

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10451 of 2018 - DB

(Arising out of OIO-SUR-EXCUS-000-COM-008-17-18 dated 24/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Aarti Industries Ltd

Plot No. 801/23, Iii Phase, Gidc,
VAPI, GUJARAT

.....Appellant

VERSUS

Commissioner of C.E. & S.T.-Surat-i

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT,GUJARAT-395001

.....Respondent

APPEARANCE:

Shri Prasannan Namboodiri, Advocate, appeared for the Appellant

Shri Tara Prakash, Deputy Commissioner (AR) appeared for the Respondent

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

HON'BLE MEMBER (TECHNICAL), MR. C L Mahar

Final Order No.12050/2024

DATE OF HEARING: 01.07.2024

DATE OF DECISION: 18.09.2024

RAMESH NAIR

The issue involved in the present case is that whether appellant is entitled for the Cenvat Credit on ISO Tank which is used for packing and transportation of the appellant's excisable final product namely Di-methyl Sulphate (DMS) from factory to the consignee premises/destination.

2. Shri Prasannan Namboodiri, Learned Counsel appearing on behalf of the appellant submits that the appellant have initially taken the Cenvat credit on ISO tank considering it as "Capital Goods", however later they realised that the credit should have been taken under "inputs" account which they have claimed during the adjudication of the case before the adjudicating authority. However the adjudicating authority has not considered their submission and holding that the ISO tank is not capital goods, therefore, the credit was denied. He submits that various board circulars have clarified that the assessee is entitled for the Cenvat credit in respect of durable packaging material if the value thereof is included in the assessable value of final product. It is his submission that in view of the board circulars the appellant are clearly entitled for the Cenvat credit. He further submits that merely because initially

the appellant have availed the Cenvat credit under capital goods account credit cannot be denied as the same is eligible as inputs. In support he placed reliance on the following judgments and circulars:-

- Circular No. 643/34/2002-CX. Dated 01.07.2002
- Circular having F. No. 354/81/2000-TRU, Dated 30-6-2000 Dated 30.06.2000
- Parle Beverages Ltd. versus Commissioner of C. Ex., Mumbai 2000 (124) ELT 803 (Tri)
- Banco Products (India) Ltd versus Commissioner of C. Ex., Vadodara-I 2008 (224) ELT. 560 (Tri. Mumbai)
- Bajaj Hindusthan Ltd. versus Commissioner of C. Ex., Meerut-1 2014 (33) STR 305 (Tri. - Del.)
- C.C.E., Chandigarh-II versus Dhillon Kool Drinks and Beverages Ltd. 2008 (229) E.L.T 193 (P & H)
- Collector of Central Excise versus Solaris Chemtech Limited 2007 (214) E.L.T. 481 (S.C.)
- Collector of C. Ex., Calcutta-I versus Black Diamond Beverages Ltd. 1997 (91) E.L.T. 422 (Tribunal)
- Collector of Central Excise versus Chemphar Drugs & Liniments 1989 (40) E.L.T. 276 (S.C.)
- Commr of C. Ex., Ahmedabad versus Paras Pharmaceuticals Pvt. Ltd 1999 (108) E.L.T 580 (Tribunal)
- Commissioner of C. Ex., Chennai-III versus Ranka Wires Private Ltd. 2015 (322) E.L.T.410 (SC)
- Commissioner of Central Excise, Noida versus Denso India Ltd. 2014 (310) E.L.T.487 (All.)
- Commissioner of Central Excise, Noida versus Denso India Limited 2004 (165) E.L.T 232 (Tri Del.)
- Chhattisgarh Beverages Pvt. Ltd. versus Commissioner of C. Ex., Raipur 2006 (205) E.LT. 220 (Tri. - Del.)
- Union of India versus Chhattisgarh Beverages Pvt. Ltd 2013 (294) E.L.T. A48 (Chhattisgarh)
- Commissioner of C. Ex. & S.T., Daman versus Aarti Industries Ltd. 2014 (307) E.L.T 553 (Tri Ahmd.)
- Cosmic Dye Chemical versus Collector of Central Excise, Bombay 1995 (75) E.L.T. 721 (S.C.)
- Gujarat Alkalies & Chemicals Ltd. Versus Commr. of C. Ex., Vadodara 2003 (161) E.L.T 202 (Fri. Mumbai)

- Kisan Sahkari Chini Mills Ltd. Versus Commissioner of C. Ex., Meerut-II 2010 (261) E.L.T. 308 (Tri. - Del.)
- Lubri-Chem Industries Ltd. versus Collector of Central Excise, Bombay 1994(73) E.L.T.257 (SC)
- Lumbini Beverages Pvt. Ltd. versus Commissioner of C. Ex., Patna 2012(284) E.L.T. 695 (Tri. Kolkata)
- Miltech Industries Pvt. Ltd. versus Commissioner of C. Ex., Pune-III 2011(263) E.L.T. 635 (Tri. Mumbai)
- PKPN Spinning Mills (P) Ltd. versus Commissioner 2015 (315) E.L.T. A180 (Mad.)
- Steel Authority of India Ltd. Versus Commissioner of C. Ex., Raipur 2014 (311) E.L.T. 709 (Tri. - Del.)
- G. Claridge & Company Ltd. versus Collector of Central Excise 1991 (52) E.L.T. 341 (S.C.)
- GKN Sinter Metals Ltd. versus Commissioner of Central Excise, Pune-I 2008 (224) E.L.T. 560 (Tri. - Mumbai)

3. Shri Tara Prakash Learned Deputy Commissioner (AR) 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 record. We find that the adjudicating authority has denied the Cenvat credit on ISO Tank on the ground that the appellant have taken credit under capital goods account and the ISO tank is not capital goods. However, the appellant realising their mistake claimed the Cenvat credit on packaging material i.e. ISO tank considering as input during the adjudication process. The Learned Commissioner should have examined that whether such ISO tank falls under the category of inputs and accordingly decided the matter on that basis. We are of the view that merely because the appellant under a belief treated the ISO tank as capital goods and taken the credit under that account does not make them disentitled for the Cenvat credit, if otherwise available on ISO tank has input. Therefore, not considering this aspect by the adjudicating authority is clearly violation of principles of Natural Justice. We are of the prima facie view that merely because the appellant have taken the credit under the capital goods but if it is available under input, the credit should be extended. However, since the Commissioner has not examined the entire matter considering the ISO Tank as input the impugned order is not legal and proper.

5. Therefore in our view, the Learned Commissioner should re-examine the matter as observed by us above and pass a fresh order. Therefore, we set

aside the impugned order, and remand the matter to the adjudicating authority for passing a fresh order. Needless to say that Learned Commissioner should consider all the relevant circulars and judgments on this issue relied upon by the appellant before this Tribunal. The appellant shall be granted sufficient opportunity of hearing and for making their submission if any needed. The de-novo order shall be passed by the adjudicating authority within a period of 1 month from the date of this order. The appeal is allowed by way of remand to the adjudicating authority in the above terms.

(Pronounced in the open court on 18.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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