

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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.5 of 2011

(Arising out of Order-in-Original No.42/Commissioner/CE/Haldia/Adjn/2010 dated 29.09.2010 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

M/s. Haldia Petrochemicals Ltd.

(1, Auckland Place, Kolkata-700017.)

...Appellant

VERSUS

Commissioner of Central Excise, Haldia

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

WITH

(i) Excise Appeal No.476 of 2012 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (ii) Excise Appeal No.70120 of 2013 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (iii) Excise Appeal No.70126 of 2013 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (iv) Excise Appeal No.76592 of 2014 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (v) Excise Appeal No.75271 of 2015 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (vi) Excise Appeal No.76006 of 2016 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (vii) Excise Appeal No.75774 of 2017 (M/s. Haldia Petrochemicals Ltd. v. Commissioner of Central Excise, Haldia); (viii) Excise Appeal No.76927 of 2019 (Commissioner of CGST & CX, Haldia v. M/s. Haldia Petrochemical Limited);

(i) (Arising out of Order-in-Original No.72/Commissioner/Haldia/Adjn/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(ii) (Arising out of Order-in-Original No.31/Commissioner/CE/Haldia/Adjn/2012 dated 31.12.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(iii) (Arising out of Order-in-Original No.73/Commissioner/CE/Haldia/Adjn/2012 dated 31.12.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(iv) (Arising out of Order-in-Original No.23/Commissioner/CE/Haldia/Adjn/2014 dated 15.09.2014 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(v) (Arising out of Order-in-Original No.34/Commissioner/CE/Haldia/Adjn/2014 dated 19.12.2014 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(vi) (Arising out of Order-in-Original No.25/Commissioner/CE/Haldia/Adjn/2016 dated 19.12.2014 passed by Commissioner of Central Excise & Service Tax, Haldia Commissionerate, Kolkata.)

(vii) (Arising out of Order-in-Original No.05/Commissioner/CE/Haldia/Adjn/2017 dated 19.12.2014 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

(viii) (Arising out of Order-in-Appeal No.11/HAL/CE/2019-20 dated 25.04.2019 passed by Commissioner of CGST & CX, (Appeals-II), Kolkata.)

APPEARANCE

Shri Arvind Baheti, Chartered Accountant for the Appellant/Assessee
Shri J.Chattopadhyay, Authorized Representative for the Respondent/Revenue

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

FINAL ORDER NO. 76076-76084/2023

DATE OF HEARING : 12 July 2023
DATE OF DECISION : 12 July 2023

Per : ASHOK JINDAL :

All the appeals are having common issue, therefore, all are disposed of by a common order.

2. The appellant is manufacturer of petrochemicals products and having two units namely Naphtha Cracking Unit (NCU) and Associated Downstream Unit (ADU). Naphtha is the principal input for the appellant and the appellant has also installed 116 MW Co-generation Power Plant within the factory compound. The appellant has availed Cenvat Credit on the duty paid on Naphtha as input . Since Naphtha was the common feed/input for the petrochemical products as well as the CPP, a part of the input Naphtha was supplied to the CPP for generation of steam and

electricity on a job work basis upto December 2009. Steam generated at the CPP was largely brought back to the petrochemical complex for use in NCU and a part thereof was further consumed in the CPP itself for generation of electricity. On the other hand, electricity generated at the CPP was pre-dominantly used in the manufacturing plants of the appellant, but a small percentage of the electricity was also supplied to external agencies and/or used for some non-manufacturing purposes as detailed hereunder:-

1. Sent to Haldia Reverside Estates Limited (HREL) which is a residential colony owned by the appellant.
2. Sent to Praxair which is an independent third-party manufacturing unit located adjacent to the appellant's plant.
3. Consumed in the administration building of the CPP.

3. The appellant reversed the proportionate Cenvat credit on Naphtha attributable to electricity that was supplied to external agencies and/or not used for manufacturing purposes. By adopting a scientific methodology whereby proportion of Naphtha which is in liquid state consumed in generation of electricity was worked out with reference to the heat generating ability. Revenue is of the view that the appellant has not reversed proportionate Cenvat credit attributable to Naphtha consumed for generation of electricity which has been supplied to external agencies and not used for manufacturing purposes therefore periodical show cause notices were issued to the appellant for the period January 2005 to June 2017 for reversal of differential Cenvat credit and first show cause notice was issued by invoking extended period of limitation. The matter was adjudicated and the impugned orders were passed wherein differential Cenvat credit was sought to be reversed except for the period August 2015 to January 2016. Ld.Commissioner(Appeals) after going through the records held that the appellant has correctly reversed the Cenvat credit, but against the said order revenue is in appeal before this Tribunal. As all the orders for

the impugned period are in challenge before us therefore all are considered and are to be decided by a common order.

