Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11293 of 2013 -DB

(Arising out of OIO-25/COMMR/SURAT-II/2013 dated 22/02/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-II)

Solvay Specialities India Pvt Ltd **……..Appellant**
Plot No. 3526-27, Gidc,
Panoli , Bharuch - Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **……..Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

WITH

Excise Appeal No. 11354 of 2013 – Rahul Majmudar

Excise Appeal No. 11388 of 2013 – Shri Biswa Chatterjee

Excise Appeal No. 11964 of 2014 - Solvay Specialities India Pvt Ltd

APPEARANCE:
Shri J.C Patel & Shri Rahul Gajera, Advocates for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

Final Order No. A/ 12267 – 12270 /2023

DATE OF HEARING: 12.06.2023
DATE OF DECISION: 11.10.2023

RAMESH NAIR

In this appeal the following issues are involved:-

1. The principal issue in the present appeal is whether the services of environmental due diligence audit of the factory site for investigation of soil and ground water contamination and services of consequential remedial action qualify as input services within the meaning of Rule 2 (l) of Cenvat Credit Rules, 2004 for the period 2007-2008 to August 2012.

2. Whether the appellant is entitled for cenvat credit of duty paid on the inputs such as TMT Bars, Steel Support Structure, Joists, Beams, Angles, Channels, and MS Angles etc. used for support structure of capital goods in the factory of the appellant.
3. Whether the demand of duty on the clearance of MS Scarps and scrape of capital goods is correct and legal in terms of Rule 3 (5A) of Cenvat Credit Rules, 2004.
4. Whether Show cause notices are barred by limitation.

1.2 The brief facts of the case are that the appellant in the month of May 2006 acquired Polymer Division of factory of Gharda Chemicals Ltd. The appellant obtained central excise registration on 16.05.2006 and undertook manufacture of excisable goods of Chapter 39 of the Central Excise Tariff at the said factory. The other two appellant are employees of the appellant company M/s. Solvay Specialities India Pvt Ltd. For the purpose of acquiring the said factory, the appellant commissioned the services of technically qualified environmental consultancy firm called Environmental Resources Management, Belgium (hereinafter ERM) for carrying out " Environmental due diligence Auditing" of the site for investigation of environmental impact by way of contamination of the soil and ground water. However the report of said Environmental due diligence Audit was also required for obtaining the consent and no objection of the Gujarat Pollution Control Board to the acquisition of the said factory by the appellant.

1.3 For the service of conducting Environmental due diligence Audit the investigation into the presence and extent of soil and ground water contamination and preparing the report with suggested remedial measures. The said ERM raised their invoices dated 19.12.2006. The appellant on 11.06.2007 took the cenvat credit of service tax of Rs. 54,94,329/- on the said service. Further for the service of carrying out and implementing the remedial measures during 2008 -2009 onwards, the service provider charge

the service tax of which the appellant took cenvat credit amounting to Rs 55,81,531/- and Rs. 50,37,560. In February 2009, the Central Excise Officer visited the appellant's factory and carried out investigation which resulted in issuance of show cause notice dated 08.06.2007 and subsequent show cause notice dated 17.01.2013. In the show cause notice dated 08.06.2011. it was also proposed to deny the cenvat credit of Rs. 3,61,594/- paid on inputs such as TMT Bars, Steel Support Structure, Joists, Beams, Angles, Channels, and MS Angles etc. on the ground that same neither be considered as capital goods nor inputs. A demand for duty of Rs. 6,38,766/- on wasrte & Scrap of Capital goods was also proposed. Both the show cause notices were adjudicated vide orders dated 20.02.2013 and 20.03.2014 whereby the demand proposed in the show cause notices were confirmed therefore, the present appeals.

2. Shri J. C patel learned counsel along with Shri Rahul Gajera appearing on behalf of the Appellant submits that the services of Environmental due diligence Audit the investigation of presence and extent of soil and ground water contamination and suggesting and carrying out remedial measures to comply with pollution control laws are clearly in relation to manufacture of final product and therefore eligible for cenvat credit as input service. He submits that the service is clearly covered under the meaning of input service given in Rule 2 (l) of CCR, 2004. He submits that these services are essential to comply with the pollution control law and without obtaining the requisite permission and consent from the pollution control authority , manufacture of final products cannot be undertaken. Therefore, the services in question are necessary for carrying out the production activity in the appellant's factory. In support he placed reliance on the following judgments:-

- Sujal Dye Chem Industries vs. CCE – 2012 (284) ELT 73
- CCE vs. Brakes India Ltd - 2019 (369) ELT 577 (Mad)
- Hindustan Zinc Ltd vs. CCE - 2013 (288) ELT 406

- Pudumjee Pulp & Paper Mills Ltd vs. CEC - 2018 (10) GSTL 550
- CCE vs. Millipore India P. Ltd – 2012 (26) STR 514 (Kar)
- Hiedelberg Cement India Ltd vs. CCE – 2017 (47) STR 98

2.1 He submits that as regard the department's case that because services of Environmental Audit were received before takeover of the factory and commencement of manufacture, they cannot be input service is untenable in law. He submits that so long the service are required for operation of the factory and carrying out production then irrespective the time of service received i.e. even before acquisition of the factory the credit cannot be denied. In support he placed reliance on the following judgments:-

- Hindalco Industries Ltd vs. CEC – 2019 (5) TMI 1620 – CESTAT New Delhi
- BASF vs. CCE - 2023 (1) TMI 54- CESTAT Ahmedabad
- Zydus Technologies Ltd vs. CST – 2015 (39) STR 657
- Pepsico India Holdings P. Ltd vs. CCE - 2022 (56) GSTL 22

2.2 As regard the cenvat credit of Rs. 3,61,594/- on SS Sheets, Plates, Joists, Channels, Coils, MS Angles, HR Coils, MS Plates , Flanges etc, he submits that the said goods were used for making support structures for capital goods during the period August 2007 to May 2008, hence the credit is admissible in view of the judgement of Hon'ble High Court of Chhattisgarh in Vandana Global Ltd vs. CEC – 2018 (16) GSTL 462. He also placed reliance on the following judgments:

- CCE vs. Singhal Enterprises P. Ltd - 2018 (359) ELT 313
- Manglam Cement Ltd vs. CEC – 2018 (360) ELT 737(LB)

2.3 As regard the demand of duty on clearances of waste and scrap of capital goods, he submits that the Commissioner has confirmed the demand by holding that as per the Rule 3 (5A) of Cenvat Credit Rules ,2004 if capital

goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on the transaction value. He submits that the Adjudicating Authority neither in the show cause notice nor in the adjudication order decided the classification of the waste and scrap under relevant tariff heading therefore, before deciding the classification demand cannot be made. He placed reliance on the following judgments:-

- Shriram Alkali and Chemicals vs. CCE – 2010 (259) ELT 77
- Shree Khedut Sahakari Khand Udhyog Mandli Ltd vs. CCE– 2018 (1) TMI 410
- Shree Khedut Sahakari Khand Udhyog Mandli Ltd vs. CCE – 2017 (11) TMI 1000

2.4 On the issue of limitation, learned counsel submits that in both the show cause notices larger period of demand was invoked. He submits that in the present case there was no fraud, collusion, or any mis- statement or suppression of facts or contravention with intent to evade payment of duty on the part of the appellant. The issue involved are of legal interpretation of the provisions of the Cenvat Credit Rules, 2004 and the Appellant had acted according to the bona fide views held by the appellant, which are also the views taken in the judgments cited herein above. That apart, well before the issuance of the show cause notice, the department had from time to time carried out Audit of the appellant's record in September, 2008, Jan-Feb 2010 and December 2010 and in none of the audit reports, the audit raised the disputes which are raised in the present show cause notice. Accordingly, the audit department was also of the view that we had correctly taken the Cenvat Credit. Simply because the preventive officers subsequently took a different view, the larger period of limitation cannot apply. He placed reliance on the following judgments:-

- Hindalco Industries Ltd vs. CCE – 2019 (5) TMI 1620- CESTAT New Delhi

- Steelcast Ltd vs. CCE – 2009 (14) STR 129 (upheld in 2011 (21) STR 500)
- Religare Securities Ltd vs. CST – 2014 (36) STR 937
- Lanxess Abs Ltd vs. CCE – 2011 (22) STR 587
- K.K Appachan vs. CCE – 2007 (7) STR 230

2.5 As regard the second show cause notice dated 17.10.2013, the larger period cannot invoked in the light of the following judgments:-

- Nizam Sugar Factory vs. CCE – 2006 (197) ELT 465 (SC)
- ECE Industries Ltd vs. CCE – 2004 (164) ELT 236 (SC)
- Bhagwati Spherocast P. Ltd v. CCE – 2019 (368) ELT 308 (Guj.)

