CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 13143 of 2018

[Arising out of Order-in-Original/Appeal No OIA-KCH-EXCUS-000-APP-130-131-2018-19 dated 11.09.2018 passed by Commissioner (Appeals) Kutchch, Gandhidham]

Man Industries India Limited .... **Appellant**

485/2, 503/1 & 492,anjar Mundra Highway, Village-Khedoi, Anjar, KUTCH, GUJARAT

VERSUS

Commissioner of CE & ST, Kutch (Gandhidham) .... **Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan Plot No. 82, Sector 8,
Gandhidham(Kutch)

WITH

EXCISE Appeal No. 13153 of 2018

[Arising out of Order-in-Original/Appeal No OIA-KCH-EXCUS-000-APP-130-131-2018-19 dated 14.09.2018 passed by Commissioner (Appeals) Kutchch, Gandhidham]

Man Industries India Limited .... **Appellant**

485/2, 503/1 & 492,anjar Mundra Highway, Village-Khedoi, Anjar, KUTCH, GUJARAT

VERSUS

Commissioner of CE & ST, Kutch (Gandhidham) .... **Respondent**
Central Excise & Service Tax Commissionerate,
Centeral Excise Bhavan Plot No. 82, Sector 8,
Gandhidham(Kutch)

APPEARANCE :

Shri Ankur Upadhyay, advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11109-11110 / 2020

DATE OF HEARING : 14.02.2020
DATE OF DECISION : 05.06.2020

RAJU :

These appeals have been filed by M/s. Man Industries against denial of Cenvat credit.

2. Learned Counsel for the appellant argued that the Cenvat credit has been denied to them in respect of service tax paid on management,

maintenance and repairs and rental charges of warehouse (dumpsite). He argued that the said warehouse is a place of removal and therefore, in terms of rule 2 (l) (ii) of Cenvat Credit Rules, 2004 and they are entitled to Cenvat credit on the same. He relied on the following decisions and the Board Circular:-

(a) Barmalt (India) Pvt. Limited vs. CCE, Delhi – 2015 (38) STR 882 (Tri. Del.)

(b) Lifelong Meditech Limited vs. CCE, Gurgaon – 2016 (44) STR 626 (Tri. Chennai)

(c) Orient bell Limited vs. CCE, Noida – 2017 (52) STR 56 (Tri. All.)

(d) Circular No. 988/12/2014-CX dated 20.10.2014 and Circular No. 999/6/2015-CE dated 28.02.2015.

These credit have been availed as a service provider and transferred to the manufacturing unit in capacity of ISD. Learned Counsel pointed out that Anjar unit is both, a manufacturing unit and a service provider. In these circumstances, Cenvat credit account is common and the credit cannot be denied.

3. Learned Authorised Representative relies on the impugned order. He pointed out that in the order-in-original it has been categorically held that the goods are cleared from the factory on payment of duty and therefore, factory gate is the place of removal. He argued that any place where duty paid goods are stored, cannot be the place of removal.

4. I have considered the rival submissions. I find that Rule 2(l)(ii) of Cenvat Credit Rules, 2004 reads as follows:-

> "(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,"

5. The appellant would be entitled to Cenvat credit of service tax utilized upto the place of removal. Therefore, the issue to be ascertained is that the warehouse in the instant case is place of removal or otherwise.

It is seen that the goods are cleared on payment of duty from the factory gate and thereafter the goods are deposited in the warehouse/ dumpsite. The goods are lifted by the buyers as and when required by the buyers from the dumpsite. The order-in-original also asserts that the consideration received for providing this service did not form part of assessable value of the goods i.e. pipes. This assertion made in the order-in-original has not been refuted in the grounds of appeal. In Para 7(ii), it has been asserted that the appellant have recovered charges from the buyers for warehousing along with service tax payable on the said charges, under the category of Business Auxiliary Service. The said charges are not included in the assessable value of pipes for the purpose of payment of Central Excise duty. It has been argued that the appellant are not only a manufacturer but also provider of services and therefore, limitation of availment of credit up to the place of removal does not apply to them so far as their activity relating to service tax are concerned.

6. From the above, it is apparent that the appellant are not only manufacturer but are also service provider. They are also one legal entity. Appellant are paying service tax due as service charges collected by them from their buyers. In these circumstances, the Cenvat credit of service tax paid on rental charges of warehouse cannot be denied as the same is admissible in respect of service provided by them to their buyers. The

transfer of credit from the ISD registration to the manufacturing unit or service provider is immaterial as they are a single entity.

In view of the above, I do not find any merit in the impugned order and the same is set-aside.

(Pronounced in the open court on 05.06.2020*)*

(Raju)
Member (Technical)

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