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

REGIONAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 11637 OF 2016 - DB

(Arising out of OIO-VLD-EXCUS-000-COM-006-16-17 dated 09/06/2016 passed by Commissioner of Central Excise, Customs and Service Tax-Valsad)

AARTI INDUSTRIES LTD **.....Appellant**
Plot No. 801/23, GIDC, Phase-iii, Vapi,
Valsad, Gujarat

VERSUS

C.C.E & S.T.-Valsad **.....Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi,
Gujarat-396191.

Appearance:
Shri Prasannan Namhoodri, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11361/2024

DATE OF HEARING: **07.03.2024**
DATE OF DECISION: **05.06.2024**

RAMESH NAIR

The brief facts of the case are that the appellant have installed boiler in the registered office and factory premises and the steam generated in the boiler is captively consumed and the excess quantity of the steam were supplied to two other nearby situated units / divisions of the appellant company namely Alchemie organics and Aarti Fertilizers. The appellant also availed CENVAT Credit in respect of input and input service in relation to overall manufacturing of inorganic and organic chemicals. The case of the department is that the appellant are availing CENVAT Credit on various inputs and also on various common input services, on removal of steam to their other unit which is exempted under Notification No. 45/2006-CE dated 01.03.2006 and Notification No. 12/2012-CE dated 17.03.2012. The part of the steam

generated is cleared to their two sister units M/s. Alchemie Organics and M/s. Arti Fertilizer having separate Central Excise registrations. The appellant are required to pay 10%/ 5%/6% of the value of steam cleared to their other two sister concerns in terms of Rule-6 (3)(i) CENVAT Credit Rule, 2004.

2. Shri Prasannan Namboodari learned Counsel appearing on behalf of the appellant at the outset submits that out of two division in one of the division i.e. Aarti fertilizer since the goods are exempted the appellant have calculated the proportionate credit attributed to the steam supplied to Aarti fertilizer and the same was reversed along with interest. Therefore, no demand in respect of removal of steam to Aarti Fertilizer will sustain. He further submits that as regards the steam cleared to Alchemie Organics, since the steam was used in the said unit for dutiable product and the unit belongs to the appellant themselves, it cannot be said that the steam will attract payment of 10%/5%/6% under Rule 6(3)(i). He submits that this issue is no longer res integra as the same has been settled in various judgment. He placed reliance on the following Judgments:-

- Maruti Suzuki Ltd. - 2009 (240) E.L.T. 641 (S.C)
- CCE versus BIOCON Ltd. - 2014 (309) E.L.T. 66 (Kar.)
- CCE versus Shree Cement Ltd. - 2018 (16) G.S.T.L. 196 (Raj.)
- CCE versus KLJ Plasticizers Limited - 2018 (364) E.L.T. 297 (Tri. - Ahmd.)
- Principal Commissioner, CGST & CE versus Hira Ferro Alloys Limited, Unit-II - Excise Appeal No. 53531 of 2018
- India Cements Limited versus CCE - 2024 (2) TMI 302 - Madras High Court
- Principal Commissioner of GST and Central Excise, Bhubaneswar versus Neelachal Ispat Nigam Ltd. - (2023) 3 Centax 262 (Ori.)
- Bilag Industries Private Limited versus CCE

- Andhra Sugars Ltd. versus Commissioner of Cus. & C. Ex., Guntur - 2007 (208) E.L.T. 221 (Tri. - Bang.)
- SRF Ltd. versus Commissioner of Central Excise, Chennai-I - 2005 (191) E.L.T. 887 (Tri. - Chennai)

