

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11509 of 2013-DB

[Arising out of Order-in-Original/Appeal No 33-34-COMMISSIONER-2013 dated 12.03.2013 passed by Commissioner of Central Excise-AHMEDABAD-I]

Nayara Energy Limited

P.O. Box No. 24, Head Post Office, Khambhalia,
JAMNAGAR, GUJARAT-361005

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-i Respondent

C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE :

Shri Ramnath Prabhu & Ms. Dimple Gohil Advocates for the Appellant
Shri Kalpesh P Shah, Asst. Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 18.04.2023

DATE OF DECISION: 11.08.2023

FINAL ORDER NO. 11682/2023

RAMESH NAIR :

The present appeal is directed against Order-in-Original No. 33-34/Commissioner/2013 dated. 12.03.2013 passed by the Commissioner, Central Excise, Ahmedabad -I.

2. The issue involved in this appeal are whether the appellant are entitled for Cenvat credit on inputs viz. Welding Electrodes, Wire FLR, Filler Wires, Welding Wire, Wire Rope, material used for railway line and capital goods viz M.S. Gratings / G.I. Coated Gratings. Ld. Commissioner vide impugned order denied the Cenvat credit on the welding Electrodes, Wire FLR, Filler Wires, Welding Wire and Wire Rope on ground that appellant's use of the said goods for repair and maintenance of plant and machinery cannot be considered to have been used 'in or in relation to the manufacture of final products' as they are not used co-extensively with the process of manufacture of petroleum products and hence not integrally connected with the manufacture. Therefore credit is not available to the appellant. The learned Commissioner has also denied the Cenvat credit on M.S Gratings/ G.I. Coated Gratings on the ground that the said goods used by the Appellant can neither be classified as Component, Spares or

Accessories of the Plant and machinery used in the manufacture of final products. Further he denied the Cenvat credit on material used in laying of Rail Lines on the ground that such Rail Line was situated outside the factory premises, therefore, credit cannot be extended.

3. Shri Ramnath Prabhu with Ms. Dimple Gohil, learned Advocates appearing on behalf of the appellant submits that appellant's unit is an integrated huge petroleum plant engaged in manufacture of Motor Sprits; High Speed Diesel; Furnace Oil; Pet Coke; Superior Kerosene; LPG; etc. Welding Electrodes, Filler Wires and Wire Fillers were used for repair and maintenance of the plant and machinery. Repair and maintenance activities are essential for smooth manufacturing operations without which manufacturing activity is not commercially feasible.

4. He also submits that Welding machine is classifiable under heading 84.68 of Central Excise Tariff and covered by Rule 2(a)(A)(i) and since welding electrodes are part of the welding machine, the same would be covered by Rule 2 (a)(iii) of Cenvat Credit Rules, 2004. He placed reliance on the following judgments.

- (i) Nayara Energy Limited vs. CCE & ST, Rajkot -2021-(8)TMI 644 -CESTAT Ahmedabad.
- (ii) Nayara Energy Limited vs. CCE & ST, Rajkot -2020-TIOL-727-CESTAT-AHM.
- (iii) Pr. Commr. of Cus. & C.Ex., Raipur vs. Steel Authority of India Limited -2020 (38) GSTL 171 (Chhattisgarh)
- (iv) CC. & CEx. vs. ACE Glass Container Limited - 2014 (34)STR 805 (Uttarakhand)
- (v) Commissioner vs. Singhal Enterprises - 2018 (359)ELT 313 (Chhattisgarh)
- (vi) Tamilnadu Newsprints & Paper Limited vs. C.C.Ex, Triuchirapalli - 2017 (357) ELT 60 (Mad.)
- (vii) Ambuja Cements Eastern Limited vs. CCE, Raipur - 2010(256)ELT 690 (Chhattisgarh)
- (viii) Hindustan Zinc Limited vs. UOI - 2008 (228) ELT 517 (Raj.)
- (ix) Essar Oil Limited vs. CCE & ST, Rajkot - Order No. A/14000/2017 dtd. 20.12.2017-SMC

- (x) Vikram Cement Vs. CCE, Indore – 2005 (187)ELT 145 (SC)
- (xi) Commissioner Vs. Alfred Hubert (India) Ltd., - 2010(257) ELT 29 (Kar.)

5. As regard the availment of Cenvat Credit on material used in laying of Rail Lines he submits that Railway Track used to move inputs, raw materials and manufactured goods within factory premises. Railway Track cannot be kept out of the consideration for availing Cenvat credit as it is being used directly for manufacture. Even though the Railway line is outside the factory but it is exclusively used for handling of material used in the manufacture of final products in appellant's factory. In support, he placed reliance on the following judgments.

