

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Excise Appeal No. 85851 of 2020

(Arising out of Order-in-Appeal No. DL/07/Appeals Thane/TR/2019-20 dated 14.01.2020 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai)

M/s. Essel Propack Ltd.

Appellant

S. No.46, Dahagaon Road,
Off. Mumbai Nashik Highway No.3,
Vasind (W), Shahpur Taluka,
Thane Dist. 421 604.

Vs.

Commissioner of CGST & CE, Thane Rural

Respondent

Utpad Shulk Bhavan, 4th Floor,
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

Appearance:

Shri Suyog Bhawe, Advocate, for the Appellant

Shri Xavier Mascarenhas, Superintendent, Authorised Representative
for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 13.01.2023

Date of Decision: 13.01.2023

FINAL ORDER NO. A/85142/2023

This appeal is directed against Order-in-Appeal No. DL/07/Appeals Thane/TR/2019-20 dated 14.01.2020 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai. By the impugned order, Commissioner (Appeals) has upheld the order-in-original holding as follows:-

"ORDER

i) I hereby demand inadmissible Cenvat Credit total amount of Rs.18.56,482- (Rupees Eighteen Lakhs Fifty Six Thousand Four Hundred and Eighty Two Only) availed and utilized for payment of Central Excise duty under Rule 14(1)(1) of Cenvat Credit Rules. 2004 read with section 11A of Central Excise Act, 1944 and read with Section 74 of CGST Act, 2017.

ii) I hereby impose interest, as applicable, from them under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with the provisions of section 11AA of Central Excise Act, 1944 and read with Section 74 of CGST Act, 2017.

iii) I hereby impose penalty on them under Rule 15(2) of the CENVAT Credit Rules, 2004. read with Section 11AC(IXC) of the Central Excise Act, 1944. for suppressing the facts with intention to avail inadmissible Cenvat Credit and thereby contravening provisions of Central Excise Act, 1944 and CGST Act, 2017 and the rules made there under."

2.1 Appellant is a manufacturer who avails the benefit of Cenvat credit scheme. During the course of verification of the records of the appellant, it was observed that the appellant has availed inadmissible Cenvat credit of Rs.18,56,482/- against invoices of input goods, capital goods and input services.

2.2 Show cause notice dated 19.04.2018 issued to the appellant sought to demand inadmissible Cenvat credit to the tune of Rs.14,22,655/- on the capital goods viz. plastic crates and input services viz. services of civil works, fabrication work and repair and maintenance services to the tune of Rs.4,10,034/- and out of pocket expenses.

2.3 The show cause notice asked the appellant to show cause as to why:-

"(i) Total inadmissible Cenvat Credit total amount of Rs.18,56,482/- (Rupees) Eighteen Lakhs Fifty Six Thousand Four Hundred and Eighty Two Only) availed and utilized for payment of Central Excise duty should not be demanded and recovered under Rule 14(1)(i) of Cenvat Credit Rules, 2004 read with section 11A of Central Excise Act, 1944 and read with Section 74 of CGST Act, 2017.

(ii) Interest as applicable should not be demanded and recovered from them under Rule 14(1)(ii) of Cenvat Credit Rules, 2004 read with the provisions of section 11AA of Central Excise Act, 1944 and read with Section 74 of CGST Act, 2017.

(iii) Penalty should not be imposed on them under Rule 15 (2) of the CENVAT Credit Rules, 2004, read with Section 11AC(1)(c) of the Central Excise Act, 1944 for suppressing the facts with intention to avail inadmissible Cenvat Credit and thereby contravening provisions of Central Excise Act, 1944 and CGST Act, 2017 and the rules made there under.”

2.4 The show cause notice has been adjudicated as per the order as referred to in para 1 above. The said order has been upheld by the impugned order. Hence this appeal.

3.1 I have heard Shri Suyog Bhawe, Advocate for the appellant and Shri Xavier Mascarenhas, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- The major issue involved in the present case is in respect of capital goods i.e. plastic crates (amount of Rs.14,22,655/-). This issue is squarely covered by the decision of the Larger Bench of the Tribunal in the case of Banco Products (India) Ltd. [2009 (235) ELT 635 (Tri.-LB)].
- Similar view has been expressed by the Tribunal in the following cases:-
 - Gestamp Sungwoo Automotive (Chennai) P. Ltd. [2018 (363) ELT 1191 (Tri.-Chennai)]
 - Ace Glass Containers US [2010 (250) ELT 110 (Tri.-Del.)] affirmed by Uttarakhand High Court as reported at [2014 (34) STR 305 (Uttarakhand)]
 - Geltec Pvt. Ltd. [2010 (258) ELT 391 (Tri.-Bang.)].
- In respect of the remaining services they have made detailed submissions to the authorities below showing the nexus between the services and their output goods. Denial of such credit without recording any finding in respect of these cannot be sustained in law. He relied upon various decisions in his support:-
 - Parle Products Pvt. Ltd. [2016 (343) ELT 498 (Tri.-Bang.)]
 - Cadila Healthcare Ltd. [2013 (30) STR 3 (Guj.)]