3. Shri Rajesh K Agarwal, Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that as per the Rule 6 (3)(i) an Assesse is required to pay 10%/5%/6% only when the CENVAT Credit availed on input or input service is attributed to the exempted goods or exempted service. In the present case as regards Aarti Fertilizer where the steam generated by the appellant was used for manufacture of exempted fertilizer. Therefore, the appellant have admittedly reversed the proportionate credit and paid the interest for the delayed period of reversal. As regards the steam cleared to Alchemie Organics since this division engaged in manufacture of dutiable goods, it is the appellant's claim that payment under Rule 6(3)(i) is not required. the revenue's contention is that since both the units are outside the premises of the appellant and steam was cleared from one factory to other factory, the appellant is required to pay an amount under Rule 6(3)(i) of CENVAT Credit Rules. We find that both the units to whom the steam was cleared are belong to the same company i.e. Aarti industries limited. Therefore, first of all those are not sister concerns but part of parcels of the appellant company itself. The only criteria for paying an amount under Rule 6(3)(i) is that if the assessee use input or input service which are attributed to exempted goods they are required to pay such amount. In the present case, in case of Aarti fertilizer since the appellant have manufactured exempted goods, they have admittedly reversed the Credit along with interest. Thereafter, the demand of 10%/5%/6% shall not sustain as held in various Judgments which are as follows:-

a. Greaves Ltd. - 2007 (211)ELT 123 (CESTAT).

b. Ruchi Infrastructure - 2008 (224) ELT 123(CESTAT)

c. Bargarh Cement Works - 2007 (217) E.L.T. 158 (Tri. - Kolkata).

d. K.G. Denim Ltd - 2005 (189) ELT 424 (Tri).

e. CCE & C vs. Rituraj Holdings Pvt Ltd - 2014 (305) E.L.T. 459 (Guj.).

f. Chandrapur Magnet Wires Pvt. Ltd - 1996 (81) E.L.T. 3 (S.C.).

As regard the steam cleared to Alchemie organics the goods manufactured by the appellant's said own unit are dutiable. Therefore, in such case demand under Rule 6(3)(i) cannot be made. As regard the contention of the revenue that since all the 3 units have different registrations, removal of steam from their unit to their other unit is cleared outside the factory, therefore, the appellant is liable to pay under Rule 6(3)(i), this issue was also considered in various Judgments by various Courts and Tribunals which are as follows :-

- Commissioner of central excise & service tax, banglore v/s. Biocon ltd. 2014 (309) E.L.T. 66 (Kar.)

  "From the aforesaid decision, it is clear that the definition of 'input' brings within its fold the inputs used for generation of electricity or steam, provided such electricity or Steam is used within the factory of production for manufacture of final products or for any other purpose. Therefore, it follows the term "within the factory of production cannot be confined to a single unit. In view of the definition of factory in the act which means more than one premises, it has to be construed as the factory owned by the assessee if the assessee owns more than one unit, all the units if they are situated at a place would constitute "a factory If the electricity or steam generated within the factory of production means within the factory premises which may include more than one unit. If such electricity or steam generated within the factory of production is utilized by the assessee in more than one unit and if those units are manufacturing excisable goods, then, the assessee would be entitled to the benefit of CENVAT credit to the entire extent of utilization of such electricity or steam in all the units of its factory premises. Therefore, whatever goes into generation of electricity or steam which is placed within the factory

which may consists of more than one unit would be an input for the purposes of obtaining credit on the duty payable thereon."

- CCE V/S. SHREE CEMENT LTD. -2018 (16) GSTL 196 (RAJ.)

  "13. While considering the matter, by a detailed judgment of the Supreme Court in case of Maruti Suzuki India Limited (supra) came to the conclusion that if the product namely electricity sold to third party or even sister concern, then it will not be entitled to Cenvat credit

  14. On the contrary, the AO observed as under

  That in this connection, as far as the present case is concerned, it is submitted that is transferring power to its own units without there being any sale In such a situation no denial of credit can be made in the case This is because of certain observations made in the order itself, which are as under-

  (a) Applying the said test, we hold that when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input' used in that electricity generation is an "input used in the manufacture of final product

  This observation makes it clear that in the case where there is an arrangement for captive generation of electricity, it has to be treated as a requirement for carrying out manufacturing process and therefore credit would be admissible. Therefore, the key expression is captive arrangement. Captive arrangement means arrangement made by the company for its own use and not for use by others. Therefore, when one company has various different units located at different geographical locations all the units are manufacturing units, and the electricity generated in one unit is being consumed in the other unit of the same company in addition to it being consumed in the same unit also, it can be safely concluded that it is a case of captive generation and captive consumption of such electricity. In such a situation, the case would satisfy the test "electricity generation is a captive arrangement"

  15. In our considered opinion, therefore, Marutis judgment will not apply in the present case and the decision which is taken by the Tribunal that the captive power plant of the sister concern, the same is against the fuel and fuel is used for the sister concern which is a part of the company itself. In that view of the matter, we are of the considered opinion that the view taken by the Tribunal is just and proper."