- (i) Nayara Energy Limited vs. CCE &ST, Rajkot -2021-(8)TMI 644 –CESTAT Ahmedabad.
- (ii) Nayara Energy Limited vs. CCE & ST, Rajkot -2020-TIOL-727-CESTAT-AHM.
- (iii) Pr. Commr. of Cus. & C.Ex., Raipur vs. Steel Authority of India Ltd. -2020(38)GSTL 171 (Chhattisgarh)
- (iv) Tata Steel Limited vs. CCE, Jamshedpur – 2016(335)ELT303 (Tri. Kolkata)
- (v) Aditya Cement vs. UOI (HC) Rajasthan – 2008 (221)ELT 362
- (vi) Jayswal Neco Limited vs. CCE, Raipur -2015(319)ELT 247 (SC)
- (vii) Essar Oil Limited vs. CCE & ST, Rajkot – Order No. A/14000/2017 dated. 20.12.2017-SMC
- (viii) Vikram Cement vs. CCE, Indore – 2006 (194)ELT 3 (SC)

6. As regard the availment of Cenvat Credit on M.S. Gratings he submits that M.S. Gratings are used as an essential accessory for supporting and holding and for approaching or reaching out plant/processing units of refinery. It is a Technological necessity without which the processing unit cannot perform. Capital goods used for fabricating structural support to plant and machinery used for manufacturing excisable goods, Cenvat credit is admissible. He placed reliance on the following judgments:

- (i) Nayara Energy Ltd. Vs. CCE &ST , Rajkot -2021-(8)TMI 644 – CESTAT Ahmedabad.
- (ii) Nayara Energy Ltd. Vs. CCE & ST, Rajkot -2020-TIOL-727-CESTAT-AHM.
- (iii) Rajasthan Spinning & Weaving Mills – 2010 (255) ELT 481 (SC)
- (iv) CCE &C.Ex. Vishakhapatnam –II Vs. A.P.P. Mills Ltd. – 2013 (291)ELT 585 (Tri. Bang)
- (v) Metrochem Industries Ltd. Vs. C.CEx. Vadodara-I- 2013 (292)ELT (Tri. Ahmd.)
- (vi) Pragati SiliconPvt. Ltd. Vs. C.EX. Delhi – 2007(211)ELT 534 (SC)
- (vii) CCEX Delhi Vs. Allied Conditioning Corporation (Regd)-2006(202)ELT 209 (SC)
- (viii) Banco Products (India) Ltd. Vs. Commissioner – 2009 (235) ELT 636 (Tri. LB)

7. On other hand Shri Kalpesh P. Shah, learned Asst. Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

8. We have heard both the sides and perused the records. We find that these issues are no longer *res integra* as this Tribunal has already decided these issue *vide* Final Order No. A/12303/2021 dated. 11.08.2021 and A/10084/2020 dated. 14.01.2020 in the Appellant's own case wherein, considering various judgments following orders were passed.

Final Order No. A/12303/2021:

"5. We have carefully considered the submission made by both the sides and perused the records. We find that all the goods have been used in or in relation to manufacture of the final product directly or indirectly. MS Gratings were used as an essential accessory for supporting and holding and for approaching or reaching out plants/ processing units of refinery in which raw material is processed for manufacture of petroleum products. Looking to the nature of the industry, it is a technological necessity without which the processing unit cannot perform. As regard welding material it is used for repairs and maintenance of the plants and the repair and maintenance activities are essential for smooth manufacturing operations without which manufacturing activity is not feasible, therefore, the cenvat credit is clearly admissible. Railway line material is used to move inputs/ raw material and manufactured goods within the factory premises. The movement of goods through railway track is directly connected to the manufacture of final product, therefore, the

credit cannot be denied on these items. We find that the appellant have cited various judgements. There is no dispute that all these items on which the credit was claimed by the appellant have been dealt with in various judgements and the credit was allowed. The input/ capital goods wise chart of relevant judgments are given below:

