

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

EXCISE Appeal No. 10583 of 2016

(Arising out of VLD-EXCUS-000-COM-0005-15-16 dated 15.12.2015 passed by
Commissioner of Central Excise, Customs and Service Tax- Valsad)

UPL LTD

UPL HOUSE, VISHWAS BLDG., PLOT CST NO. 610-B/2, H/E WARD,
WESTERN EXPRESS HIGHWAY, NEAR TEACHERS COLONY,
OFF ALI YAVAR JUNG MARG, BANDRA (EAST),
MUMBAI-MAHARASHTRA

...Appellant

VERSUS

C.C.E. & S.T.-VALSAD

THIRD FLOOR, ADARASHDHAM BUILDING,
VAPI-DAMAN ROAD,
VAPI, GUJARAT-396191

...Respondent

APPEARANCE:

Shri Prakash Shah & Mohit Raval Advocate appeared for the Appellant
Shri R. R. Kurup, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 12338 /2023

DATE OF HEARING: 11.10.2023
DATE OF DECISION: 20.10.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit in respect of waste treatment services received from Bharuch Enviro Infrastructure Limited, Ankleshwar for treatment of their factory's waste which arises out of the manufacture of final product.

2. Shri Prakash Shah, learned counsel appearing on behalf of the appellant submits that requirement of treatment of factory waste is as per the Gujarat Pollution Board order dated 27.05.2008 and according to the consent of GPCB, the appellant has to mandatorily follow the rules for specific disposal of Trade Effluents and Emissions, as per the specifications listed by the GPCB in the consent order of GPCB wherein it is specifically mandated that High COD and Low TDS effluents shall be sent to BEIL, a GPCB controlled site for proper treatment and disposal of the waste. It is his submission that the treatment of the waste arising out of the

manufacture is mandatory as per the Gujarat Pollution Control Board and without complying the order of the GPCB regarding treatment of factory waste, the appellant cannot carry out their manufacturing activity, therefore, the effluent treatment service received by the appellant is in or in relation to manufacture of final product and the same is admissible input service and credit must be allowed. He placed reliance on the following judgments:

- Cheminova India Ltd. Final order dated 28.06.2023
- Kanoria Chemicals & Industries Ltd. 2015 (7) TMI 970 CESTAT (AHM)
- Wipro Enterprises (P Ltd. 2018 (12) TMI 1167 CESTAT Chennai
- Anar Chemicals Pvt. Ltd. 2011 (24) STR 32
- Indian Farmer Fertiliser Cooperative Ltd 1996 (86) ELT 177 (SC)
- UOI vs Hindustan Zinc Ltd 2019 (367) ELT 616 (Raj.)
- CCE vs Eastend Paper Industries Ltd. 1989 (43) RLT 201 (SC)
- Deepak Fertilizers & Petrochemicals Corpn. Ltd. 2013 (32) STR 532 (Bom.)

3. On the other hand, Shri R.R. Kurup, Learned (Superintendent) authorized representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case, the issue to be addressed by us is whether waste treatment service received by the appellant from Bharuch Enviro Infrastructure Limited is admissible input service used in or in relation to the manufacture of their excisable goods. We find that on the very specific issue involved in the present case, this Tribunal has passed various decisions, some decisions are reproduced below:

- Cheminova India Limited

“07. We have carefully considered the submissions made by both the sides and perused the records. Since all the appeals are on the same issue though heard on different dates i.e. 20.04.2023 & 29.05.2023, we are deciding all the appeals together. We find that the revenue has denied the cenvat credit on services related to the effluent treatment activity of the waste generated during the course of manufacture of the final product of the appellant. The denial of cenvat credit is on the ground that the effluent treatment activity is post manufacture which has nothing to do with the manufacture of final product of the

appellant. We find that even though the effluent treatment is not directly connected with the manufacture of final product of the appellant but as per the pollution control act (supra) the appellant is bound under the law to carry out the effluent treatment of the Industrial waste generated during the course of manufacture of their final product. As per the provision of Pollution Control Act, if the effluent generated in the manufacture is not treated the appellant shall not be liable to run their factory. In this undisputed position, the effluent treatment activity is necessary to carry out the uninterrupted production of the final product in the appellant's factory therefore, it can be conveniently draw the conclusion that the effluent treatment activity is a vital part of overall manufacturing of the final product if this be so then the input services used for effluent treatment are admissible input service. This issue is no longer res-integra as in the various judgments the services related to effluent treatment has been held as admissible input service and cenvat credit was allowed. Some of the judgments are cited below:-

