CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 113 of 2008

(Arising out of Order-in-Original No. 7/PD/Th-II/2007 dated 30.10.2007 passed by the Commissioner of Central Excise, Thane-II)

M/s Sah Petroleums Ltd. .... Appellant
Plot No. 5 to 12, Behind Dewan and Shah Industrial Estate,
Vill – Valiv Vasai (E), Thane - 401208

Versus

Commissioner of Central Excise, Thane-II .... Respondent
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai – 400028

WITH

Excise Appeal No. 114 of 2008

(Arising out of Order-in-Original No. 7/PD/Th-II/2007 dated 30.10.2007 passed by the Commissioner of Central Excise, Thane-II)

Mr. Aditya Roy .... Appellant
Sr. GM of M/s Sah Petroleums Ltd.
Plot No. 5 to 12, Behind Dewan and Shah Industrial Estate,
Vill – Valiv Vasai (E), Thane - 401208

Versus

Commissioner of Central Excise, Thane-II .... Respondent
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai – 400028

Appearance:

Shri J.H. Motwani with Ms. Rinky Jasuja, Advocate for the Appellants

Mrs. A.S. Parab, AC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87453-87454 / 2019

Date of Hearing: 10.12.2019

Date of Decision: 10.12.2019

Per: Dr. D.M. Misra

These appeals are filed against Order-in-Original No. 7/PD/Th-II/2007 dated 30.10.2007 passed by the Commissioner of Central Excise, Thane-II.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Industrial, Automotive & Specially Lubricants falling under Chapter 27, 34 & 38 of the Central Excise Tariff Act, 1985. In the factory premises, the appellants fabricated a huge storage tanks by using Mild Steel Sheets/plates, Angles, Channels, Beams etc. on which they availed CENVAT Credit amounting to Rs.94,08,719/- during the period January, 2002 to July, 2006. Consequently, a show-cause notice was issued on 10.01.2007 for recovery of the said credit along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty; also personal penalty was imposed on Shri Aditya Roy, Sr. General Manager of the appellant company. Hence, the present appeals.

3. At the outset, learned Advocate for the appellant has submitted that during the relevant period the appellant had procured various inputs like, Angles, MS Channels, MS Beams, etc. and used the same in the fabrication of storage tanks inside their factory premises. He has submitted that their main raw materials is base oil, which is used for blending different grades of lubricants and is integral to the manufacturing of lubricants and greases. The base oil is stored in 29 storage tanks erected/ fabricated within the factory premises. He has submitted that

during the period January, 2002 to July, 2006 they have erected 5 storage tanks within their factory premises. The appellants have availed the credit of excise duty paid on raw materials i.e. HSM Plate, HR Plate, PM Plate, Steel Rods, HRSS Plates, MS Angles, MS Channels and MS Beams used in erection/fabrication of the storage tank. He has submitted that the adjudicating authority erroneously arrived at the findings that since the storage tanks are immovable property, hence not excisable goods, accordingly the credit availed on inputs namely, HSM Plate, HR Plate, PM Plate, Steel Rods, HRSS Plates, MS Angles, MS Channels and MS Beams used in the fabrication of storage tank is not admissible to credit. He submits that the issue is no more *res integra* and covered by the judgment of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise, Bangalore-II Vs. SLR Steels Ltd. – 2012 (280) ELT 176 (Kar) and by the Hon'ble Bombay High Court in the case of Commissioner of Central Excise Vs. Isptat Industries Ltd. in Excise Appeal No. 187 of 2006 vide Order dated 19.7.2007. He has submitted that the view expressed by the Larger Bench of the Tribunal in the case of Vandana Global Ltd. Vs. Commissioner of Central Excise, Raipur – 2010 (253) ELT 440 (Tri-LB) has not been accepted by the Hon'ble Chhattisgarh High Court reported as Vandana Global Ltd. Vs. Commissioner of Central Excise & Cus, Raipur – 2018 (16) GSTL 462 (Chhattisgarh). Therefore, the appellants are entitled to CENVAT Credit on HSM Plate, HR Plate, PM Plate, Steel Rods, HRSS Plates, MS Angles, MS Channels and MS Beams etc. used in the fabrication of storage tank in their factory premises.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner and heavily relied upon the judgment of the Larger Bench of the Tribunal in the case of Vandana Global Ltd. (supra).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present appeal for consideration is whether the appellants are entitled to avail CENVAT Credit on the inputs namely, HSM Plate, HR Plate, PM Plate, Steel Rods, HRSS Plates, MS Angles, MS Channels, MS Beams etc. used by the appellant in the fabrication of storage tank inside the factory premises. The demand was issued to the appellants alleging that on utilization of these inputs/raw materials in the fabrication of storage tanks, the resultant storage tank become an immovable property, hence, the credit on raw materials used for such fabrication of 'storage tank' is not admissible. We find that the Hon'ble Karnataka High Court in the case of *SLR Steels Ltd. (supra)* addressed the said issue observing as follows: -

> "**6.** In order to answer this question, it is necessary to look into the definition of capital goods as contained in the Cenvat Credit Rules, 2004 which reads as under :
>
> > **Rule 2(a).** Capital goods means :
> >
> > (A) the following goods, namely : (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, (Heading 6805, grinding wheels and the like, and parts thereof falling under Heading 6804) of the First Schedule to the Excise Tariff Act;
> >
> > (ii) Pollution control equipment
> >
> > (iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used -

(1) In the factory of the manufacturer of the final products, but does not include any equipment of appliance used in an office; or

(2) For providing output service.

7. A perusal of the aforesaid provision makes it very clear though storage tanks may be immovable property and the pollution control equipment are included within the definition of ''capital goods'', input as defined in Rule 2(k) makes it clear that ''input'' includes in goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Therefore, the input is not necessarily to be used in the manufacture of final product. By virtue of explanation 2 - goods used in the manufacturer of capital goods which are further used in the factory of the manufacture also falls within the definition of input. In 2009, this explanation has been amended to the following effect :

> "but shall not include cement, angles, channels Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods."

8. Therefore, the notification of the Legislature is very clear that it is only the ''inputs'' used in the manufacture or construction of capital goods which is construed as input and cenvat credit is available on the duty paid in purchase of such inputs. If the cement, angles, channels, Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (T.M.T.) and other items are used in the construction of factory shed, building or laying of foundation, the duty paid on such items the assessee would not be entitled to cenvat credit. Similarly, though the assessee is entitled to cenvat credit of cement and steel used in the manufacture of capital goods viz., storage tank, if any structure for support of capital goods is constructed and steel and cement is used for such support, the assessee is not entitled to the benefit of cenvat credit on the duty paid on such cement and steel. Therefore, there is no ambiguity in any of these provisions. When once a storage tank and pollution control equipment constitutes capital goods and any raw material purchased for construction of those goods, the duty paid could be utilized as a cenvat credit by the assessee notwithstanding the fact that the storage tank is an immovable property. Therefore, the appellate authority committed a serious error firstly in holding that the storage tank is an immovable property and secondly, on the ground that it cannot be bought and sold in the market, the criteria which is totally unwarranted under the circumstances. Therefore, the Tribunal was justified in setting-aside the said order and holding that the assessee is entitled to the benefit."

7. Also, we find that the Hon'ble Chhattisgarh High Court disapproved the opinion expressed by the Larger Bench of the Tribunal in Vandana Global Ltd.'s case (supra) holding that the explanation added to the definition of capital goods by the amendment dated 7.7.2009 cannot have retrospective application.

8. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sinha