- Essel Propack Ltd. [2018 (8) TMI 78 – CESTAT Mumbai]
- Bostik India Pvt. Ltd. [2017 (49) STR 240 (Tri.-Bang.)]
- Toyota Kirloskar Motor Pvt. Ltd. [2016 (46) STR 69 (Tri.-Bang.)]
- Godfrey Philips India Ltd. [2009 (14) STR 375 (Tri.-Ahmd.)]
- Gulf Oil Corporation Ltd. [2016 (43) STR 220 (Tri.-Ahmd.)].

3.3 Learned AR reiterates the findings recorded in the impugned order.

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

4.2 For denying the Cenvat credit, the impugned order observes as follows:-

"8. I observe that the appellant have availed Cenvat Credit of capital goods and input services, however the plea of the appellant cannot be accepted on the following grounds:-

(i) Wrong availment of Cenvat Credit on capital goods: It was observed that the appellant has wrongly availed Cenvat Credit for the period 01.04.2016 to 30.06.2017 of Rs. 14,22,655/- on capital goods, however the said capital goods are not defined under Rule 2(a) of Cenvat Credit Rules, 2004. Hence not eligible to be qualified as capital goods.

(ii) Wrong availment of Cenvat Credit on ineligible input service: It was further observed that the appellant has received services of Civil works, Fabrication works and Repairs or Maintenance service, etc. from the service providers namely M/s. R D Enterprises, M/s. Priyanka Enterprises, M/s. High Tech Services, M/s. Nerva Applications, M/s. G. Raju Engineering Works Contractors etc. and availed Cenvat Credit of Rs. 4,10,034/- against the invoices issued by them. However, these services again do not qualify as input service under Rule 2(1) of Cenvat Credit Rules, 2004. Hence credit is not allowed."

4.3 In the case of Banco Products (India) Ltd. [2009 (235) ELT 636 (Tri.-LB)] referred by learned counsel for the appellant, the Tribunal has held as follows:-

"14. Reference to all the above decisions was necessary to understand the scope of the term "accessory". If the plastic crates are held to be an accessory to the main machine, appearing against Sr. No. (i) of the definition of the capital goods, as contained in Rule 2(b) of the Cenvat Credit Rules, 2002, they would earn the status of the eligible capital goods for the purposes of Modvat. The appreciation of the various judgments on expression "accessory" as discussed above, leads us to observe that an accessory may or may not be required for essential working of the main unit, but is an object which is used for the convenience and effectiveness of that unit. It may also not be necessary that such accessory must be designed to be used in a particular machine. The same may be of a kind, which is capable of being used as a common object, with number of machines. The only criteria for an object to be held as an accessory, as emerging from the above extracted portion of various judgments is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine. The plastic crates in question are used for transportation of the raw material to the processing machine and all the finished goods from the machine to the storage area. It can be argued that instead of using such plastic crates as material handling device, the various components or the inputs can be carried manually also. However, the question is as to whether such transportation of the inputs or semi-finished goods in the factory would be convenient way of dealing, and whether the same would not hamper the continuous working of the machine on account of delays in the delivery of the raw material etc. It may be possible in theory to do so, but is neither practical nor possible to do in the actual manner. The delivery of the raw material in time for increasing the effective working of the same and then removal of the finished goods from the vicinity of the machine contributes may be in a subordinate degree to attain a general result or effect. Same adds to definition of effectiveness of the machinery, and when viewed and judged in the light of interpretation of the

term "accessory" by various Courts, the plastic crates are required to be held as accessory only. If that be so, the same would fall under Sr.No. 3(i) of Rule 2(b) of Cenvat Credit Rules, 2002.

15. We may, at this stage, refer to the Tribunal's decision holding such plastic crates used as material handling equipment, as eligible capital goods for the purposes of Modvat credit, though some of the decisions are for the period when the definition of the capital goods as appearing in Rule 57Q was different. Nevertheless, the said decisions are relevant as the material handling equipment have been allowed credit by treating them as accessory.

