

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 158 of 2024**

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THE PRINCIPAL COMMISSIONER CENTRAL GST AND CENTRAL EXCISE
Versus
M/S NAYARA ENERGY LTD.

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Appearance:

MS HETVI H SANCHETI(5618) for the Appellant(s) No. 1
MS. DIMPLE K. GOHIL(7451) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 03/04/2024

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned counsel Ms. Hetvi Sancheti for the appellant and learned advocate Mr. Vishal Agrawal with learned advocate Ms. Dimple K. Gohil for the respondent.

2. This appeal arises under Section 35(G) of the Central Excise and Salt Act, 1944 from the Judgment and Order dated 11.08.2023 passed by the Customs Excise and Service Tax Appellate Tribunal (for short "the CESTAT") in Appeal No. 11509 of 2013. The Revenue has proposed following substantial questions of law:

"A. Whether the Hon'ble CESTAT

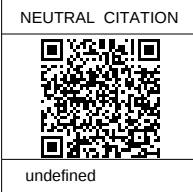


committed a grave error in interpreting and applying the definition of 'Capital Goods' as provided under Rule 2(a)(A) of the Cenvat Credit Rules, 2004, and wrongly allowing Cenvat Credit on goods such as "Welding Electrodes," "Welding filler Wires," "Wire FLR," "Welding Wire," "Wire Rope," and "M.S. Gratings/G.I. Coated Gratings," which do not fall within the specified categories?

B. Whether the Hon'ble CESTAT overlooked the clear provisions of Rule 2(k) of the Cenvat Credit Rules, 2004, while allowing Cenvat Credit on goods like "Welding Electrodes," "Welding filler Wires," etc., which were used for repair and maintenance of Plant & Machinery, and not in the direct manufacturing process, as required by the definition of 'inputs' and resultantly CENVAT Credit on such goods cannot be allowed?

C. Whether the Hon'ble CESTAT incorrectly relied on judgments that are not final and have been challenged at higher forums, thereby disregarding the principle of judicial discipline and creating an erroneous precedent?

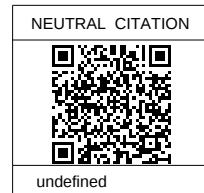
D. Whether the Hon'ble Tribunal



erred in setting aside the order of the Adjudicating Authority, confirming the demand for the recovery of wrongly availed Cenvat Credit of Rs.1,56,73,968/-, and not considering the fact that the said goods were not entitled to be treated as 'Capital Goods' or 'Inputs' under the Cenvat Credit Rules, 2004?"

3.It is the case of the Revenue that whether the respondent assessee is entitled for Cenvat credit on inputs i.e. welding electrodes, wire FLR, filler Wires, Welding wires, Wire rope, material used for railway line and capital goods i.e. M.S.Gratings/ G.I.Coated Gratings or not.

4.The Commissioner of CENVAT by order in original dated 12.03.2013 denied the CENVAT credit on above items on the ground that the use of such goods for repair and maintenance of plant and machinery by the respondent assessee can not be considered to have been used "in or in relation to the manufacture of final products", as they are not used co-extensively in the process of manufacturing of the petroleum products by the respondent assessee. It was therefore held that the

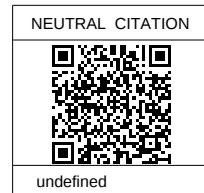


respondent assessee can not avail the Cenvat credit as such goods are not integrally connected with the manufacture of the petroleum products.

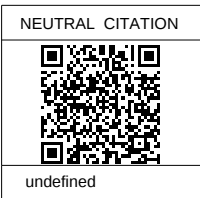
5.The Adjudicating Authority with regard to the Cenvat credit availed by the respondent on M.S.Gratings/ G.I.Coated Gratings held that such credit cannot be availed by the respondent as such goods can not be used by the respondent can not be classified as component spares or accessories of plant and machinery used in the manufacture of the final products. The Cenvat credit on such goods was also denied on the ground that the same was used in laying of rail lines and such rail lines were situated outside the factory premises.

6.Being aggrieved the respondent assessee preferred the appeal before the CESTAT. The CESTAT in the judgment and order passed in the appellants own case in final order no.A/12303/2021 dated 11.08.2021 and final order no.A/10084/2020 dated 14.01.2020 allowed the appeal.

7.Learned advocate Ms.Hetvi Sancheti submitted



that the Adjudicating Authority after analysing the definition of input as provided in Rule 2(k) of the CENVAT Credit Rules 2004 upto 31.03.2011 and the Rule 2(k) of the CENVAT Credit Rules which were amended with effect from 01.04.2011 vide notification no.3 of 2011 held that the respondent assessee has not utilized the inputs of the goods mentioned herein above for the purpose of manufacture of the final product. It was submitted that the reliance placed by the respondent on the decision of the **M/s.Hindustan Zinc Ltd. Vs. Union of India** reported in **2008 (228) E.L.T. 517 (Raj.)** and **M/s. ITC Ltd. Vs. CCE, 2008-TIOL-117-CESTAT-BANG** of Bangalore Tribunal and **M/S. Manikgarh Cements V. CCE, 2008 TIOL-43-CESTAT-MUM** were also distinguished and it was held by the Adjudicating Authority that the above welding electrodes, wire FLR, filler wires, welding wire and wire rope used for repairs and maintenance of plant and machinery in the factory of the assessee during the period under question were not eligible inputs for Cenvat credit. It was also submitted by learned advocate Ms.Sancheti that the Adjudicating Authority has categorically held on facts that there is no evidence on record

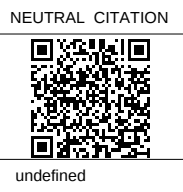


to show that any part of such inputs were used in the manufacture of any capital goods for captive consumption.

8. With regard to the Cenvat Credit M/S. Gratings it was submitted that the Adjudicating Authority has applied the "user test" and in the facts of the case, it was held that such Ms. Gratings can not be considered as part of the capital goods installed in the factory premises of the respondent and therefore the same would not fall within the ambit of the capital goods as contemplated in Rule 2(a)(A) of the Cenvat Credit Rules, 2004.

9. In support of her submissions, reliance was placed on the following decision:

Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III reported in **2009 (240) E.L.T. 641 (SC)**, wherein the Hon'ble Apex Court in the facts of the said case held that the inputs used as a fuel in the electricity generation was not eligible for Cenvat Credit used in generation of the excess electricity cleared for a price contractual rate in favour of the grid then such fuel would not be entitled to the Cenvat



credit to the extent of the excess electricity cleared at the contractual rates in favour of the joint ventures, vendors etc. which is sold at a price.

10. Learned advocate Ms.Sancheti invited the attention of the Court to the findings given by the Hon'ble Apex Court in para nos.14 and 16 which reads as under:

"14. In the case of Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. reported in (1989) 4 SCC 566 the difference between the expression "used in the manufacture" and "used as input (raw material)" was highlighted. In that judgment, it was held that undoubtedly the said two expressions are distinct and separate, but, when an ancillary process (like electricity generation) aids the making of an end product, then, the ancillary process gets integrally connected to the end product. In the said judgment, this Court applied what is called as "the dependence test". It may, however, be noted that in the definition of "input" the expression "used in or in relation to the manufacture of final product" is not a standalone item. It has to be read in entirety and when so read it reads as "used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not". These words "whether directly or



indirectly" and "whether contained in the final product or not" indicates the intention of the legislature. What the legislature intends to say is that even if the use of input (like electricity) in the manufacturing process is not direct but indirect still such an item would stand covered by the definition of "input". In the past, there was a controversy as to what is the meaning of the word "input", conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of "input", the Legislature has clarified that even if an item is not contained in the final product still it would be classifiable as an "input" under the above definition. In other words, it has been clarified by the definition of "input" that the following considerations will not be relevant:

- (a) use of input in the manufacturing process be it direct or indirect;
- (b) even if the input is not contained in the final product, it would still be covered by the definition.

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input". Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that

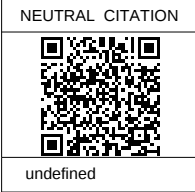


it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when



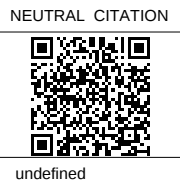
they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product" It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in



relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."

11. Reliance was also placed on the admission of the SLP in case of **M/s.Hindustan Zinc Ltd. (Supra) and Vandana Global Limited** as the Rajasthan High Court and Jharkhand High Court respectively held in favour of the assessee for entitlement of the Cenvat credit on similar products.

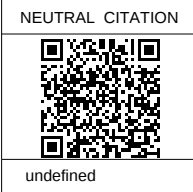
12. On the other hand, learned advocate Mr.Vishal Agrawal for the respondent assessee submitted that the issue is no more res-integra in view of the decision of the Hon'ble Apex Court in **Civil Appeal No.4704 of 2007** in case of the **Kisan Co-operative Sugar Factory Ltd. Vs. Commissioner, Central Excise, Meerut-I**, wherein about forty appeals were disposed of by the Hon'ble Supreme Court in the similar issue and it was submitted that Hon'ble Supreme Court has held that in view of the settled legal position, the interpretation of the expression "used in or in relation to manufacture" was interpreted as to the item used for maintenance of the Plant and Machinery were also held to be the



item used in the manufacture of the finished goods. It was therefore submitted that the Tribunal has not committed any error in arriving at the findings that the respondent is entitled to the Cenvat credit on the items like Welding Electrodes, Welding filler Wires as capital goods as per Rule 2(k) of the CENVAT Credit Rules, 2004.

13. Having heard learned advocates for both the sides and considering the fact that the Tribunal has relied upon the decision in the respondent assessee's own case, as well as in view of the fact that now the issue is no more res-integra in view of the decision of the Hon'ble Supreme Court in case of **Kisan Co-operative Sugar Factory Ltd. (Supra)** wherein the Hon'ble Apex Court has held as under:

"16. The controversy with regard to the products in question are similar to all the cases. The availment of the credit under the relevant Modvat/Cenvat Credit Rules in the context of eligible inputs as defined from time to time have been delineated under the respective rules starting from the period prior to 01.03.1995 and thereafter at subsequent periods

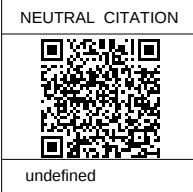


when the rules have been amended or substituted by fresh rules. The bone of contention in these cases revolves around the definition of inputs. It is not in dispute that the said definition is an exhaustive.

20. In view of the settled legal position, the interpretation of the expression "used in or in relation to manufacture" is of a very wide import and takes within its scope and ambit all items used in the process of manufacture whether directly or indirectly and whether contained in the final product or not. The items used for maintenance of plant and machinery are also items used in the manufacture of finished goods. Hence, credit on the items used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assesseees.

Thus, in view of the above judgments, credit on welding electrodes and other items such as jointing sheets, SS plates etc. used for maintenance, repair, up-keep or fabrication of plant and machinery are admissible to the assesseees."

14. With regard to the issue of entitlement on the Cenvat credit on the M.s.Gratings/G.I. Coated Gratings are concerned, the Tribunal

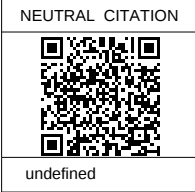


has relied upon the decision of the appellants own case and quoted the same as under:

"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



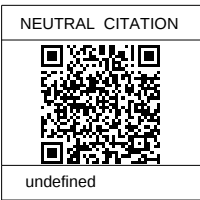
same is used as accessory for supporting and holding for approaching how to plant/processing units of refinery. The platforms for approaching or reaching out the plant is part and parcel of the entire plant and machinery particularly in large scale manufacturing unit without which the operation of plant 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"

15. In the aforesaid observation made by the Tribunal in Final Order no.A/10084/2020 it is observed that the M.S.Gratings were used as accessory for supporting and holding for approaching how to plant and processing units of refinery and 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 the plant is not possible. It was therefore held by the Tribunal that, therefore the M.S.Gratings used as accessory in such structure is used in relation to the manufacture of final product. In view of such finding of fact arrived at by the Tribunal, We are of the opinion that the Tribunal has not committed any error in following a Coordinate Bench's decision in the case of the respondent assessee itself.

16. In view of the above, we are of the opinion that there is no error committed by



the Tribunal giving rise to any question of law, much less any substantial question of law arising from the impugned order. The appeal therefore being devoid of any merit is accordingly dismissed.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

URIL RANA