CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 590 of 2012

(Arising out of Order-in-Original No. 54 to 56/COMMR/M-III/PKA/2011-12 dated 30.12.2011/16.01.2017 passed by Commissioner of Central Excise, Mumbai-III)

M/s. Cipla Ltd. **Appellant**
LBS Marg, Vikhroli (W),
Vikhroli, Mumbai 400 083.

Vs.

Commissioner of Central Excise , Mumbai-III **Respondent**
3rd & 4th floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane (W), Mumbai 400 604.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Ms. A.S. Parab, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86683/2021**

Date of Hearing: 10.08.2021
Date of Decision: 10.08.2021

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No 54 to 56/COMMR/M-III/PKA/2011-12 dated 30.12.2011/16.01.2017 of the Commissioner of Central Excise, Mumbai III. By the impugned order, the Commissioner has adjudicated three show cause notices as follows:

a. Remand ordered by Hon'ble CESTAT, WZB vide order no. A/329-330/10/EB/C-II dated 11.10.2010 in the matter of Order-in-Original no. 14-15/SHH/08-09 dated 15.01.2009 concerning SCN's V. Adj(SCN)15-31/Kanjur/Commr/M-III/07 dated 19.09.2007 and V. Adj(SCN)153/ Kanjur/Commr/M-III/08 dated 02.03.2008.

b. SCN No. V.Adj(SCN)15-27/KDN/M-111/2010 dated 29.12.2010;

1.2 By the impugned order, the Commissioner has held as follows:

"*40. Accordingly, I pass the following order –*

ORDER

A. I determine and demand the amounts of Rs.1,61,71,941/-, Rs. 1,12,96,991/- and Rs. 71,91,464/- in terms of rule 14 of the Cenvat Credit Rules, 2004 read with the then section 11A(2) of the Central Excise Act, 1944 [raised in the show-cause-cum demand notices dated 19.09.2007, 02.05.2008 and 29.12.2010 against M/s CIPLA Ltd. in terms of the provisions rule 14 of the CCR, 2004 read with the provisions of the then proviso to section 11A(1) of the CEA, 1944). The amount of Rs.6,02,698/- paid during clearance of the capital goods is appropriated towards the total demand of Rs.3,46,60,396/-and I finally determine and demand in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with the then section 11A(2) of the Central Excise Act, 1944 the balance amount of Rs. 3,40,57,698/ [Rupees Three crores forty lakhs fifty seven thousand six hundred ninety eight only) and the same is directed to be paid forthwith.

B. The assessee is also ordered to pay interest in terms of Rule 14 of the CCR, 2004 read with the then section 11AB of the CEA, 1944 on the said amount as determined above.

C. In respect of the contraventions mentioned in show cause notice dated 19/09/07 (supra) covering the period from April, 2004 to March, 2007, I impose a penalty of

i. Rs. 1,08,19,179/- [Rupees: One Crore eight lakhs nineteen thousand one hundred seventy nine only] in respect of the Cenvat credit wrongly availed on Capital goods, under Rule 15[2] of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act 1944; and

ii. *Rs. 2000/- [Rupees: Two Thousand Only] under Rule 15[3] Cenvat Credit Rules, 2004 in respect of the Cenvat Credit wrongly availed on Input Services of Rs.53,52,762/*

D. *In respect of the contraventions mentioned in show cause notice dated 02/05/08 [supra) covering the period of April, 2007 to December, 2007, I impose a penalty of -*

i. *Rs. 87,98,969/- [Rupees Eighty seven lakhs ninety eight thousand nine hundred sixty nine only) in respect of the Cenvat credit wrongly availed on Capital goods under Rule 15[1] of Cenvat Credit Rules, 2004; and*

ii. *Rs. 2000/- under Rule 15[3] of Cenvat Credit Rules, 2004 in respect of the Cenvat Credit wrongly availed on Input Services of Rs.24,98,022/-.*

E. *In respect of the contraventions mentioned in show cause notice dated 29/12/2010 [supra) covering the period December, 2004 to March, 2007, I impose a penalty of -*

i. *Rs. 71,91,464/- [Rupees Seventy one lakhs ninety one thousand four hundred sixty four only) under Rule 15[2] of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act 1944.*