16. In the case of *M/s. Kellogg India Ltd. v. CCE, Mumbai-VIII - 2006 (196) E.L.T. 223* (Tri.-Mumbai), has allowed the credit of material handling equipment by following the earlier decision of the Tribunal in the case of *CCE, Bhopal v. M/s. H.E.G. Ltd. - 2002 (51) R.L.T. 434 (CEGAT-Delhi)*, as also in the case of *CCE, Salem v. M/s. Cheran Spinners - 2004 (168) E.L.T. 174* (Tri-Chennai).

17. In the case of *M/s. Cheran Spinners*, it was contended on behalf of the Revenue that since the plastic crates are falling under heading 3923.90, which is not the specified heading listed under Rule 57Q, at the relevant time. The said contention of the Revenue was rejected by the Bench and after observing that the manufacturing process is not possible without plastic crates and the same are integrally connected with the manufacture of final product, the benefit on the same was allowed under Rule 57Q as material handling equipment. The said decision was subsequently followed in the case of *M/s. Nestle (India) Ltd. v. CCE Goa, 2007 (216) E.L.T. 707* (Tri.-Mumbai).

18. As contrary to the above, Revenue has drawn our attention to the Tribunal's decision in the case of *CCE, Salem v. M/s. PKPN Spinning Mills (P) Ltd. 2005 (192) E.L.T. 541* (Tri.-Chennai), laying down that the plastic crates are not entitled for capital goods credit. The learned advocate has drawn our attention to the Para 5 of the said decision where the claim was made by assessee under Sr.No. (i) and it was found that since the plastic

crates do not fall under any of the specified headings enumerated Sr.No. (i), their claim was rejected. It stand specifically recorded in the said decision that the respondents have no case that these plastic crates are components, spares and accessories of any of the goods specified at Sr.No. (i) above. As such, the above decision can be considered as having been given by consensus and without adverting to the fact as to whether the plastic crates would be covered by expression accessories appearing in Sr.No. (iii) of Rule 2(b). The said decision was subsequently followed in another decision given by the same Bench in the case of CCE Salem v. M/s. Sugavaneswara Spinning Mills (P) Ltd. - [2006 \(199\) E.L.T. 698](#) (Tri.-Chennai).

19. Further, in the case of M/s. Hindustan Seals Ltd. v. CCE Kolkata-II [2006 \(196\) E.L.T. 302](#) (Tri.-Kolkata), the claim of the assessee for availing Modvat credit of duty paid on the plastic crates was under Rule 57A and 57B as 'inputs'. The claim for admissibility of the credit as capital goods was not one of the issue before the Bench. As such, it can be recorded that M/s. PKPN Spinning Mills' case and followed subsequently in M/s. Sugavaneswara Spinning Mills' case, was by way of concession and M/s. Hindustan Seals judgment having not considered the availability of credit as capital goods, there is no decision holding against the admissibility of the plastic crates as accessory. In any case, having elaborately discussed as to what is the meaning and scope of the term "accessory", as interpreted by Hon'ble Supreme Court in various decisions and by Tribunal, it has to be held that the plastic crates are eligible capital goods for the purposes of Modvat credit. We answer accordingly.

20. We may examine the appellant's alternative claim of entitlement to credit of duty paid on the plastic crates as inputs. The definition of inputs as contained in Rule 2(g) is as follows :-

"2(g) "Input" means all goods, except (light diesel oil) high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting

oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production."

21. *It is their contention that inasmuch as the plastic crates are used "in relation to the manufacture" of their final product and as the said expression is of very wide import, as consistently held by various judicial authorities including Hon'ble Supreme Court, the credit would be available as inputs also. While dealing with identical expression, the Hon'ble Supreme Court in the case of Collr. of C.E. v. M/s. Rajasthan State Chemical Works - [1991 \(55\) E.L.T. 444](#) (S.C.) has observed that - "there is no warrant for limiting the meaning of the expression 'in the manufacture of the goods' to the process of production of the goods only. The expression "in the manufacture of the goods" takes within its encompass all processes which are directly related to the actual production" Accordingly, it was held that use of powers in handling raw material prior to commencement of actual process was held as use for powers in any process in or in relation to manufacture of final product. Accordingly, Hon'ble Supreme Court observed that the process of handling/lifting/pumping/transfer/transportation of the raw material is also a process in or in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods. By applying the ratio as enacted by Hon'ble Supreme Court to the issue disputed before us, it has to be held that the process of manufacture starts with the process of handling of the raw material and resultant use of plastic crates for movement of such raw material, in which case, the plastic crates would earn their status as inputs.*