| Sr. No. | Regarding eligibility to Cenvat Credit | Case Laws |
|---------|--|---|
| 1. | Capital goods/ inputs | <ul style="list-style-type: none"> • <i>NayaraEnergyLtd.VsCCE&STRajkot2020-TIOL-727-CESTAT-AHM</i> • <i>RajasthanSpinning&Weaving Mills 2010 (255)ELT291 ELT585</i> • <i>CCE vs A.P. P. Mills Ltd.2013 (291) ELT 585 (Tri.Bang.)</i> • <i>MetroChemIndustriesLtd. 2013 (292) ELT 578(Tri.Ahmd.)</i> • <i>ThiruArooranSugars2017(355)ELT373(Mad.)</i> • <i>MundraProts&SpecialEconomicZoneLtd.2015 (39)STR726(Guj.)</i> • <i>Essar Oil Ltd. Order No.A/14000/2017dated20.12.2017(SMC)</i> • <i>SinghalEnterprisesPvt.Ltd. 2016 (341) ELT 372(Tri.Del.)affirmedin2018(359)ELT313(Chhattisgarh)</i> • <i>ModiRubberLtd.2000 (119)ELT197(Tri.LB)</i> |
| | | <ul style="list-style-type: none"> • <i>Banco Products (India) Ltd -2009 (235) ELT 636 (Tri.LB)</i> |
| 2. | Welding Electrodes | <ul style="list-style-type: none"> • <i>Nayara Energy Ltd. Vs CCE&STRajkot -2020-TIOL-727-CESTAT-AHM</i> • <i>CCE vs Steel Authority of India Ltd. – 2020 (38) GSTL 171(Chhattisgarh)</i> • <i>Commr. Vs Singhal Enterprises 2018 (359) ELT313 (Chhattisgarh)</i> • <i>ACC Ltd. 2018 (361) ELT343 (Bom.)</i> • <i>Ambuja Cements Eastern Ltd. 2010 (2560 ELT 690(Chhattisgarh)</i> • <i>HindustanZincLtd.2008 (228)ELT517(Raj.)</i> • <i>Essar Oil Ltd. Order No. A/14000/2017 dated 20.12.2017(SMC)</i> • <i>Vikram Cement 2005 (187) ELT145 (SC)</i> • <i>Commr. Vs Alfred Hubert (I) Ltd. 2010 (257) ELT29 (Kar.)</i> |

6. *In view of the above, it can be seen that on every item, this Tribunal has considered the admissibility of the cenvat credit and in various judgments, it was held that the credit is admissible on the goods in question. Therefore, following the precedent decisions of this Tribunal and various courts, we are the view that the appellant is entitled for the Cenvat credit on the said goods. Accordingly, we set aside the impugned order and allow the appeal with consequential relief."*

Final Order No. A/10084/2020:

"4. *We have heard both the sides and perused the record. We find that all the items were used exclusively in relation to manufacture of final product in the appellants manufacturing unit. The welding electrode and welding filler wire were used for repair and maintenance of plant and machinery which is necessity to run the production of excisable goods. Therefore, the same is used even if not directly but indirectly indeed in relation to manufacture of final product. As regard material used for railway line the only ground for denial of credit by the adjudicating authority is that the railway line is located outside the factory premises. In the present case railway line installed partly within the factory and outside the factory is exclusively used for handing of material which is used in the manufacture of final product. We, following the judgment of Hon'ble Supreme Court in the case of Vikram Cement V. Commissioner- 2006 (197) E.L.T. 145 (S.C.), are of the view that credit on material used for laying rail line is admissible. As regard material namely M.S. Gratings/ G.I. Coated Gratings. We find that the same is used as accessory for supporting and holding for approaching how to plant/ processing units of refinery. The platforms for approaching or reaching out the plant is part and parcel of the entire plant and machinery particularly in large scale manufacturing unit without which the operation of plant is not possible. Therefore, the M.S. Gratings used as accessory in such structure is used in relation to the manufacture of final product. The construction chemical was used for the maintenance of cooling towers, pumps, compressors and machine base plates etc. is used for maintenance and operation of the plant, therefore, the same can be classified as accessory for plant and machinery. Hence, being essential chemicals for running plant is admissible inputs and eligible for Cenvat Credit. We find that in respect of all the items in question, this tribunal/High Court/Supreme Court has given judgment in favour of the assessee. More particularly in the appellants own case this tribunal's vide order No. A/14000/2017 dated 20.12.2017 considered the eligibility of the Cenvat Credit on the identical inputs/ capital goods and the appeal was allowed. In these circumstances the law is settled in favour of the appellant. We, therefore of the considered view that the appellants are entitled for Cenvat Credit in respect of the inputs/ capital goods in question.*

5. *Therefore, the impugned order is set aside, appeal is allowed."*

9. In view of the above decision and other decisions relied in the above matter, we are of the view that appellants are entitled for the Cenvat credit on the said goods. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Pronounced in the open court on 11.08.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL