

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

**Appeal No. : ST/10438/2018**

Arising out of OIA No. KCH-EXCUS-000-APP-108 to 109-2017-2018  
passed by Commissioner (Appeals), Customs & Central Excise-Rajkot)

CCE-Kutch (gandhidham) : Appellant (s)

Vs

Almac Enterprise : Respondent (s)

Represented by:

For Appellant (s) : Shri.K. J.Kinariwala, AR

For Respondent (s) : None

**CORAM :**

Dr. D. M. Misra, Hon'ble Member (Judicial)

Date of Hearing/Decision: 21.03.2018

ORDER No. A/10567/2018

**Per : Dr. D. M. Misra**

None present for the Respondent. Heard the Ld. AR for the Revenue.

2. This is an appeal filed against the order-in-appeal No. KCH-EXCUS-000-APP-108 to 109-2017- 2018 passed by Commissioner (Appeals), Customs & Central Excise-Rajkot.

3. The short issue involved in the present appeal is: whether the appellant are entitled to avail Cenvat credit of the duty paid in respect of inputs such as MS Angles, MS Channels, MS plates and MS Pipes etc. used in repair and maintenance of plant and machinery in their factory.

4. Ld. AR for the Revenue reiterated grounds of appeal and submitted that credit is not admissible on these inputs in view of the Boards Circular, as the goods were used in repair and maintenance of the capital goods.

5. I find that the Ld. Commissioner (Appeals) taking into consideration the Chartered Accountants Certificate observed that the inputs, namely, MS Angles, MS Channels, MS Beams , used for fabrication, Repairing and Replacement of plant and machinery, namely, Boiler, Bunker, Coal Feeder, Coal Handling Plant, Raw Mill, RMH etc. during the relevant

period. This Tribunal consistently held that MS Angles, Channels, Beams etc., used in Repair and Maintenance of Plant and Machinery in the factory is admissible to credit. This issue has been considered by this Tribunal in Kissan Sahakari Chini Mills Ltds case (supra) after analysing the principle of law of this Tribunal observed as under:-

5.1 have considered submissions from both the sides and perused the records. I find that the issue as to whether the goods used for repair and maintenance of plant and machinery are eligible for cenvat credit, stands decided in favour of the Appellant by Honble Rajasthan High Court in the case of Hindustan Zinc Ltd. (supra) wherein Honble High Court has held that MS/SS plates used in the workshop meant for repair and maintenance of the plant and machineries would be liable for cenvat credit and also by the judgments of Honble Chhattisgarh High Court in the case of Ambuja Cements Eastern Ltd. v. Commissioner of Central Excise (supra) and Honble Karnataka High Court in the case of Commissioner of Central Excise v. Alfred Herbert (India) Ltd. (supra) wherein Honble High Court have held that the inputs used for repair and maintenance of plant and machinery would be eligible for cenvat credit. The learned departmental representative has cited a contrary judgment of Honble High Court of Andhra Pradesh, in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. v. Commissioner of Customs & Central Excise, Tirupati reported in 2012 (278) E.L.T. 167. Since three High Courts as mentioned above, have held that the inputs used for repair and maintenance of plant and machinery are eligible for cenvat credit, I am of the view that it is these judgments which have to be followed.

5.2 The Apex Court in the case of J.K. Cotton SPG & WVG Mills Co. Ltd. v. Sales Tax Office reported in 1997 (91) E.L.T. 534 (S.C.), interpreting the scope of the expression - in the manufacture of goods in Section 8(3)(C) of the Central Sales Tax Act, 1956 has in para 9 of the judgment held that this expression would cover the goods used in any process/activity which is so integrally connected to the ultimate manufacture of goods without that process or activity, even if theoretically possible, is commercially inexpedient. The scope of the expression used in the

definition of input in Rule 2(k) of the Cenvat Credit Rules, 2004 - used in or in relation to manufacture of final products, whether directly or indirectly and whether contained the final products or not is much wider than the scope of the expression used in manufacture of and therefore the expression- used in or in relation to manufacture of final product, whether directly or indirectly in the definition of input in Rule 2(2) would cover all the goods whose use is commercially expedient in manufacture of final products.

5.3 Repair and maintenance of plant and machinery is an activity without which smooth manufacturing is not possible. Commercially, manufacturing activity is not possible with malfunctioning machines, and leaking tanks, pipes and tubes. Therefore the activity of repair and maintenance of plant and machinery is an activity which has direct nexus with manufacture of final products and the goods used in this activity would be eligible for Cenvat credit. For eligibility of an input for Cenvat credit what is relevant is whether the activity in which that input is used has nexus with the manufacture of final product and the nexus has to be determined on the basis of criteria as to whether that activity is commercially essential for manufacture of the final products.

6. In the result, the impugned order is upheld and Revenues appeal is dismissed.

(Dictated and pronounced in the open Court)

**(D .M .Misra)**

Member (Judicial)