22. *Similarly, in the case of Collr.of C.E. v. M/s. Solaris Chemtech Ltd. - [2007 \(214\) E.L.T. 481](#) (S.C.), it was reiterated that the expression "in or in relation to manufacture" of final product must be given a wide connotation. A reference, at this stage, may also be made to Larger Bench decision of the Tribunal in the case of M/s. Union Carbide India Ltd. v. CCE - [1996 \(86\) E.L.T. 613](#) (Tri.-LB), laying down that the words "in*

relation to the manufacture” has been used to widen and expand the scope, meaning and content of the expression “inputs” so as to attract the goods which do not enter directly or indirectly into the finished product, but are used in any activity concerned with or pertaining to the manufacture of the finished goods.

23. *By various decisions of the Tribunal, in number of cases, it has held that the equipment used for collecting, transporting or dispensing material being necessary for undertaking production, are required to be held as used “in relation to” the manufacture of the final product. Reference in this regard, is made to Tribunal’s decision in the case of CCE Bangalore v. M/s. Anglo French Drugs & Indus. Ltd. - [2008 \(225\) E.L.T. 76](#) (Tri.-Bang.), in the case of CCE Rajkot v. M/s. Ajanta Transistor Clock Mfg. Co. - [2009 \(233\) E.L.T. 97](#) (Tri.-Ahmd.). In the later decision, Tribunal took note of the Hon’ble Supreme Court’s decision in the case of M/s. Tata Engineering and Locomotive Co. Ltd. [[2003 \(158\) E.L.T. 130](#) (S.C.)] holding that the bins, trolleys, etc. are entitled for the benefit of Notification No. 217/86-C.E., which exempts the goods used within the factory of production and observed that as the provisions of notification are similar to Rule 57A, the benefit has to be extended to the plastic crates, as input. The plastic crates were also held to be input in the case of M/s. GKN Sinter Metals Ltd. v. CCE Pune-I - [2008 \(224\) E.L.T. 560](#) (Tri.-Mumbai).*

24. *We fully agree with the above judgment on the issue. The plastic crates are used for transporting/storing of the goods in the factory of production. Proper storage of inputs is essential for efficient manufacturing process and in absence of proper facilities for storage and transportation; the same will affect the manufacturing process. Further, the Hon’ble Supreme Court in the case of M/s. Rajasthan State Chemical Works has observed that the manufacturing process starts with the drawing of water from the reservoir. By applying the same fact, it can be safely concluded that the manufacturing process starts with the issuance of the inputs from the stores and their further transportation to the production platform is only a part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the*

manufacturing platform, the process cannot start. Such delivery of the goods includes transportation of the goods by plastic crates. Similarly, finished products are required to be stored in a bonded store room. The plastic crates are again used for such transportation. As such, we are of the view that the plastic crates would also be eligible for modvat credit as input.

25. *In view of our foregoing discussion, we answer the referred question as under :*

Modvat credit is available on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input."

4.4 The Larger Bench of the Tribunal has held that the said plastic crates are capital goods. I do not find any merits in the impugned order for denying the credit in respect of such capital goods. Though the above order of the Tribunal is in respect of Modvat credit scheme, it has been followed by the Tribunal under Cenvat credit scheme, vide orders in the case of Gestamp Sungwoo Automotive (Chennai) P. Ltd. [2018 (363) ELT 1191 (Tri.-Chennai)], Ace Glass Containers US [2010 (250) ELT 110 (Tri.-Del.)] affirmed by Uttarakhand High Court as reported at [2014 (34) STR 305 (Uttarakhand)] and Geltec Pvt. Ltd. [2010 (258) ELT 391 (Tri.-Bang.)].

4.5 In respect of the input services, appellant has made detailed submissions to the original authority vide their letter dated 19.07.2018 stating as follows:-

"15. We submit that major portion of demand of Cenvat credit is related to labour charges for repairing and fabrication work. Fabrication the making of metal structures by cutting bending and assembling processes. The service has been utilized in the fabrication of material support trolleys and material handling equipments. Material support trolleys are used for movement of materials within the factory. Material storage platform are used for storage of materials. It is a matter of common understanding that in a factory, storage of goods and movement of goods from the place of to the machinery and vice-versa becomes at integral part of the entire manufacturing process. It can therefore be said

that material support trolleys and material storage platform are used for the process of manufacturing. Also the repairing charges are related to plant and machinery. Since these are used for the process of manufacturing, the fabrication service also is in relation to the manufacturing and Cenvat credit on the same shall be allowable to the assessee.