In case of M/S KANORIA CHEMICALS & INDUSTRES LTD (supra) this tribunal dealt with the similar fact and passed the following order:-

4. Heard both the sides and perused the case records. The issue involved in the present appeal is whether certain pollution control services availed by the appellant are eligible to CENVAT Credit under CENVAT Credit Rules 2004 or not. Revenue filed this appeal on the ground that the activities in relation to business have been deleted from the definition of input services during the relevant period. It is observed from the permissions granted by Gujarat Pollution Control Board under The Water (Prevention And Control of Pollution) Act, 1974, that Appellant was required to maintain certain standards of effluent from Appellants factory as a mandatory and statutory necessity. When the activity is required to be done mandatorily under a statutory obligation, then it cannot be said that the same is not in relation to the manufacture of finished goods in Appellants factory. This principle was settled by Honble Supreme Court in the case of Indian Farmers Fertilizer Co-op. Ltd Vs CCE Ahmedabad (supra), where duty free raw material Naptha used for effluent treatment plant, was held to be eligible for exemption. Para 9 of this case law is relevant and is reproduced below:-

“9. That leaves us to consider whether the raw? naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.”

5.1 In view of the above observations made by Apex Court, treatment of effluent from a factory has to be considered as essential and integral part of the process of manufacture. The ratio of this judgment will be applicable to the services availed by the Appellant. Accordingly, appeal filed by the Revenue is rejected and cross objection filed by Respondent is disposed of.

In case of M/S. WIPRO ENTERPRISES (P) LTD., 2018 (12) TMI 1167 – CESTAT CHENNAI this tribunal's Chennai Bench on the issue of credit on water treatment given the following finding:-

9. Coming to Water Treatment Service, I find that the same is utilized by the appellant as per the guidelines or norms of PCB according to which establishment of Effluent Treatment Plant in the factory is a statutory requirement for the treatment of polluted water. With regard to Garden Maintenance Services too, I find that the same is required as per the guidelines of the PCB for the purpose of a better work atmosphere. Further, I find that this issue stands decided by a plethora of decisions including the decision of the Hon'ble Madras High Court in the case of Wipro Ltd. Vs. Commissioner of C.Ex.,

Pondicherry – 2018 (10) G.S.T.L. 172 (Mad.) wherein the jurisdictional High Court has held that Housekeeping and Landscaping Services were entitled to CENVAT Credit of service tax paid on them. In the light of the discussions made hereinabove, I am of the view that the appellant has rightly availed Credit on Water Treatment Service and Garden Maintenance Service for which reason I set aside the demand raised on this count.

10. To sum up:

(i) Demand on Rent-a-Cab Service for the period from April 2008 to March 2009 is set aside;

(ii) Demand on Rent-a-Cab Service for the period from December 2011 to October 2012 is upheld with interest thereon;

(iii) The demand raised on Water Treatment Service and Garden Maintenance Service for the period January 2015 to December 2015 is set aside; 11. The appeals are partly allowed on the above terms.

Similarly, in the case of ANAR CHEMICALS PVT. LTD. 2011 (24) S.T.R. 32 (TRI. - AHMD.) this bench of the tribunal on the maintenance service of effluent treatment plant allowed the cenvat credit, the relevant order is as under:-

2. The Hon'ble Supreme Court in the case of Indian Farmers Fertilizer Cooperative Ltd. referred supra, has held that pollution control apparatus/device used in plant are to be treated as part and parcel of manufacturing process for production of end product. Further, on going through the ratio of law declared in the above judgment, is to the effect that definition of input services is wide and take into its ambit all the activities relating to the functioning of business. Admittedly, the Pollution Control Board requires the appellant to maintain Effluent Treatment Plant upto a certain standard and all the services used by the assessee for maintenance of such standard has to be held as activities relating to business. In the case of Brakes India Ltd. referred supra, it was held that creation and maintenance of garden within the factory premises by treating industrial and domestic sewage water, is mandatory requirement from Pollution Control Board and the man power services used for garden maintenance are required as infrastructure for manufacture and clearance of final product and the credit is admissible in respect of the same. Similarly, in the case of Coca Cola India Pvt. Ltd. referred supra, it stand held that the expression "business" is an integrated/continuous activity and not confined or restricted to mere manufacture of production. The activities in relation to business covers all activities related to functioning of business. As such, as long as there is a connection between the services and the manufactured goods, the input credit is admissible.