- CCE V/s. KLJ Plasticizers Limited- 2018 (364) ELT 297 (Tri.- Ahmd.)

"The Revenue is in appeal against the impugned order.

2. The brief facts of the case are that the respondent is having two units. One unit was having manufacturing unit and in the other unit boiler was installed. For the boiler, the appellant receiving coal and availing Cenvat credit. The coal was sent to other unit of the respondent where the boiler was located for generating steam, which is used by the respondent only through pipeline. The case of Revenue is that, as the boiler unit and the manufacturing unit are two separate units having two separate registrations, therefore, inputs received in the boiler unit are not entitled for Cenvat credit to the respondent. In these set of facts, the proceedings were initiated, after appreciating the facts of the case, the Ld. Commissioner (Appeals) allowed the Cenvat credit to the respondent holding that as the coal has been received by the respondent in the other unit for generation of steam where the boiler was located for generation of steam which was ultimately used by the respondent through pipeline. Against the said order, Revenue has filed the present appeal on the ground that the issue has been settled by the decision of Hon'ble Gujarat High Court in the case of Sintex Industries Limited v. CCE-2013 (287) E.L.T. 261 (Gul.).

3. Heard the Ld. AR and considered the submissions. On perusal of the records, I find that the facts in the case of Sintex Industries Limited (supra) are altogether different from the facts of the case in hand. In the case of Sintex Industries Limited (supra), the case of the Revenue was that there were two units located having a common boundary wall and DG Sets generating electricity, which partly used by the assessee and partly sold out to the other unit. The Hon'ble High Court held that electricity which has been used by the assessee, the assessee is entitled to avall Cenvat credit on the furnace oil used in the DG Sets for generation of electricity and part of the electricity which has been weeded out, on that part, the assessee is not entitled to avail Cenvat credit of furnace oil.

Admittedly in this case, the whole of the coal which has been used for boiler for generation of steam and such generated steam has been used by the respondent 100% through pipelines. In that circumstances, the facts in the case of Sintex Industries Limited (supra) are not relevant to the facts of this case.

4. In view of the above observations, I do not find any merits in the Revenue's appeal and the same is dismissed by upholding the impugned order."

- Principal Commissioner, CGST & CE Versus Hira Ferro Alloys Limited, Unit-II - Excise Appeal No. 53531 of 2018

"2. The respondent is engaged in manufacture of Ferro Alloys falling under Chapter 72 of the Central Excise Tariff. It also has another unit in the same area and both units have separate central excise registrations and both are maintaining separate statutory records. The appellant's records were audited by the Department for the period December 2011 to March 2016 and several points were raised by the audit. The only one which remains to be decided is regarding the Cenvat credit on the inputs /input services used by it for providing of electricity part of which it supplied its sister unit. According to the Revenue, the respondent is entitled to Cenvat credit on the inputs and input services used in manufacture of its final product but not the inputs and input services which go into production of electricity which it supplied to its sister unit. The appellant had sold part of the electricity to the Chattisgarh State Power Distribution Company Limited and had to that extent reversed the Cenvat credit on the inputs and input services. However, the appellant had not reversed Cenvat credit to the extent it had supplied the power to its own sister unit which has a separate central excise registration."

10. We have considered the arguments on both sides and perused the records.

11. We find that the case of the Revenue is that as per CCR, CENVAT credit can only be allowed on the duty paid on inputs and service tax paid on input services. The definitions of 'inputs' in Rule 2 (k) of CCR is as follows:

(k) -input means

(1) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam or pumping of water for captive use; or

(iv) all goods used for providing any (output service, or,

(v) all capital goods which have a value upto ten thousand rupees per piece.

12. The case of the appellant Revenue is that since part of the electricity is transferred to sister unit, the inputs used in generating it to that extent is an input for the sister unit as it is relatable to the goods manufactured by it and they are not inputs relatable to the final products of this respondent. Each unit is separately registered and is a separate assessee as far as central excise is concerned. To the extent the electricity is sold to outsiders, the respondent has reversed the CENVAT credit. We find that on identical issue, High Court of Rajasthan had, in Shree Cements Ltd., allowed CENVAT credit on the inputs used in production of electricity which is supplied free of cost to the assessee's sister unit. A bench of this Tribunal has also taken similar view in Sanghi Industries, Bilag Industries, and Hindustan Zinc Ltd. We find no reason to take a different view in this case. Accordingly, we hold that the respondent is entitled to CENVAT credit to the extent the inputs are used for production of electricity which is transferred free of cost to its sister unit.

13. Accordingly, the appeal filed by the Revenue is rejected and the impugned order is upheld. The Miscellaneous application also stands disposed of."

- India Cements Limited versus CCE - 2024 (2) TMI 302 - Madras High Court

"20. CENVAT credit was claimed on the purchase of naphtha for generation of electricity in gas turbines. There was a common distribution port for the electricity generated in all three turbines as well as the diesel generator set. To be noted, no CENVAT credit was claimed in respect of the diesel used as fuel.

21. From the common generation point some portion of the electricity was consumed captively and some was wheeled to its joint ventures. vendors etc. The assessee had contested the denial of CENVAT credit on the electricity wheeled to its joint ventures and vendors.

22. The revenue had argued that it is only in the case of inputs used in, or in relation to manufacturing of final products, that CENVAT credit was admissible. The input in that case had been used for production of electricity which was not excisable. The argument was

that the Rule covers all inputs as long as they were used in or in manufacturing of final products directly or indirectly.

23. Additionally, they argued that all the inputs mentioned therein had to be used only within the factory or production. That is the point upon which the present appeals revolve. In the interests of clarity, we reiterate that the respondents have not in the matters before us, at any point in time, argued or pursued the stand that electricity is not an 'input' perse, that is not entitled to the grant of CENVAT credit

24. The stand is restricted to the availment of credit by the principal unit only that is located proximate to the location of the CPP.

25. Paragraphs 19 and 20 of the judgment read as follows:-

"19. The question which still remains to be answered is: whether an assessee would be entitled to claim CENVAT credit in cases where & sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution? in the case of Collector of Central Excise v. Rajasthan State Chemical Works reported in 1991 (55) ELT 444 (SC) the test laid down by this Court is whether the process and the use are integrally connected. As stated above, electricity generation is more of a process having its own economics. Applying the sad test, we hold that when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input" used in that electricity generation is an "npur used in the manufacture of final product. However, to the extent the excess electricity is cleared to the grid for distribution or to the join ventures, vendors, and that too for a price (sale) the "process and the use test fails. In such a case, the nexus between the process and the use gets disconnected. In such a case, it cannot be said that electricity generated is "used in or in relation to the manufacture of final product, within the factory". Therefore, to the extent of the clearance of excess electricity outside the factory to the joint ventures vendors grid etc. would not be admissible for CENVAT credit as such wheeled out electricity, cleared for a price, would not fall within the definition of "input" in Rule 2(g) of the CENVAT Credit Rules, 2002. This view is also expressed in para 9 of the judgment of this Court in the case of Collector of

Central Excise v. Solaris Chemtech Limited-(2007) 214 ELT 481 (SC). Further, our view is supported by the observations of this Court in the case of Vikram Cement v. Commnr. Of Central Excise, Indore 2006 (194) ELT 3 (SC) which is quoted below

“It appears to us on a plain reading of the clause that the phrase "within the factory of production" means only such generation of electricity or steam which is used within the factory would qualify as an immediate product. The utilization of inputs in the generation of steam or electricity not being qualified by the phrase "within the factory of production" could be outside the factory. Therefore, whatever goes into generation of electricity or steam which is used within the factory would be an input for the purposes of obtaining credit on the duty payable thereon."

20. To sum up, we hold that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of production for manufacture of final products or for any other purpose. The important poet to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to fime in favour of its joint ventures, vendors etc. for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to CENVAT credit. In short, assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which a sold at a price."

26. While the appellant would argue that judgment in Maruti Suzuki Ltd. (supra) did not involve the question that anses in this case, the respondents would maintain that it was on point. They specifically draw attention to the paragraphs set out above to support their argument that the final product must be consumed in the original location where input had been consumed.

27. The narration of facts as captured in paragraphs 1 and 7 of the judgment in Maruti Suzuki is to the effect that the supply of electricity in that case was to sister concems,

vendors and third parties, and at cost. Thus, the Court was concerned with the factual scenario where the power was sold to other units and whether, in such circumstances, such sale would qualify for the claim of CENVAT credit.

28. In the present case, the electricity has not been sold but has been supplied though wheeling by TANGEDCO to sister units located elsewhere. All units are engaged in manufacture/grinding of cement and form part of the same group of companies. They admittedly hold separate licenses for manufacture and are independent assessees. In our considered view, the facts that the power in this case has not been sold for consideration and has only been shared with the sister units will be a relevant consideration.

29. That apart, the judgment relates to an interpretation of the term 'input' in regard to production during the period July 2002 and December 2002. The definition of input taken into account was with reference to the definition that was applicable then and with reference to transactiona at the relevant point time. However, the definition of input stood substituted w.e.f. 01.04.2011 vide Notification 3/2011-C.E.(N.T), dated 01.03.2011 with effect from 01.04.2011, reading thus:-

"(k)" input" means

(i) all goods used in the factory by the manufacturer of the final product: or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products: or

(iii) all goods used for generation of electricity or steam for captive use, or

(iv) all goods used for providing any output service,"

30. Upon a comparison of 2002 and 2004, Rules one would see that under the 2002 Rules, the mandate was categoric that an input must be consumed 'within the factory or production". Under the substituted Rules however, inputs have been categorized into four categories

(i) goods used in the factory' by the manufacturer of the final product

(ii) all goods including accessories cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products

(iii) all goods used for generation of electricity or steam for captive use and

(iv) all goods used for providing any output service.

31. Clauses (1) and (iv) are not relevant for the purposes of this order. Importantly, a distinction has been envisaged between the goods used in the factory' by the 'manufacturer of the final product and the goods used for 'generation of power. While the former insists that the goods must be used in the factory, there is no stipulation of place as regards the goods in clause (i). Therefore, we find merit in the position that electincitly captively generated is an input, wherever used by the assessee concemed. The use of the term 'captive' is, in our view a qualification of the location where it is generated and not of the location where it is used.

32. In the present appeals, the period in question is September 2012 to May 2013 to which the substituted definition of input would apply. There is a substantial cost in the setting up of a CPP. Perhaps the object of the substitution is itself that such expenditure must go to benefit the company as a whole, including the sister concerns to which supply is made.

33. There is no dispute on facts in relation to the power supplied gratis to the sister units. Thus the admitted facts that commend themselves to us are that

(i) the captive power plant has been set up at substantial cost by the appellant at one of the company locations.

(ii) the electricity generated has been used as input only within the Appellant group of companies though at different locations.

(iii) the consumption is in pari matenia with the power generation and there is no inflated claim.

(v) the electricity generated has been wheeled through the grid and thus the process of supply to each of the sister units is transparent and in accordance with the terms of, and procedure under the Wheeling agreement entered into with TANGEDCO

(v) being related parties and units of one company, it is possible for there to be a check on the methodology adopted by the parties for the transfer of the input, the utilization of the "input itself and all other relevant determinants by the department.

34. On a careful consideration of the parameters as above, we are of the view that the appellant must succeed on the specific fact pattern as arising in this appeals. These appeals are allowed in terms of this order. Miscellaneous petitions are closed. In the circumstances there shall be no order as to costs."

- Principal Commissioner Of GST and Central Excise, Bhubaneswar versus Neelachal Ispat Nigam Ltd. (2023) 3 Centax 262 (Ori.) –

"16. The above submissions have been considered. To begin with, the Court would like to refer to the definition of "Factory" under Section 2(e) of the CE Act which reads as under:

"Factory means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on."

17. This has to be read together with the relevant portion of the CBEC's Manual of Supplementary Instructions dated 1st September, 2001, which reads thus:

"Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

(a) Interlinked process- product manufactured/produced in one premise are substantially in other premises for manufacture of final products.

(b) Large number of raw materials is common and received/proposed to be received commonly for both/all the premises.

(c) Common electric supplies.

(d) There is common labour/work force.

(e) Common administration/works management.

Common Sales Tax registration and assessment.

(g) Common Income-tax assessment.

(h) Any other factor as may be indicative of inter linkage of the manufacturing process."

18. The above definition does not preclude the possibility of there being two or more premises which can be "segregated by public road, canal or railway line." How the two premises are to be considered to be part of the same factory by the Commissioner of the Central Excise has been set out in the above instructions of the CBEC. It only shows that as long as the two portions are integrally connected and inter-linked with the manufacturing process of excisable goods, it can be considered to be part of the same factory premises. In other words, merely because the Coke Oven Plant and the CPP may have been in two separate locations would not result in there being considered to be not part of the same factory premises.

19. An important factor which has to be taken note of in this context is that an agreement was executed between the Government of Odisha and KMCL on 28th June, 2000 where under a land to an extent of 249.45 acres on which both the Coke Oven Plant as well as the CPP Plant were located had subsequently been transferred to KMCL

20. As regards the selling of 75% of the power to NINL, there is indeed no restriction under the CENVAT Scheme that after captive use of power, the surplus power cannot be sold to any other party. The only restriction is that the capital goods are not to be exclusively used for manufacture of 'exempted products'. It is nobody's case that the final manufactured products of KMCL or that of NINL are 'exempted products'. In this context, it should be noticed that power/electricity' is not a final product. It is generated in the CPP of KMCL and is used in the manufacture of excisable goods in the Coke Oven Plant.

21. In Commissioner of Central Goods & S.T., Jaipur v. Shree Cement Ltd. 2018 (16) GS.T.L. 196 (Raj), a similar question arose. There, one factory manufactured duplex board and the

other paper. They were separately registered with the Central Excise Department. The question that arose was whether the excess electricity cleared by the Assessee in favour of its sister concern units would make it ineligible for CENVAT Credit. The Court answered the question in the negative. It was held that electricity generated by the CPP was being used for the sister concern which was part of the company itself and, therefore, would still constitute captive consumption of electricity. In other words, the Assessee was held to be eligible for the CENVAT Credit.

22. The question to be asked is only this: whether the power generated in the CPP of KMCL is used in the manufacture of the excisable goods by KMCL? If the answer to that question is in the affirmative, the mere fact that the surplus power may have been sold to NINL would not disentitle KMCL to the benefit of CENVAT Credit on capital goods. In that view of the matter, the questions framed by this Court are answered as under:

(Question No. (1) is answered in the affirmative, ie, in favour of the Respondent and against the Appellant. a final product and,

(i) Question No. (ii) is answered by holding that the power generated in the CPP is not therefore, this question does not arise in the facts and circumstances of the case. In other words, with the electricity generated in the CPP being used in the manufacture of the final excisable product of KMCL, CENVAT Credit would be available to KMCL.

(ii). Question Nos.(iii) and (iv) are answered in favour of the Respondent and against the Appellant by holding that the Coke Oven Plant and the CPP have factually been shown to be part of the same factory premises and CENVAT Credit can be allowed in the facts and circumstances of the case.

23. For the aforementioned reasons, the appeal is dismissed, but in the circumstances, with no order as to costs."

From the above judgments it can be seen that the input or input service used for generation of electricity which were in turn used by more than 1 unit of the same assesse the CENVAT Credit was allowed. The ratio of the above

Judgments is directly applicable on the issue and facts of the present case. Accordingly, we are of the view that except the CENVAT Credit reversed by the appellant attributed to the steam cleared to their own unit i.e. Aarti fertilizer, the remaining amount, interest and penalty are not sustainable and the same are set aside.

5. The impugned order stands modified to the above extent. The appeal is allowed in the above terms.

(Pronounced in the open court on **05.06.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

AD