18. We entered into an arrangement with Hi-Tech service for maintenance of Air conditioners and refrigerators in the factory. We submit that the Air Conditioners and Chillers are installed in our factory mainly to ensure that the machines installed in the factory which process/manufacture the final products run smoothly and do not get affected due to high temperatures. The machines need to be kept in a cool environment for the efficient performance. Processes like printing, plate making etc, require cooling and the same is provided with the installation of an air conditioner. To guarantee the smooth and well-functioning of the machines and to maintain the temperatures in the rooms where the machines are kept, it is necessary to install air conditioners. Therefore, we submit that Cenvat credit of service tax paid on AMC of air conditioners is not deniable to us.

19. We rely on the following decisions:

ADC India Communications Ltd. - 2012 (283) ELT 415 (Tri. - Chennai).

Bry Asia Pvt. Ltd. vs. CCE, Delhi III, 2011 (10) TMI 207 (CESTAT New Delhi)

20. We reiterate that the Air Conditioners installed in the factory are necessary for the maintaining and regulating the temperatures. It is submitted that without maintenance and repair, the factory cannot be properly run and therefore, cenvat credit taken on the service tax paid on these repair services is admissible. Also, it is specifically mentioned in the Inclusive part of the Input Services definition that, any repairs services in relation to the factory or the office within a factory premises is input services. Therefore, the cenvat credit availed of service tax paid on repairs of the ACs is admissible to us as the ACs are in

the plant i.e. in the factory and conference rooms within the factory premises.

21. We rely on the judgment of Commissioner of CEx. Ahmedabad-II versus Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.) wherein it was held that the air conditioners are necessary for factory buildings as well as for activities relating to business and are, therefore, integrally connected with our business and thus the repairing activity of air conditioners are essential services and are eligible services for the purpose of taking Cenvat credit. The relevant extract of the judgment is reproduced below:

"(xi) As regards services availed by the assessee towards repair and maintenance of copier machine, air conditioner, water cooler, etc. it cannot be gainsaid that such equipment are necessary for factory buildings as well as for activities relating to business and are, therefore, integrally connected with the business of the assessee. Under the circumstances, no infirmity can be found in the view taken by the Tribunal that such services are eligible services for the purpose of taking CENVAT credit on the service tax paid thereon."

23. We submit that we have received services of dismantling, shifting and loading and unloading machines from our vendors to our factory and within factory. The service of movement of goods forms an integral part of the manufacturing activity. Since the services are directly in relation to the process of manufacturing, the service falls within the ambit of input service and cenvat credit on the same should be allowable to us.

24. We submit that we have received services of certification of R & D expenses from our vendors. Since the services are directly in relation to the process of manufacturing, the service falls within the ambit of input service and cenvat credit on the same should not be denied to us.

26. We submit that we have availed Cenvat credit on invoices raised for reimbursement of out of pocket expenses. In this case we submit that the main services are in nature of consultancy

services received in respect of statutory audit, Secretarial audit from Chartered accountant, advocates etc. Cenvat credit on such services is admissible to us Therefore the expenses incurred for rendering such services are also admissible to us. Even though they have raised separate invoices for such expenses the said expenses are related to the services on which Cenvat credit is admissible to us. Therefore, Cenvat credit availed on invoices raised on reimbursement of out of pocket expenses is not deniable to us.”

4.6 Both the authorities have not considered the submissions made by the appellant while passing the impugned orders. In absence of any finding recording on the submissions establishing nexus with the processes undertaken by the appellant, I am unable to sustain the impugned orders to this effect. Also I am constrained to record any independent finding in this regard. Matter in respect of these input services needs to be considered by the original authority and findings recorded on the submissions made for which matter needs to be remanded back to the original authority.

5.1 In view of above, while allowing the appeal to the extent of credit in respect of capital goods, I remand the matter back in respect of input services to the original authority to reconsider the issue taking into account the submissions made by the appellant establishing the nexus between their processes and the input services received.

5.2 In view of above, appeal is partly allowed and the matter remanded back to the original authority as indicated in para 5.1 above.

5.3 Needless to say the original authority should decide the matter following the principles of natural justice, within 90 days of the receipt of this order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)