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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75721 of 2021

(Arising out of Order-in-Original No.06/COMMR/CGST & CE/HALDIA/Adjn/2021 dated 23.06.2021 passed by Commissioner of Central Tax (In-Situ), CGST & CX, Haldia.)

M/s. Indian Oil Corporation Limited, Refinery Division,
(Haldia Refinery, Haldia-721606, Purba Medinipur, West Bengal.)

...Appellant

VERSUS

Commissioner of CGST & CX, Haldia Commissionerate

.....Respondent

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

APPEARANCE

Shri Romi Agarwal, Asstt.Manager (Finance) for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75488/2022

DATE OF HEARING : 11 August 2022
DATE OF DECISION : 23 August 2022

P.K.CHOUDHARY :

The Appellant is engaged in the manufacture and sale of petroleum products. The petroleum products are manufactured in the refineries of the Appellant situated in various parts of the country. The present appeal relates to the Haldia refinery. In the course of refining crude oil, one of the petroleum products, Bitumen is produced. During the period from April 2013 to June 2017, Appellant used Crumb Rubber Modifier (CRM) for mixing with Bitumen to produce Crumb Rubber modified Bitumen (CRMB) which was cleared upon payment of duty from Haldia refinery. The Appellant also availed Cenvat Credit on Handling services used during the production of CRMB. Regular Excise Returns were filed reflecting the amount of Cenvat Credit claimed and utilized and clearance of CRMB upon payment of Duty. Permission for

mixing CRM with Bitumen to produce CRMB was granted by the jurisdictional Central Excise authorities. The dispute is regarding availment of Cenvat Credit on the CRM and Handling service used within the Refinery. Vide the adjudication order dated 23.06.2021 Cenvat Credit amounting to Rs.*11,62,425*/-was disallowed and determined as payable by the assessee along with interest and penalty of Rs.1,16,243/- was also imposed. Hence, the present appeal before the Tribunal.

2. Learned Authorised Representative appearing on behalf of the Appellant submits that the fact of manufacturing of new product (CRMB) in the proposed Crumb Rubber Modifier Bitumen Plant was informed to the Department and the Ld. Deputy Commissioner has included the CRMB Plant in existing Central Excise Registered premises. They further submit that the duty paid on the Crumb Rubber Modifier Bitumen cleared from Haldia Refinery premises was all along much more than the Cenvat Credit availed. The additional amount of duty was paid from Personal Ledger Account (PLA) and no refund has been claimed on the excess amount paid.

3. The learned Authorised Representative further submits that it is the case of the Revenue that the Appellant had wrongly availed MODVAT/CENVAT Credit on CRM and Handling Services used for manufacturing CRMB and subsequently utilized the same for payment of Central Excise duty on CRMB inasmuch as the said process did not amount to manufacture of excisable goods as per section 2(f) of the Act. He also submitted that the issue is no more res integra and cited the following decisions:-

1) CCE, Bangalore-V v. Vishal Precision Steel Tubes & Strips Pvt.Ltd.[2017 (349) ELT 686 (Kar.)]
2) CCE& Cus., Surat-III v. Creative Enterprises[2009 (235) ELT 785 (Guj.)]
3) Commissioner v. Creative Enterprises [2009 (243) ELT A 120(SC)]

4) CCE, Pune-III Vs. Ajinkya Enterprise reported at 2013 (294) E.L.T. 203 (Bom.)

4. The learned Authorised Representative for the Appellant further submits that as Handling Services was used before the place of removal, there is no occasion for disallowance of Cenvat Credit on Input Services.

5. Learned Authorized Representative for the Department relies on the impugned order and reiterates the findings therein.

6. We have considered the arguments and perused the appeal records.

7. The issue involved in this case is whether assessee has availed Cenvat Credit correctly when the activity undertaken by them on the inputs according to Revenue does not amount to manufacture. We find that the Hon'ble Karnataka High Court in the case of CCE Bangalore-V v. Vishal Precision Steel Tubes & Strips Pvt.Ltd. (supra) relying on the decision of Hon'ble High Courts of Bombay and Gujarat have held as under:

> *"3. We may record that the Tribunal in the impugned order at paragraph 2 has observed thus:-*
>
> > *"2. It is undisputed that the appellants were paying duty of excise on their final product by utilizing the Cenvat credit. As such, the question required to be decided s that irrespective of the fact that whether the activity of the appellant amounts to manufacture or not and when admittedly, the credit availed is being utilized for payment of duty of excise on the said activity, whether there would be any obligation on the part of the assessee to reverse the credit. Though the appellants have referred to various decisions of the Tribunal confirmed by the Hon'ble Bombay High Court, we find that all such decisions stands considered by the majority order of the Tribunal in the case of Asian Colour Coated Ispat Ltd. v. CCE [20 15 (3 17) E.L.T. 538 (Tri.-Del.)]. Wherein it stands held that when the Cenvat credit availed on the inputs stand utilized for payment of duty on the final product, there would be no requirement*

of reversal of the said credit even if the activity undertaken by die assessee does not amount to manufacture. By following the said decision, we set aside the impugned order and allow the appeal with consequential relief to the appellant".

The aforesaid order shows that when the Cenvat credit availed on the inputs stand utilized for payment of duty on the final product, there would be no requirement of reversal of the said credit even if the activity undertaken by the assessee does not amount to manufacture.

8. We may usefully refer to the decision of Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) E.L.T. 203 (Bom.)], wherein, the Hon'ble High Court at paragraphs 8 and 9 has observed thus :-

"8. We see no merit in the above contentions. As rightly contended by the representative of the assessee appearing in person, UI 1st March, 2005 the Revenue has accepted that the activity carried on by the assessee constituted manufacturing activity in view of Board Circular dated 7th September, 2001 and accordingly, held that the assessee is entitled to take credit of duty paid on HR/CR coils. It is only because, the Board, on 2nd March, 2005 has withdrawn the Circular dated 7th September, 2001, and the Revenue is claiming that the activity carried on by the assessee does not amount to manufacturing activity. The question is, whether on the facts of the present case, the Revenue, based on the Circular dated 2nd March, 2005, is justified in calling upon the assessee to reverse the credit or pay the amount to the extent of the credit liable to be reversed, with interest and penalty?

9. It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting/ of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical processinvolving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the

activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted".

9. In another judgement of the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise & Customs, Surat-III v. Creative Enterprises - 2009 (235) E.L.T. 785 (Guj.) at paragraph 6, it was observed thus :-

> ***"6.*** *When one goes through the order of the first appellate authority, it is apparent that the respondent has been held to be a manufacturer as defined in Section 2(f) of the Central Excise Act, 1944. The appellate authority has taken into consideration the activities carried on by the respondent-assessee. The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture."*

10. It is an undisputed position that the final product is treated as dutiable and duty is paid by the assessee. When once duty is paid by the assessee treating the activity as manufacturing activity by the Department, Cenvat credit is available and there is no question of denial of Cenvat credit.

11. In view of the foregoing and authoritative judicial pronouncements on the issue, I find that the impugned order is not sustainable and is liable to be set aside and accordingly I do so.

The impugned order is set aside and the Appeal filed by the Appellant is allowed.

(Order pronounced in the open court on 23 August 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

sm