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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGIONAL BENCH AT CHANDIGARH

DIVISION BENCH

Appeal No. E/60624/2017-Ex

(Arising out of Order-in- Original NO.35/CE/COMMR/RS/SNP/2016-2017 dated 24.3.3017 passed by the Commissioner, Central Excise, Sonepat)

M/s.Indian Oil Corporation Ltd. **Appellant**

Vs.

CCE, Panchkula **Respondent**

Present for the Appellant: Shri Dinesh Verma, Advocate
Present for the Respondent: Shri Bhasha Ram,AR

CORAM:HON'BLE MR. ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER(TECHNICAL)

Date of Hearing/Decision:07.01.2022

FINAL ORDER No. 60017/2022

*Per:*Ashok Jindal

The appellant is in appeal against the impugned order wherein cenvat credit on various items used for erection, installation and commissioning of various EPCC projects by way 20 contracts with various contractors sought to be denied holding that the contractors only installed plant fixed to the earth, which is not excisable goods. Against the said order, the appellant is before us.

2. Ld. Counsel for the appellant submits that in their own case for the earlier period, this Tribunal vide Final Order No.61158-61161/2019 dated 17.12.2019 has allowed the cenvat credit to the

appellant and which is subsequent to the issuance of show cause notice and following the order of this Tribunal, the impugned order is set aside.

3. On other hand, ld.AR insisted that the appellant had entered into composite lump sum turnkey contract for various EPCC projects with certain contractors to set up a plant in their premises to manufacture naphtha as these contractors are joint company are made turnkey basis. Therefore, the raw material is procured by them cannot be the inputs for fabrication of raw material by the appellant, the cenvat credit is not entitled to them. Therefore, the impugned order is to be upheld.

4. Heard the parties.

5. The facts are as under:-

2. The appellant is a Public Sector Undertaking, engaged in the manufacture and marketing of petroleum products. The dispute in this case is in respect of their refinery at Panipat where they manufacture various petroleum products falling under Chapter 27 and also goods covered by Chapter 39 of Central Excise Tariff, Act 1985. During the impugned period, the appellant had taken Cenvat Credit in respect of various items of capital goods received by them for erection, installation and commissioning of Nephtha Cracker Plant. A team of officers from the Jurisdictional Central Excise Commissionerate, Rohtak, visited the appellant"s premises to ascertain the correctness of the Cenvat Credit taken. The Officers found that the appellant had entered into composite lump sum turnkey contracts for various EPCC (Engineering, Procurement, Construction and Commissioning Contracts) projects with different contractors such as M/s Larsen & Toubro Ltd., M/s Toyo Engineering Corporation, M/s IOT Engineering Projects Ltd., M/s Technimont SPA, M/s Paharpur Cooling Towers Ltd., M/s V.A. Tech Wabag Ltd., M/s Nicco Corporation Ltd., M/s Indian Oil Tanking Ltd., M/s Samsung Engineering Co. Ltd., M/s Engineers India Ltd.

etc. Enquiry was conducted with various officers of the appellant company who were associated with setting up of Nephtha Cracker Plant. After scrutiny of the documents of contractors of the appellant for various contracts and enquiry with their officers, the investigating officers were of the view that the appellant are not eligible for capital goods Cenvat Credit in respect of various items of machinery, equipment and instruments falling under Chapter 84, 89 & 90 of the Tariff and other items mentioned in Rule 2(a) of the Cenvat Credit Rules, 2004, inasmuch as the contractors of the appellant had only installed the plant fixed to earth, which is non-excisable. Accordingly, the Show Cause Notice was issued to the appellant for recovery of allegedly wrongly taken capital goods Cenvat Credit along with interest thereon under section 11AB and also for imposition of penalty on them under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. This Show Cause Notice was issued by invoking the extended period under proviso to Section 11AC of the Central Excise Act, 1944 by alleging that appellant company has committed fraud and deliberately suppressed the information from the Department with intent to evade the payment of duty by taking wrong Cenvat Credit. The Show Cause Notice was adjudicated and Cenvat Credit demand against the appellant along with interest thereon under Section 11AB and besides this, imposed penalty on the appellant company under Rule 15(2) of the Cenvat Credit Rules, 2002 read with Section 11AC of Central Excise Act, 1944. It was also held that the capital goods in respect of which the Cenvat Credit, in question, has been taken by the appellant, had been brought by their contractors and used in execution the EPCC projects on turnkey basis which resulted in coming into existence of the plant, which was immovable in nature and could not be considered as excisable goods and hence the capital goods used excisable goods and hence the capital goods used for setting up of such plants would not be eligible for Cenvat Credit. Another ground the denial of Cenvat Credit is that the Appellant were not the owner of the goods at the time of their receipt and what they had received was a plant which is an immovable property. Against the said order, this appeal has been filed.

6. Considering the fact that in the appellant's own case for the earlier period, this Tribunal has observed as under:-

"6. We have considered the submissions from both the sides and perused the records. The Cenvat Credit, in question, has been taken in respect of various items of the machinery. It is not disputed that the goods in respect of which Cenvat Credit, in question, has been taken are covered by the Chapter 84, 85 & 90 of the Central Excise Tariff or are the item specifically mentioned in Rule 2(a) and accordingly are covered by the definition of the „capital goods" as given in Rule 2(a) of Cenvat Credit Rules. The Department seeks to deny the Credit Credit on the two grounds, namely :-

(a) at the time of receipt of capital goods in the refinery where the same had been installed for setting up Nephtha Cracker Plant, the appellant were not owner of the goods, as the same had been brought by their contractor for setting up the plant; and

(b) the goods after being installed had becomes fixed to earth structure which is not excisable and hence the Cenvat Credit of Central Excise duty involved these goods would not be available to the 7 E/56733/2013, E/51215,55782/2014 E/173/2016 appellant.

7. In term of the definition of „capital goods" as given in Rule 2(a) of the Cenvat Credit Rules, 2004, the capital goods are those goods which are specified in this Rule and which (except for office equipment or appliance) are used in the factory of the manufacture of the final products or for providing of output service. Thus any items which is covered by the list of the items mentioned in Rule 2(a) of the Cenvat Credit Rules, except for office equipment or office appliances, and is used in any manner in the factory of the manufacturer of the final products, would be covered by the definition of the capital goods and accordingly would be eligible for Cenvat Credit. There is absolutely no requirement that the capital goods at the time of receipt must be owned by manufacturer or that the same would cease to be capital goods, if they are installed in the factory and become fixed to earth. In fact, most of the capital goods the machinery, equipment or instruments covered by Chapter 84, 85 & 90, pipes and tubes, pollution control equipment refractories, and storage tanks are required to be installed and after installation, the same put together constitute a manufacturing plant, which is a fixed to earth structure. Just because after being installed in the factory, the capital goods put together become a plant which is a fixed to earth structure, the Cenvat Credit cannot be denied on the basis that the plant which is fixed to earth structure, is not excisable. This preposition of the Department is, in fact absurd, as there is not such condition in Rule 2(a) for capital goods. For capital goods Cenvat Credit, the items must be among those mentioned in this Rule and should have been 8 E/56733/2013, E/51215,55782/2014 E/173/2016 used in the factory of the manufacturer and how the items are not used relevant. The words used in Rule 2(a) are "used in the factory of manufacturer of the final product" not "used in the manufacture of final product". Therefore, once any item received in the factory is "capital goods" in terms of Rule 2(a) of the Cenvat Credit Rules, and is used in the factory, the manufacturer would be entitled to Cenvat Credit of excise duty paid in respect of the same. If the logic of the commissioner in the impugned orders are accepted, no capital goods Cenvat Credit can be allowed in respect of any item of capital goods enumerated in Rule 2(a) of the Cenvat Credit Rules, as all the items - various items of machinery covered under Chapter 84, 85 & 90 of the Tariff, pipes & tubes, tanks, pollution control equipments refractors etc. have to be installed in the factory before being put to use and after

installation, the same would become fixed to earth plant. Reading the impugned orders give an impression that the same has been passed without any application of mind. We, therefore, are of the view that impugned orders are not sustainable, the same are set- aside".

7. As in an identical issue has been dealt by this Tribunal hereinabove, in the appellant's own case, therefore, we follow our own order dated 17.12.2019 and hold that the appellant is entitled to availcenvat credit.

8. In view of above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(pronounced in the open court)

(C.J.MATHEW)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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