In view of the above, I hold that the services availed by the appellant in respect of Effluent Treatment Plant are admissible input services and the CENVAT Credit of Rs. 1,01,797/- (Rupees One Lakh, One Thousand, Seven Hundreds and Ninety Seven Only) is admissible to the appellant.

3. As regards dis-allowance of CENVAT Credit of Rs. 3,50,286/- (Rupees Three Lakhs, Fifty Thousands, Two Hundreds and Eighty Six Only) and of Rs. 56,374/- (Rupees Fifty Six Thousands, Three Hundreds and Seventy Four Only), it is not clear from the impugned order of the Commissioner (Appeals) that as to whether the same is denied on the ground of procedural lapses or on the ground that the duty does not stand deposited by the service provider with the department. It is also seen that the appellate authority has observed that the issue of non-payment of Service Tax by service provider was raised in the Audit. Whether this was the audit of present appellant or of the service provider is not clear. As such, I would like the Commissioner (Appeals) to decide the said issues afresh after taking note of various decisions of the Tribunal relied upon by the appellant before me.

4. In view of the above, the demand of Rs. 1,01,797/- (Rupees One Lakh, One Thousand, Seven Hundreds and Ninety Seven Only) along with interest and

penalty of identical amount is set aside. In respect of other issues, the matter is remanded to Commissioner (Appeals), for fresh consideration.

5. The appeal is disposed off in above manner.

The similar issue related to effluent treatment plan has been dealt with in detail by the Hon'ble Supreme Court in the case of INDIAN FARMERS FERTILIZERS CO-OPERATIVE LTD 1996 (86) ELT 177 (SC) wherein, the Hon'ble Apex Court expressed the following issue:-

7. Emphasis was laid, and rightly, by learned counsel for the appellants on the phraseology used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is "used elsewhere in the manufacture of fertilisers". The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end-product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

8. For our conclusion we draw support from the judgment of this Court in Collector of Central Excise, Calcutta-II v. Eastend Paper Industries Ltd. - 1989 (43) E.L.T. 201 = 1989 (4) SCC 244, where it was held, "Where any particular process.....is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression in the manufacture of goods". This was a reiteration of the view expressed in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Another - 1965 (1) SCR 900. It was there held, "The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production". In Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. - (1984) 4 SCC 566, the respondent manufactured paper and paperboard, "in the processes relating to which "sodium sulphate" is used in the chemical recovery cycle of sodium sulphate which forms an essential constituent of sulphate cooking liquor used in the digestion operation". The Exemption Notification concerned provided exemption to goods which had used as raw material or component parts any goods (inputs) falling under Item 68 of the First Schedule to the Act from so much of the excise duty leviable thereon as was equivalent to the excise duty paid on the inputs. The Court quoted what had been said in Dy. CST v. Thomas Stephen & Co. Ltd., namely, "Consumption must be in the manufacture as raw material or of other components which go into the making of the end-product" and observed that, correctly apprehended, that statement did not lend itself to the understanding that for something to qualify itself as a raw material it had necessarily and in all cases to go into and be found in the end-product. The court also quoted with approval the case of Eastend Paper Industries Limited cited above.

9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years

upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

10. In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the appellants is entitled to the exemption provided by the Exemption Notification No. 187/61 as amended from time to time.

In view of the above judgments and other judgments cited by the appellant, it can be seen that the issue is no longer res-integra as the services availed in respect of effluent treatment plant for treatment of industrial waste is in relation to the overall manufacturing activity of the appellant's final product in the appellant's factory therefore, the said services are input service hence, the credit is admissible.

08. Accordingly, we set aside the impugned order and allow the appeals with consequential relief."

- CCE vs Kanoria Chemicals & Industries Ltd.

"4. Heard both the sides and perused the case records. The issue involved in the present appeal is whether certain pollution control services availed by the appellant are eligible to CENVAT Credit under CENVAT Credit Rules 2004 or not. Revenue filed this appeal on the ground that the activities in relation to business have been deleted from the definition of input services during the relevant period. It is observed from the permissions granted by Gujarat Pollution Control Board under The Water (Prevention And Control of Pollution) Act, 1974, that Appellant was required to maintain certain standards of effluent from Appellants factory as a mandatory and statutory necessity. When the activity is required to be done mandatorily under a statutory obligation, then it cannot be said that the same is not in relation to the manufacture of finished goods in Appellants factory. This principle was settled by Honble Supreme Court in the case of Indian Farmers Fertilizer Co-op. Ltd Vs CCE Ahmedabad (supra), where duty free raw material Naptha used for effluent treatment plant, was held to be eligible for exemption. Para 9 of this case law is relevant and is reproduced below:-

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5.1 In view of the above observations made by Apex Court, treatment of effluent from a factory has to be considered as essential and integral part of the process of manufacture. The ratio of this judgment will be applicable to the services availed by the Appellant. Accordingly, appeal filed by the Revenue is rejected and cross objection filed by Respondent is disposed of."

- Indian Farmers Fertiliser Cooperative Ltd.

“6. The excise authorities and the appellants filed appeals before the Tribunal. The Tribunal reversed the decision of the Collector insofar as it held that the off-site plants, other than the effluent treatment plant, were a part of the process of manufacture of fertilisers. The Tribunal held that ammonia was used for the maintenance of the plant and equipment meant for testing and commissioning the plant and could not be said to be utilised in manufacture. Similarly, the purpose of the water treatment being essential for the protection of the boiler and other process equipment from corrosion, formation of scales, etc., the ammonia used for the purpose could not be said to be used in the manufacture of fertilisers. The view of the Collector, insofar as the effluent treatment plant was concerned, was upheld.

7. Emphasis was laid, and rightly, by learned counsel for the appellants on the phraseology used in the Exemption Notification. The exemption is made available to such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is “used elsewhere in the manufacture of fertilisers”. The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end-product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

8. For our conclusion we draw support from the judgment of this Court in *Collector of Central Excise, Calcutta-II v. Eastend Paper Industries Ltd.* - [1989 \(43\) E.L.T. 201](#) = 1989 (4) SCC 244, where it was held, “Where any particular process.....is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression in the manufacture of goods”. This was a reiteration of the view expressed in *M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Another* - 1965 (1) SCR 900. It was there held, “The expression “in the manufacture” takes in within its compass, all processes which are directly related to the actual production”. In *Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.* - (1984) 4 SCC 566, the respondent manufactured paper and paperboard, “in the processes relating to which “sodium sulphate” is used in the chemical recovery cycle of sodium sulphate which forms an essential constituent of sulphate cooking liquor used in the digestion operation”. The Exemption Notification concerned provided exemption to goods which had used as raw material or component parts any goods (inputs) falling under Item 68 of the First Schedule to the Act from so much of the excise duty leviable thereon as was equivalent to the excise duty paid on the inputs. The Court quoted what had been said in *Dy. CST v. Thomas Stephen & Co. Ltd.*, namely, “Consumption must be in the manufacture as raw material or of other components which go into the making of the end-product” and observed that, correctly apprehended, that statement did not lend itself to the understanding that for something to qualify itself as a raw material it had necessarily and in all cases to go into and be found in the end-product. The court also quoted with approval the case of *Eastend Paper Industries Limited* cited above.

9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of

effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

10. In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the appellants is entitled to the exemption provided by the Exemption Notification No. 187/61 as amended from time to time.

11. There shall be no order as to costs.”

5. On going through the above decisions, we find that as per the Hon'ble Supreme Court judgment in the case of Indian farmer Fertiliser, it has been held that effluent treatment activity is essential in relation to the manufacture of final product. In the present case, the entire case of the department is that the effluent treatment activity is not in relation to the manufacture of the final product which is contrary to the Apex Court judgment (supra). Following the said Apex court judgment, this Tribunal also taken a view that the effluent treatment activity is indeed in or in relation to the manufacture of final product, therefore, the cenvat credit cannot be denied. Accordingly, we are of the view that the issue is no longer res-integra and same has been decided in favour of the assessee. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 20.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha