

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**Excise Appeal No. 87188 of 2019**

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/791-792/18-19 dated 02.04.2019 passed by the Commissioner (Appeals), CE & GST, Nashik)

**M/s Astoria Agro & Allied Inds. Pvt. Ltd. ....Appellant**  
Samsherpur, Tal. & Dist. Nandurbar

*VERSUS*

**Commissioner of CGST & CEx., Nashik ....Respondent**  
Plot no. 155, Sector -34NH,  
Jaishth & Vaishakh,  
CIDCO, Nashik

With

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**APPEARANCE:**

Shri J.N. Somaiya, Advocate for the appellant  
Shri Xavier Mascarenhas, Supdt (AR) for the respondent

**CORAM:**

**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER No: A/85918-85919/2023**

DATE OF HEARING : 12.12.2022  
DATE OF DECISION : 06.06.2023

**Per: AJAY SHARMA**

These appeals have been filed assailing the impugned order dated 02.04.2019 passed by Commissioner (Appeals), CE & GST, Nashik rejecting the appeal filed by the appellant.

2. The appellant herein is engaged in manufacture of Sugar and Molasses. During the period 26.11.2016 to 30.6.2017 they availed Cenvat credit amounting to Rs. 4,34,680/- on service tax paid on civil construction service, preparation of draft project report and modification of old bullock cart and during the period 26.5.2016 to 30.3.2017 they availed Cenvat credit amounting to Rs. 3,16,116/- on chequered plate, angles, channels and beams. These services and goods, according to department, were not input services and inputs as they were not having any nexus with the manufacturing and w.e.f. 1.4.2011 some of the services such as laying of foundation and construction of civil structure were specifically excluded from the definition of input service. Accordingly two show cause notices dated 15.12.2017 and 19.12.2017 respectively were issued to the appellant proposing denial of the Cenvat credit on the said services and goods and the same culminated in the Orders-in-Original dated 25.5.2018 and 28.5.2018 respectively confirming the demand and ordering its recovery alongwith interest and also equal penalty. Aggrieved, the appellant filed appeal and the learned Commissioner (Appeals) vide impugned order dated 19.3.2019 although upheld the demand but reduced the penalty to 10% of the Cenvat credit disallowed.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the case records including the synopsis/written submissions placed on

record. So far as Cenvat credit on construction service is concerned the same is already reversed by the appellant alongwith interest in the months of March/April, 2018. From the reading of the impugned order it seems that the learned Commissioner has not gone into the details of the project report submitted by the appellant for sugar plant modernization and bagasse based cogeneration project in support of their submission that the Cenvat credit has been availed on the service of preparation of project report for expansion of existing sugar plant with co-generation plant and the same is admissible. There has to have findings regarding accepting or rejecting the submissions of the appellant after taking recourse to the said project report and more particularly its executive summary. I am of the considered view that this issue needs to be re-looked into by the learned Commissioner and therefore the same is remanded to the first appellate authority.

4. So far as bullock carts are concerned, it is the case of the appellant that they are providing bullock carts to their sugarcane transport contractors for transportation of sugarcane (the raw material) from the agricultural fields to their factory and therefore it is in relation to their activity of bringing the inputs to their factory and is covered within the definition of '*input service*'. Learned counsel also submits that bullock carts have been shown as capital goods in their balance sheet/books of account but the same was not verified by the learned Commissioner. He tried to explain the books of account to me but since the same has to be verified by the authorities below therefore I am not inclined to look into it and the same is also remanded to the learned Commissioner (A) to be decided afresh.

5. Now coming to the issue of Cenvat credit of Rs.3,16,661/- availed on HR Steel sheet (chequered plate), MS Angle, channel, non alloy steel bar and MS beam. According to the department, it has been informed during the course of audit that the said

goods were used for supporting structure of capital goods but before the authorities below the appellant submitted that after receiving the show cause notice they have done verification and found that the said goods have been actually used for repair and maintenance and also produced the certificate from a chartered engineer dated 27.7.2018 to that effect certifying that the said material has been consumed in the fixed assets viz. plant and machinery & carrier vehicle used for production, which the chartered engineer has prepared after verification of the production process and relevant technical and related documents. If the claim made by the appellant, which, as claimed by them, is supported by the sufficient evidence, then it has to be looked into by the learned Commissioner and cannot be brushed aside merely being an afterthought. Therefore this also has to be looked into by the learned Commissioner.

6. In view of the discussions made hereinabove, the impugned orders are set aside and the appeals are remanded to the learned Commissioner (Appeals) to be decided afresh within a period of three months, after giving reasonable opportunity of hearing to the appellants and after looking into the evidence/case laws produced by the appellants in support of their submissions/claims. The appeals are accordingly allowed by way of remand.

(Pronounced in open Court on 06.06.2023)

**(Ajay Sharma)**  
**Member (Judicial)**

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