IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. E/87948/17

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-498/2017-18 dated 17.10.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

Dow Agro Sciences India P. Ltd.	**Appellant**
Vs.	
Commissioner of Central Tax, Pune	**Respondent**

<u>Appearance:</u>

Shri Vinod Awtani, C.A.	for appellant
Shri H.M. Dixit, Asst. Commr (AR)	for respondent

<u>CORAM:</u>

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 23.03.2018

FINAL ORDER NO...A/86643 / 2018

Per: M.V. Ravindran

This appeal is directed against Order-in-Appeal No. PUN-EXCUS-001-APP-498/2017-18 dated 17.10.2017.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this appeal is whether the appellant is eligible to avail CENVAT Credit of service tax paid by service provider who rendered the services of

waste disposal management. It is undisputed that the assessee in this appeal is manufacturer; during course of manufacturing, hazardous waste is required to be disposed of by the assesee in accordance with the Environment Act and the directions of Maharashtra State Pollution Board. It is also to be noted that Government of India has promulgated the activity of waste disposal as a statutory requirement to be carried out by appellant under Hazardous Waste (Management Handling and Trans Boundary Movement) Rules, 2008, wherein it is mandated that all hazardous waste needs to be handled in a specific manner and disposed in accordance with Rules. The services provided to the assessee in this case are in accordance with these Rules and the manufacturing activity of the assessee is depending upon the compliance of these rules. If that be so, if an outside agency provides mandated services, in my view, CENVAT Credit cannot be denied to assessee as these services are in or in relation to the manufacturing activity of the assessee.

5.1 Hon'ble Apex Court in the case of *Indian Farmers Fertilizers Coop Ltd. v. Commissioner of Central Excise - 1996 (86) ELT 177 (SC)*, in paragraph No.9, specifically held as under:-

> *"9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant*

is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."

5.2 Plain reading of the above reproduced paragraph will indicate that effluent treatment in a manufacturing area has to be considered in relation to manufacturing activity.

5.3 Further, I find that this Tribunal in the case of *CCE & ST v. Kanoria Chemicals and Industries Ltd. – 2015–TIOL-1934-CESTAT-AHM* has held that CENVAT credit on effluent treatment plant has to be considered as eligible CENVAT credit as Pollution Control Boards of the respective states have put in place, a mechanism that before any permission is granted the compliance of waste management is put in place. I find that similar view has been expressed by Tribunal in the case of *CCE* *v. L'Oreal India Pvt. Ltd. - 2018-TIOL-39-CESTAT-MUM*. In view of the foregoing and binding decision of the Hon'ble Supreme Court and the Tribunal, I hold that the appellant is entitled for availment of CENVAT credit on service tax paid on hazardous waste management service. Appeal of appellant is allowed.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)

nsk