F. *I also give the assessee the option of payment of 25% of the penalty as available under the then section 11AC if they pay the duty confirmed within thirty days of the receipt of this order along with the interest u/s 11AB of the CEA, 1944. Needless to mention the reduced penalty of 25% also needs to be paid within the period of thirty days as mentioned in the then section 11AC of the CEA, 1944.*

G. *The assessee M/s Cipla Ltd. is directed to pay the adjudged amounts forthwith."*

2.1 Tribunal while remanding the matter back to Commissioner, vide its order dated 11.10.2010 has held as follows:

"2. In the impugned order, the learned Commissioner denied CENVAT credit on certain capital goods and on certain input services for the period from April 2004 to December 2007. The said capital goods were installed in the Research & Development wing the appellant. The said input services were used in or in relation to the construction of the R&D wing. The learned Commissioner found that the R&D wing was not a part of the registered factory premises and, therefore, he took the view that the appellant was not entitled to CENVAT credit on the capital goods installed in the R&D wing or on the input services availed in or in relation to the construction of that wing. The main challenge in the present appeal is against this decision of the learned Commissioner. The learned counsel for the appellant submits that the relevant show-cause notices have only alleged that the R&D wing was situate away from the factory and had not categorically alleged that it was not within the registered factory premises. It is submitted that the adjudicating authority obtained a verification report from the Assistant Commissioner without notice to the appellant and relied on that report to decide on the CENVAT-credit issue against the appellant. It is submitted that no copy of the said report was supplied to the appellant and, therefore, an effective opportunity of contesting the Revenue's case was denied to them. In other words, according to the learned counsel, natural justice was denied to them. The learned counsel has also invited our attention to certain documents available on record. One of these documents is an application dated 25.4.2006 submitted by the appellant to the Assistant Commissioner for issuance of installation certificate in respect of certain capital goods with accessories, which were imported and installed in the R&D wing. Another document is a certificate of installation dated 5.5.2006 issued by the factory manager in respect of the said capital goods with accessories. Yet another document is an installation report dated 23.3.2006 of M/s. Inkarp Instruments Pvt. Ltd. A letter dated 8.5.2006 of the Range Superintendent, addressed to the Assistant Commissioner, recommending issuance of installation certificate to the appellant, is also seen on record. The Assistant Commissioner's certificate of installation of the capital goods in

the factory of the appellant is also found on record. On the strength of these documents, the learned counsel has contested the Commissioner's finding that the capital goods were not received in the factory premises. The learned counsel has also invited our attention to a factory plan which appears to have been approved in 1998. This plan also shows the R&D wing seemingly endorsed on a subsequent date. The appellant would rely on these documents to plead that the R&D wing was very much within the registered factory premises during the material period, during which the capital goods in question were received by them and the input services were availed by them. Nevertheless, we find, the verification report dated 13.1.2009 obtained by the Commissioner from the Assistant Commissioner after concluding the personal hearing in the case on 4.12.2008, without notice to the appellant, raises a question mark. The learned JCDR, who also has been heard by us, has not contested the claim of the appellant that no copy of the verification report was furnished to them before the impugned order was passed.

3. In the aforesaid facts and circumstances, the case has to be remanded for fresh adjudication, as we have found negation of natural justice to the appellant on the part of the Commissioner.

4. As pointed out by the learned JCDR, there is an appeal of the Revenue also against the Commissioner's order, which does not figure in today's cause-list. We have called for those records also and have heard both sides. We note that a crucial finding of the Commissioner has not been challenged by the Revenue and the same reads thus: "The admissibility of CENVAT credit on the capital goods used for research and testing purpose is not disputed. The same is allowed provided it is used in the factory that is registered." The only grievance raised in the Revenue's appeal is that the learned Commissioner confirmed the substantive demand against the assessee under a wrong provision of law. According to the Revenue, the adjudicating authority should have invoked Rule 14 of the CENVAT Credit Rules, 2004 instead of Section 11A of the Central Excise Act/Section 73 of the Finance Act, 1994. We further note that *the Revenue, in their appeal, has only sought for remand of the case to the adjudicating authority. We are inclined to remand the case accordingly.*

5. In the result, we set aside the Commissioner's order and allow both these appeals by way of remand, with a request to the learned Commissioner to pass fresh speaking order after supplying to the assessee a copy of the verification report dated 13.1.2009 and giving them a reasonable opportunity of being heard. The sole grievance raised by the Revenue before us may also be considered by the learned Commissioner."