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. The main issue is that whether the services related to pollution control measures received by the appellant are eligible input services as defined under Rule 2 (l) of Cenvat Credit Rules, 2004. The Adjudicating Authority has denied the credit on two counts:-

1. That the service is not directly related to the manufacture of excisable goods and

2. The part of the services were received before acquisition of manufacturing unit from M/s. Gharda Chemicals Ltd.

4.1 We find that there is no dispute that the appellant have received the service of ERM service of Environmental Due Diligence audit of the factory site or investigation of soil and ground water contamination and service of consequential remedial action, these services are necessary to comply with the pollution control law. Without compliance of pollution control law the permission to run the factory cannot be granted by the Pollution Control

Authority. Therefore, the services in question related to pollution control of the factory is integral in the operation of the production activity in the appellant's factory. Even though the services do not contribute directly in the manufacture but being necessary to run the factory in relation to the manufacture indirectly. As per the definition of input service if the services is used in or in relation to manufacture and whether directly or in directly, the same is qualified as input service. The court and Tribunal in various judgments held the services related to pollution control as input services and credit was allowed even though such services are not directly used in the manufacture of final product. Some of the judgments and observation therein are cited below:-

> ***"a) Sujal Dye Chem Industries v CCE-2012 (284) ELT 73***
> *In this case the Appellant received service of audit of their process of manufacture and raw materials so as to bring about a change in the same and phase out use of materials which cause depletion of ozone in the atmosphere so as to comply with Ozone Depleting Substances (Regulation & Control) Rules, 2000. The Tribunal held that the obtaining of the service for preparation of such audit report was an input service since the whole activity has a direct nexus with the manufacture and manufacturing process and is with the objective of reduction of emission of Ozone Depleting Substances.*
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> ***b) CCE v Brakes India Ltd -2019 (369) ELT 577 (Mad)***
> *In this decision, the Hon'ble Madras High Court has held that receiving service of Plantation in the factory to comply with requirement of Water (Prevention and Control of Pollution) Act 1974 is an inputservice. The Hon'ble High Court held that receiving service for maintaining the factory in eco-friendly manner as per statutory requirements is related to manufacture of final product and therefore such service is an input service.*
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> ***c) Hindustan Zinc Ltd v CCE-2013 (288) ELT 406***
> *In this decision, the Hon'ble Tribunal has held that services received for maintenance of plantation, lawn, etc, to comply with Pollution Control laws is a service which is essential for manufacturing operations and therefore is in relation to manufacture and accordingly an input service.*
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> ***d) Pudumice Pulp & Paper Mills Ltd v CCF-2018 (10) GSTL 550***
> *In this decision the Hon'ble Tribunal has held that receiving service. for maintaining a garden in the factory to comply with Pollution Control laws is a service in relation to manufacture since without complying with Pollution control laws no manufacture can be undertaken in the factory. To the same effect is the decision in*
> ***Thyssenkrupp Electrical Steel (1) P. Ltd v CCF-2017 (3) GSTL 176***

e) CCE v Millipore India P. Ltd -2012 (26) STR 514 (Kar)
In this decision, the Hon'ble High Court has in Para 7 held that the Environmental law expects the employer to keep the factory without contravening any of those laws. The Hon'ble High Court has further held that the concept of corporate social responsibility is also relevant and further that for discharge of a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.

f) Hiedelberg Cement India Ltd v CCE-2017 (47) STR 98
In this decision, the Hon'ble Tribunal has held that Consultancy Service received in relation to "Greenhouse Gas Emission Reduction" for pollution control as per Kyoto Protocol is an input service."

4.2 From the above judgments it is settled that the services which are in relation to pollution control of the factory, the same are input services in terms of Rule 2 (l) of Cenvat Credit Rules, 2004 and hence, eligible for cenvat credit.

4.3 As regard the issue that whether the services received prior to acquisition of the factory and commencement of manufacture, we find that as discussed above the services related to pollution control are in relation to the production in the factory, therefore, the time of receipt of service is immaterial so long it is undisputed that the services were used in pollution control which in turn necessary for running the production activity in the appellant's factory. Therefore, even if the services were received prior to acquisition of the factory, the fact remains the services were received by the appellant only and the invoices therefore were also issued in favour of the appellant. Hence, the receipt of services by the appellant is not under dispute and it is also not under dispute that the services even though received prior to acquisition and commencement of the factory the same were in relation to pollution control of the same factory wherein subsequently the production activity has been carried out. This issue has been considered in various judgments. Some of the judgments and observation there on are given below:-

"a) Hindalco Industries Ltd vs. CCE - 2019 (5) TMI 1620-CESTAT NEW DELHI:
In this decision, the Appellant availed Cenvat Credit of service tax paid on various services received in the course of acquisition of land for the factory as set out in Paras 2 and 3 of the judgment. The said services were received from 2009 onwards, whereas the plant started production only in 2013. The Tribunal held that the Appellant was entitled to take credit of the said services, since the availing of the said services was required for undertaking, manufacture of the final products.

b) BASF vs. CCE-2023 (1) TMI 54-CESTAT Ahmedabad
In this decision, the services were received by the Appellant during the period April 2011 to March 2016 while the factory was in the process of being set-up and before the commercial production started in March 2016. The denial of the Cenvat Credit was set aside by the Tribunal, which held in Para 6 of the judgment that without use of the services in question, the factory would not have come up and no manufacture would have been possible.

c) Zydus Technologies Ltd vs. CST-2015 (39) STR 657
In this decision, the services received during the period when the Plant was being set up and before commercial production started were held to have been received in relation to the manufacture of the final product.

d) Pepsico India Holdings P. Ltd vs. CCE-2022 (56) GSTL 22
*In this decision, the Hon'ble Tribunal has held that the services received by way of lease of land and for setting up of factory thereon are eligible as input services since without the factory, there can be no manufacture of the final product and therefore such services are in relation to the manufacture of the final product and qualify as input service.***"**

4.3 In view of the above judgments it is a settled law that even though the services were received prior to the commencement of production so long it is in relation to the manufacturing activity of the assessee, the cenvat credit cannot be denied only because the same were received prior to acquisition of the factory and/ or commencement of the production.

4.4 As regard the issue regarding admissibility of cenvat credit on various steel items such as TMT Bars, Steel Support Structure, Joists, Beams, Angles, Channels, and MS Angles etc we find that the learned Commissioner denied the cevat credit on the aforesaid goods relying on the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd (Supra). However subsequently to the impugned order passed, the Hon'ble High Court of Chhattisgarh in Vandana Global Ltd - 2018 (16) GSTL 462 reversed the larger bench judgment of CESTAT in case of Vandana Global Ltd. Moreover this issue has ben considered in the case of CCE vs. Singhal Enterprises P. Ltd

- 2018 (359) ELT 313 and Manglam Cement Ltd vs. CEC – 2018 (360) ELT 737(LB) as cited by the learned counsel. Therefore, in light of the Hon'ble Chhattisgarh High Court judgment and subsequent judgments the appellant is entitled for the cenvat credit on the aforesaid goods.

4.5 As regard the demand of duty on clearance of waste and scrap of the capital goods, we find that the Adjudicating Authority has demanded the duty on the clearance of waste and scrap of the capital goods which is clearly provided under Rule 3 (5A) of Cenvat Credit Rules, 2004. It is the submission of the learned counsel that without deciding the classification demanding of duty is incorrect. In this regard we find that the classification of the goods arises only in respect of the goods manufactured by the asseessee. In the present case the demand is on the capital goods used by the appellant and cleared as waste and scrap. Obviously such waste and scrap does not arise out of manufacture of excisable goods. The capital goods itself became waste and scrap after used for long time, therefore, the demand of duty on such waste and scrap on its transaction value is absolutely correct and legal. Therefore, the demand on this count is sustainable on merit. However, the appellant have strongly argued on limitation, we are convinced that the issue being interpretation of legal statute and appellant being registered under Central Excise, the suppression of fact, collusion, fraud etc. cannot by attributed on the appellant. Therefore, the demand for the extended period will not be sustainable. However, if there is any demand within a normal period in respect of waste and scrap of capital goods, the same need to be worked out and recovered by the department.

4.6 As regard the penalty, we find that since there is no malafide attributed on the part of the appellant and extended period is not invokable, the penalty is not sustainable. Moreover, the major demand was set aside on merit. Corresponding to the said demand also no penalty can be imposed.

5. As per our above discussion and finding, the impugned order is modified to the above extent. The appeal is allowed in the above terms.

(Pronounced in the open court on 11.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L MAHAR
MEMBER (TECHNICAL)

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