excise, Bhubaneswar reported in 2007 (219) E.L.T. 960 (Tri.-Del.), the Tribunal held that mere location of capital goods outside the factory premises is no ground for denying the credit. In Commissioner of Central Excise, Nagpur v. Indorama Textiles Ltd. reported in 2010 (260) E.L.T. 382 (Bom.), the Hon'ble Bombay High Court held that when the electricity is used as intermediate goods in the manufacture of final product such electricity can be obtained from outside source also.*

We note that the department has not disputed the 8. duty-paid nature of the capital goods, discharge of duty by the appellant, usage of capital goods for generation of electricity and consumption of such electricity by the appellant in the manufacture of dutiable final products. In these factual matrix, we find no justification to deny the credit on the capital goods availed by the appellant. Accordingly, the impugned order is set aside, the appeal is allowed.

21. The aforesaid principle of law allowing CENVAT credit on capital goods installed outside the factory but its use being inextricably connected with the manufacturing process has been consistently taken in the following cases:

- Madras Cements Ltd. v. CCE 2010 (257) E.L.T. 321 (S.C.)
- Maihar Cement Unit No. 2 v. CCE 2013 (293) E.L.T. 239 (Tri.-Del.)
- PCCE v. M/s. Neelachal Ispat Nigam Ltd. 2022 (11) TMI 1091 (HC-Ori)

22. We find that COB Plant is an integral part of the factory and it has no separate legal identity. We also observe that the invoices were issued in the name of the Appellant and credit was availed only once after payment of duty by the factory. Further, the department has not disputed the nature of goods being capital goods, its use in manufacture of concentrated Ores which are ultimately used in manufacture of dutiable final products i.e. HCFC. Under these circumstances, we find no justification to disallow the credit on capital goods availed by the Appellant. We are of the view that the above decisions are squarely applicable to the present case and CENVAT credit on capital goods would be admissible in the hands of the factory.

23. In view of the above discussions and analysis, denial of CENVAT credit on input services and capital goods is not sustainable. Accordingly, the impugned order is set aside and Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on 05 June 2023.)

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

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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