2.2 The third show cause notice dated 29.12.2010 was issued to the appellant observing as follows:

"2. During the course of audit on the records of the assessee conducted in the month of September and October, 2009, for the period from April 2006 to March 2008, it has been noticed that the assessee has stopped their manufacturing activities from November, 2006 and demolished the manufacturing shed. It was observed that some of the capital goods on which CENVAT Credit has been availed, are still being used by the assessee for Research and Development, Quality Control and other purposes. The newly constructed Research and Development Building is a separate independent building and is situated outside the area demarcated for factory premises in the approved ground plan submitted by them at the time of registration. Thus these capital goods have been removed from the factory premises to the Research and Development Building without paying the CENVAT Credit availed on them violating Rule 3(5) of the CENVAT Credit Rules, 2004.

3. Further, they have installed 2 Nos of (D G Sets) diesel Generator Sets which are exclusively used for Research & development Laboratory. As per Rule 3(1) of the CENVAT Credit Rules, 2004, a manufacturer or producer of final products shall be allowed to take CENVAT credit of duties paid on any capital goods which are received in the factory of the manufacturer for use in or in relation to the manufacture of final products. Since the assessee has stopped the manufacturing unit, the mentioned Diesel Generator Sets as detailed at Sr No 36 & 37 of Annexure

A are not used in or in relation to the manufacture of final products and therefore the CENVAT Credit availed on them is inadmissible to the assessee."

2.3 The three show cause notices were adjudicated by the Commissioner as per the impugned order, referred to in para 1.2, supra. Aggrieved by the order of Commissioner, appellants have filed these appeals.

3.1 We have heard Shri Rajesh Ostwal, Advocate, for the Appellant and Ms A S Parab, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the Appellants learned counsel submits-

- In the remand proceedings, Commissioner is bound by the remand order and cannot have gone beyond the directions contained in remand order as per the order of the Hon'ble Apex Court in the case of Kamlakshi Finance Corporation 1991 (56) ELT 433 (SC)]. In the impugned order Commissioner has travelled beyond the directions contained in the remand order and has confirmed the demand for the reason that, R & D activity is not a manufacturing activity and the appellants did not informed the department in this regards. It is settled principle that department cannot make a new case in the remand proceedings (Kalyani Sharp India [2008 (226) ELT 197 (T)]).
- Once the Commissioner accepts that the R & D Building is within the premises of the Appellant, the entire case of revenue falls.
- Documentary evidences on record show that all the activities relating to construction of R & D Building were in the knowledge of the department.
- The R & D activities undertaken are interconnected with manufacturing activities undertaken, and would be integral part of the factory as per Section 2(e) of the Central excise Act, 1944.
- Ground Plan shows R & D Building as integral part of the factory premises Since R & D building is located within the registered premises of the appellant, denial of CENVAT

credit on the capital goods used therein is not justified as has been held in case of Maruti Suzuki [2016 (9) TMI 627 CESTAT and Hero Motocorp Ltd {2018 (7) TMI 421 CESTAT].

- CENVAT Credit is available on the Capital Goods used for R & D within the factory premises as has been held in the case of Cadila Healthcare Ltd. 2010 (17) STR 134 (T)].
- Diesel Generating Sets have been installed within the factory premises for the manufacture of finished goods hence credit on them cannot be denied.
- Eligibility to credit is to be determined at the time of receipt of the capital goods as has been held in the case of Surya Roshini Ltd [2003 (155) ELT 481 (T)].
- Rule 3 (5) not applicable in the case of shifting of the capital goods within the premises of the assessee.
- Denial of CENVAT Credit on the input services for the reason that the same has no nexus with manufacturing activity is not tenable.
- Substantial portion of the demand is barred by limitation.

3.3 Learned Authorized Representative, while reiterating the findings recorded in the order, submitted that appellants had never declared about installation of the Capital Goods, in the premises of R & D building which is beyond the demarcated area per the approved ground plan. The R & D activities were not used for the manufacture of the finished goods within the factory premises of the appellant, but were used for conducting research for other units which were not connected. Since these capital goods were not having any connection with the good manufactured in the factory of appellant, were this credit has been taken the credit has been rightly denied by the Commissioner.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 For the two show cause notices covered by the remand order, tribunal has categorically after taking the notice of the order in original passed in first round of proceedings, observed in para 5 as follows:

"We note that a crucial finding of the Commissioner has not been challenged by the Revenue and the same reads thus: "The admissibility of CENVAT credit on the capital goods used for research and testing purpose is not disputed. The same is allowed provided it is used in the factory that is registered."

It is settled principle that the findings which have been recorded earlier and if not challenged by way of the appeal to the appropriate forum, become final and binding on both the parties. Hence the issue of eligibility of the CENVAT Credit in respect of the Capital Goods, installed in the R & D building cannot be raised once again in the remand proceedings. The only issue that was to be addressed by the Commissioner in these proceedings was limited to the use of the Capital Goods and Input Service in the factory of the manufacturer.

4.3 Commissioner has in para 20.2 and 20.3 of his order quoted the definition of Capital Goods and Input Services as per the CENVAT Credit Rules, 2004 and thereafter proceeded to decide on the admissibility of CENVAT credit stating as follows:

"21. It is apparent that for a manufacturer to avail Cenvat Credit on Capital goods and Input Services, the same have to be invariably used by the manufacturer In his "factory" whether directly or indirectly, in or in relation to the manufacture of final products.

21.1 This proposition also gets support from the law laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd. 2009(240)ELT 641(SC). Paragraphs 9, 16, 17 & 18 of the said decision are extracted below –

"9. Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely :

(i) specific part

(ii) inclusive part

(iii) place of use

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in *relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety.*

17. As stated, the definition is in three parts, namely, specific part, inclusive part and place of use. All the three parts are required to be satisfied before an input becomes an eligible input.

18. It may be noted from the CENVAT Credit Rules of 2004 vis-a-vis CENVAT Credit Rules of 2002 that the word "for" in the inclusive part after the words "steam used" is substituted by the words "used in or in relation to the manufacture of final products". In other words, the crucial requirement of the definition clause is restated by the Legislature. We may note that the CENVAT Credit Rules of 2004 came in force in September, 2004. In some of the cases in batch before us the show cause notice goes right up to January 2005, hence, CENVAT Credit Rules, 2004 also apply to those cases. In short, an item would fall within the category of "inputs" as defined only on compliance with all the three parts of the definition clause."

21.2 The aforesaid decision of the Hon'ble Supreme Court has also been followed by the Hon'ble Gujarat High Court in the case of Gujarat Heavy Chemicals Ltd. 2011(22)STR610(Guj.). Paragraphs 10 & 11 are extracted below –

"10. Definition of input service is expressed in the form of 'means' and 'includes'. 'Means' part of the definition contains, inter alia, service used by the manufacturer whether directly or indirectly or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition, of course, is worded to include variety of services used not only for, but in relation to manufacture of final products and also for clearance of final products upto the place of removal. This Court in Tax Appeal No. 419 of 2010 and connected matters decided on 6th April 2011 held that the said definition is exhaustive in nature.

11. Despite such wide connotation of the term 'input service' as defined in Rule 2(1) of the Cenvat Rules, the question is whether the present case would be covered in the said definition. Facts *are short and not in dispute. Respondent assessee, manufacturer of soda ash, has provided residential quarters for its workers. In such residential quarters, the assessee also provided security services. Can such security services be stated to be service used by the manufacturer directly or indirectly in or in relation to the manufacture of final product? Our answer has to be in the negative. We do not see any connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. This is also the view of the Bombay High Court in the case of Manikgarh Cement (supra)."*

22. I find that the assessee failed to inform the department about the setting up of the "Research and Development building" within the ground of the originally registered premises and availed Cenvat Credit on the various Capital Goods and Services installed and utilized in the said premises. It is seen from the allegations leveled in the show cause notices and also on the basis of the assessee's letter dated 10th May, 2007 and which have not been disowned by the assessee that "the work of Research and Development is basically to conduct study, research and development of organic chemicals, bulk drugs or active pharmaceutical ingredients and development of formulations manufactured from bulk drugs, that the research work done is not pertaining to or related to the products manufactured by the assessee at Vikhroli unit, that the work in the R & D is an independent work not related to the manufacturing activity of the assessee's Vikhroli factory; there is no manufacture of any final product in the newly constructed Research and Development building as all the input/ raw materials used for research are wholly consumed and no final marketable product emerges". Since the assessee has not denied the facts leveled in the demand notice, it is apparent that the same stand true.

22.1 To substantiate further, I quote the letter dated May 10, 2007 of the assessee where they have submitted that they are NOT taking any input credit for use in R & D activities. Thus it *makes further clear that activities of R & D building are not amounting to manufacture in terms of section 2(f) of the Central Excise Act, 1944.*

23. The definition of the term "factory" is very clear in this regard- it means means any premises, including the precincts thereof, wherein or in any part of which excisable goods are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

23.1 It is clear that the "premises including the precincts" should be where the manufacturing activity or any part of manufacturing activity is carried out.

23.2 In the present case, the assessee has not been able to prove that any such manufacturing activity or any part of the manufacturing process is being carried out in the R & D building as detailed above. Moreover, the said building has not been incorporated as a registered premises within the registration certificate issued and in possession of the assessee.

24. The provisions of section 6 of CEA, 1944 reads thus

"6. Registration of certain persons.

Any prescribed person who is engaged in-

(a) the production or manufacture or any process of production or manufacture of any specified goods included in [the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (S of 1986), or

(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in (the First Schedule and the Second Schedule} to the Central Excise Tariff Act, 1985 (5 of 1986),shall get himself registered with the proper officer in such manner as may be prescribed.]

25. So also, rule 9 of the CER, 2002 mentions thus —

Rule 9 Registration.-

(1) Every person; who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excitable goods, shall get registered:

Provided that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No.2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.

(2) The Board may by notification and subject to such conditions or limitation as may be specified in such notification, specify person or class of who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such conditions and safeguards and procedure as may be specified by notification by the Board.

26. It is amply clear that assessee ought to have incorporated within the existing certificate the new R&D building so as to notify to the department that the same is also connected with the manufacturing activity. This further establishes that no activities relating to manufacturing process in terms or section 2(f) of the CEA, 1944 was carried in the said R&D building. In their written submission dated 14.12.2011 the assessee has mentioned that the newly constructed R&D building was not included in the registration certificate due to lack of provision in the law. I am surprised at such a submission made by an assessee M/s Cipla Ltd. who are in the business of manufacturing since decades; they are not a small industrial unit so as to claim ignorance of the niceties of the Central Excise law. As is said, Ignorance or law is no excuse. The provisions of law as reproduced above are clear and it does not require rocket science to understand that the construction and existence of the R&D building ought to have been declared to the department.

27. The onus is on the assessee when it comes to availment of Cenvat Credit under the CCR, 2004. Rule 9 (5) of the CCR, 2004 in very clear terms mentions that burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit.

28. Having not done what is mandatorily required to be done, the assessee cannot brush aside this requirement as being procedural and stake their claim for substantial benefits as provided in the Cenvat Credit Rules, 2004.

29. Incidentally, as mentioned in the preceding paragraphs since the assessee has not come forward to prove that the activities conducted in the said building are in relation to the manufacturing being conducted in the factory, except mentioning that various research, development and analytical work related to drugs and medicines and which envisaged validation, research on new molecules, development of method or analysis, amendment and up-gradation in formulation/dosage form, there could not have been any material change in the position in the matter of availment of Cenvat credit on the impugned capital goods. It is also pertinent to note that there is no manufacture of any final product in the newly constructed R&D building as all the inputs/raw materials used for research are wholly consumed and no final marketable product emerged. Suffice to say that once the manufacturing operations in the registered factory came to a standstill in the month or November, 2006 consequent upon the demolition of the manufacturing unit, there could not and cannot be any further occasion for the manufacturer to have availed any Cenvat Credit on the Capital goods and input services.

30. The assessee's reliance on the decisions of the Hon'ble High Courts in the case of Coca Cola India Pvt. Ltd. (2009(15)STR6S7(Born)), Ultratech Cement Ltd. [2010(20)STR577(Bonn)] and Micro Labs Ltd. [2011(270)ELT156(Kar.)], GTC Industries Ltd. 2008(12)STR 468 are distinguishable for the simple reason in that these cases pertain to admissibility or otherwise of Cenvat Credit on the Input Services referred and there was no occasion for the Hon'ble Courts to consider the admissibility in the situation envisaged in the present case. Inasmuch since the matter before the Hon'ble Courts was not identical to the situation prevailing here i.e credit taken in a building other than the 'manufacturing *premises' and not incorporated in the registration certificate, these decisions cannot come to the rescue of the assessee.*

31. It is, therefore, clear that the Cenvat Credit on the capital goods/equipments installed in the R&D building and the services received in the R&D building is not available to the assessee and the same has been rightly demanded in the show-cause notices as having been wrongly availed in contravention of the provisions of rule 2(a), rule 2(1) and rule 3 of the Cenvat Credit Rules, 2004. In such an eventuality, there could not have been any possibility of utilization of the same for clearance of finished products manufactured in the factory. Similarly, the capital goods removed from the factory premises after its 'demolition to the Research and Development Building without reversing any Cenvat Credit is improper and in contravention of the provisions of rule 3(5) of the CCR, 2004.

32. I may also mention that it is not the case that after the demolition of the manufacturing premises the assessee has surrendered their registration certificate. They have in none of their written or oral submissions informed that the said registration certificate, they have for the manufacturing premises has been surrendered for de- registration. In fact, they have mentioned in their reply dated 21.06.2011 that the registration certificate is not yet surrendered. In their submission being the copy of the Grounds of appeal before the Hon'ble CESTAT, they have adverted to Chapter 2, paragraph 6 of the Supplementary Manual and submitted that amendment in existing registration certificate is only envisaged when there is a transfer of business or change in the constitution. 1 am unable to subscribe to the assessee's argument for the simple reason that by this action of theirs by not incorporating the R&D building they have indicated that the said building does not form a part of the same factory. The provisions of section 6 and rule 9 reproduced earlier cannot be truncated by a feeble plea of the requirement not having been mentioned ›n chapter 2, paragraph 6 of the Supplementary Manual. The case laws cited of Diamond Cements 2004(169)ELT 34, Finolex Industries 2003(1S6)ELT 96, *Malabar Jute Mills Ltd. 2007(220)ELT 121 are, therefore, distinguishable and do n relate to the case on hand.*

33. I, therefore, am of the considered view that the assessee is not entitled to avail and utilize Cenvat credit on the capital goods installed in the R&D building and also the Services utilized in that building. The capital goods removed from their manufacturing premises to be installed in the R & D building was also required to be made on reversal of the CENVAT Credit availed by the assessee."

4.4 The matter was remanded by the tribunal, with specific direction for providing the verification report dated 14.01.2009 to the appellants and thereafter decide the matter afresh. Order of the Commissioner is totally silent on the said verification report. In the said verification report following observations were made-

"As regards, research and Development laboratory, M/s CIPLA Ltd, did not show the same in their ground plan when they took the Central Excise Registration as it was constructed in 2004-05. Further it is to report that the same has not been declared to the department and the status of it remains the same as on date.

Copy of the Ground Plan duly certified by the concerned range Supdt, is also enclosed herewith for the favour of information please."

4.5 In contrary the tribunal has taken note of various documents while remanding and stated "*One of these documents is an application dated 25.4.2006 submitted by the appellant to the Assistant Commissioner for issuance of installation certificate in respect of certain capital goods with accessories, which were imported and installed in the R&D wing. Another document is a certificate of installation dated 5.5.2006 issued by the factory manager in respect of the said capital goods with accessories. Yet another document is an installation report dated 23.3.2006 of M/s. Inkarp Instruments Pvt. Ltd. A letter dated 8.5.2006 of the Range Superintendent, addressed to the Assistant Commissioner, recommending issuance of installation certificate to the appellant, is also seen on record."* If the Superintendent has himself recommended for issuance of installation certificate for these capital goods in Research and Development Building then how come Assistant Commissioner has made the observations as reproduced above in the verification report dated 14.01.2009. Admittedly the Appellant were registered for undertaking the manufacturing activities in the premises as per the approved ground plan of the premises. The approved ground plan of the registered premises is reproduced below:

4.6 Undisputedly the premises marked as R & D Building is located within the registered premises, as per Rule 174 (i) of the Central Excise Rules, 1944 (as they existed at the time when the ground plan was approved) and Rule 9 of the Central Excise Rules, 2002. From the wording of Section 6 of Central Excise

Act, 1944 and Rule 9 of the Central Excise Rules, 2002 it is quite apparent that these provisions are in respect of the registration of the person who undertakes the manufacturing activity etc. Admittedly the appellants are registered as manufacturer of the finished goods at the said premises, which include the premises on which the Research and Development building has been constructed. It cannot be the case of the revenue after looking into the ground plan approved that the said premises of R & D Building is not located within the registered premises.