4. Ld.Counsel appearing for the appellant submits that
 - A. Import from the state electricity grid has been erroneously considered as export of electricity to external agencies in the computation of the Department as evident from the Annexure A to the show cause notices.
 - B. The duty calculation of the department proceeds on the erroneous premise that the power/electricity supplied to external agencies is entirely out of the electricity generated at the 'CPP' without any adjustment for the power imported from the grid.
 - C. Steam consumed in the 'CPP' was for generation of electricity and since the appellant had already caused reversal of credit on Naphtha attributable to the electricity not used for manufacturing purposes/cleared to external agencies, no further reversal was required with respect to the steam attributable to such electricity.
 - D. The outflow to the state electricity grid was involuntary and technical in nature and the appellant has no received any payments from the grid on account of such an outflow and as such no reversal of Cenvat Credit was required on the same.
 - E. The reversal on account of Education Cess and Higher Education Cess has been erroneously computed in the SCN.
5. He further submitted that the adjudicating authority has passed non-speaking order. He also prayed that extended period of limitation cannot be invoked when there is no suppression of fact.
6. On the other hand the Ld.Authorized Representative reiterated the impugned orders. For the appeal filed by the revenue it is his submission that there is no dispute in regard to calculation of amount

of Cenvat credit required to be reversed. The same has been discussed in the show cause notice as well as in the Order-in-Original, but the Ld.Commissioner(Appeals) held that the impugned order passed by the adjudicating authority is arbitrary and non-speaking which is not proper. It is also submitted by him that the Ld.Commissioner(Appeals) has simply accepted the methodology adopted by the appellant for reversal of Cenvat credit without examining the details, therefore, the order of Ld.Commissioner(Appeals) is to be set aside.

7. Heard the parties, considered the submissions.

8. We find that on merit there is no dispute Naphtha used in generation of electricity which has been weeded out to outside agencies, the appellant is required to reverse the Cenvat credit. The appellant is also doing so by adopting certain methodology and proportionate Cenvat credit on Naphtha has been reversed. There is no dispute with regard to classification thereof. Appellant has raised objection that whether the electricity has been imported by the appellant from grid has been erroneously considered that same has been weeded out to the state electricity grid which is not correct. It is also contention of the appellant that the department has proceeded to calculate the power/electricity supplied to external agencies is entirely out of the electricity generated at the CPP without any adjustment for the power imported from the grid. Further, the steam consumed in the CPP was for generation of electricity and since the appellant has already caused reversal of Cenvat credit on Naphtha attributable to the electricity not used for manufacturing purposes and cleared to external agencies, no further reversal is required with respect to the steam attributable to such electricity. Further, the appellant has raised an objection that outflow to the state electricity grid was involuntary and technical in nature and the appellant has not received any payments from the grid on account of such an outflow and as such no reversal of Cenvat credit was required for the same. For this he relies in the case of Hindustan Petroleum Corporation Limited Vs. Commissioner of Central Excise, Vishakhapatnam [2008 (221) E.L.T. 236], wherein it

has been held that leakages of electricity to the grid was held to be a technical necessity and unintentional and as such no demand of duty could sustain on the same. If that is the event then for such leakage no demand is sustainable against the appellant. It is also objected by the appellant that for reversal on account of Education Cess and Higher Education Cess has been erroneously computed in the show cause notice. As it is only a question of computation for reversal of proportionate Cenvat credit on Naphtha used in generation of electricity which has been weeded out of the factory premises or external agencies. For that, the exercise is required to be done at the end of adjudicating authority and for such calculations as discussed hereinabove is required to be done with the help of the appellant. In that circumstances, we direct both the parties to sit together and reconcile the quantum of Cenvat credit reversal by the appellant.

9. In view of this, we set aside the impugned orders and remand the matter back to the adjudicating authority for re-computation of the amount of Cenvat credit to be reversed by the appellant in the facts and circumstances of the case.

10. Accordingly, by setting aside the impugned orders the matter is remanded back to the adjudicating authority for de novo adjudication after consideration of the submissions made by the appellant with reconciliation statements in accordance with law.

Appeals are disposed of by way of remand.

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

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)