4.7 Commissioner has in his order quoted the definition of the factory as per Section 2 (e) of the Central Excise Act, 1944. Hon'ble Supreme Court has in case of Delhi Cloth and General Mills Co Ltd [1978 (2) ELT J 121 (SC)], interpreted the word "factory" as defined by Section 2(e) stating as follows:

"(4) The expression "factory" is defined in Section 2(e) to mean any premises including the precincts thereof wherein or in any part of which excisable goods are manufactured. The definition covers the present case because the calcium carbide is manufactured in one part of the factory while the acetylene gas is manufactured in another part thereof. The definition of "factory" makes it clear that the meaning of factory is not restricted to only the part in which the excisable goods are manufactured. On the other hand, it includes the whole of the premises in a part of which such goods are manufactured. At any rate the case of the petitioner is that the whole of the premises which comprise both the plants making calcium carbide and acetylene gas are its factory. It is not contended by the respondents that the calcium carbide plant constitutes a separate factory and the acetylene gas plant constitutes another factory. It cannot be said, therefore, that the so-called calcium carbide made by the petitioner is removed from the factory in which it is made. A perusal of Rules 9 and 49 makes it clear that the question of collection of any excise duty cannot arise unless and until the goods are removed from the factory."

4.8 The phrase, "*means any premises, including the precincts thereof*", used in Section 2 (e), ibid, is pari materia to the phrase used in the Section 2 (m) of the Factories Act,. Hon'ble Supreme

Court while interpreting the Section 2(m) of Factories Act, in case of Grauer & Weil (India) Ltd 1994 (74) ELT 481 (SC)] held as follows:

"11. *From a bare perusal of the definition of factory under Section 2(m) of the Factories Act, it is patent that if on any premises including the precincts thereof ten or more workers are working or were working on any day of the preceding twelve months, and in any part thereof a manufacturing process is being carried on with the aid of power it would be a factory.* ***Ordinary, meaning of the word `premises' is a piece of land including its buildings or a building together with its grounds or appurtenances and precincts mean the areas surrounding a place. The words "any premises including the precincts thereof" under Section 2(m) are therefore wide enough to include all buildings with its surroundings which form part of one unit.*** *If therefore in such an area ten or more workers are working and in any part thereof manufacturing process is being carried on with the aid of power it would be a factory within the meaning of Section 2(m)."*

4.9 What emerges from the above case laws is that in the registered premises, appellant should undertake the activities relating to manufacture of the finished goods, it is not necessary that each and every part of the premises should be dedicated to manufacturing of the finished goods, there can be number of parts which undertake the activities such as storage of the raw material and finished goods, administrative activities, development of the product manufactured etc. all such activities are integral to manufacture of the finished products. In the decision of Maruti Suzuki referred to by the Commissioner in his order, Hon'ble Apex Court has in par 20, observed 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."*

4.10 Clearly Hon'ble Apex Court has stated that the to the extent that the inputs are used within the factory of production for any purpose the Cenvat Credit should not be denied or varied. Now coming back to the definition of Capital Goods as per the CENVAT Credit Rules, 2004, the bone of contention is ***"used (1) in the factory of the manufacturer of the final product, but does not include any equipment or appliances used in an office; or".*** Admittedly the Research and Development building is not the office of the appellant factory. The only question which needs to be examined whether these Capital Goods are used in the factory of manufacturer. The phrase used in the definition of Capital Goods, is not the same as that in the definition of "inputs" where it is stated that to qualify as inputs the goods should have been used in or in relation to the manufacture of finished goods. In case of the Capital Goods, the use of Capital Good within the factory of manufacturer whether in or in relation to manufacture of the finished products or otherwise shall make them eligible as Capital Goods in terms of the definition. The observations made by the Commissioner that these capital goods should have been used by the manufacturer in his "factory" whether directly or indirectly, in or in relation to the manufacture of final products do not find support from the definition of Capital Goods.

4.11 Tribunal has in the case of Mother Dairy [2005 (183) ELT 303 (T-Mum)] after considering the definition of factory under section 2(e) of the Central Excise Act, 1944 held as follows:

***"5.** After hearing both sides, perusal of the records and case laws, we are of the opinion that the definition of the factory as given in Section 2(e) is comprehensive enough to say that the activities of storing and using the furnace oil has been done by the appellant within the factory and as such we do not see any justification for dis-allowance of the credit and imposition of the penalty. We, therefore, set aside the impugned order and allow the appeal filed by the appellant*."

4.12 Since the Capital Goods after the demolition of manufacturing sheds, were shifted within the registered premises from the from the manufacturing shed to the Research and Development Building, the same cannot be said to have been removed from the factory. Undisputedly the CENVAT Credit taken against these Capital Goods when they were received was not disputed by the revenue. In the decision of Delhi Cloth Mill, referred earlier by us, taking of the goods from one place in the registered premises/ factory to the other place in the same registered premises/ factory do not amount to removal or clearance of the goods. Tribunal has in the case of Maruti Suzuki India Limited [2016 (344) ELT 1125 (T-Chand)] held as follows:

"7. The various goods covered under capital goods are listed in Sl. Nos. (i) to (vii) under Rule 2(a)(A). There is no dispute that the goods fall within one or other categories specified in (i) to (vii). The condition precedent for allowing credit for the above goods as capital goods is that these goods should be used in the factory of the manufacturer of the final product. There is an exclusion however to any equipment or appliance used in office.

8. In is on record that the assessee's R&D facility is located within the factory premises registered with the Central Excise Department, housed in buildings which are different from the factory sheds. When considered with reference to the definition of capital goods given above, we are of the view that there is no bar in using the capital goods in the buildings earmarked for R&D activities as long as it is situated within the factory premises registered with the Central Excise Department. The definition as it stands now does not make it mandatory that the *capital goods should be used in or in relation to the manufacture of final products as was the case in some earlier periods.*

9. We find that the Tribunal had occasion to consider a similar issue with reference to the definition of capital goods under the erstwhile Rule 57Q of the Modvat Rules in the case of USV Limited (supra), wherein it was held that the capital goods installed in research laboratory situated in the appellant's factory premises are eligible for benefit of Modvat credit even if not used in the factory of manufacture of finished goods. The Hon'ble Supreme Court has taken a similar view in the case of CCE, Coimbatore v. Jawahar Mills Limited - 2001 (132) E.L.T. 3 (S.C.). This decision was also delivered in the context of erstwhile Rule 57Q. Similar views were also been taken in the cases of CCE, Meerut-II v. India Glycols Limited - 2006 (196) E.L.T. 221 (Tri.) and CCE, Meerut-II v. India Glycols Limited - 2008 (230) E.L.T. 39 (Uttarakhand). In the light of the above decisions we find that the issue is settled in favour of the appellant.

10. In line with the above discussions, we find that the demand for reversal of Cenvat credit is not sustainable inasmuch as it is allowable under the definition of capital goods under the Cenvat Credit Rules. Accordingly, we set aside the impugned orders and allow the appeals."

4.13 This decision in the case of Maruti Suzuki was followed by the tribunal in the case of Hero Motocorp Limited [2018 (7) TMI CESTAT Chandigarh] In view of the decision referred above we have no hesitation in holding the Research and Development Building located in the registered premises of the Appellant, is the part of the factory of manufacture of the appellant and hence the credit availed on the Capital Goods installed in the said premises cannot be denied on that ground.

4.14 As we have held the Research and Development Building to be the part of the factory/ registered premises of the Appellant, CENVAT Credit on the input services for use in the said Research and Development building/ activities could not have been denied. Commissioner has in the impugned order, sought to deny the credit on the certain input services by stating that appellant had stopped the manufacturing activities in the Vikhroli Unit from November 2006 and had also demolished the manufacturing sheds. However they continued to avail and utilize the CENVAT Credit on the input services received by them in the said premises. It is settled law that CENVAT Credit on the inputs or the input services received by the appellant cannot be denied to the appellant till the time the same are used in the factory of the manufacturer.

4.15 We also note that all the activities were well within the knowledge of the department as is seen from the various correspondences highlighted by the tribunal in the order remanding the matter back to the original authority. In view of the specific correspondences and declarations referred earlier, we do not find any justification in invoking the extended period of limitation for making these demands.

4.16 Thus we do not find any merits in the impugned order and set aside the same.

5.0 Appeal is allowed and the impugned order set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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