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

REGIONAL BENCH - COURT NO. 3

Excise Appeal No.12493 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-119-2019-20 dated 11/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Power Build Pvt Ltd **........Appellant**
Anand Sojitra Road, V.V. Nagar
ANAND, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

WITH

Excise Appeal No.12983 of 2019

(Arising out of OIA-VAD-EXCUS-001-APP-119-2019-20 dated 11/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Power Build Pvt Ltd **........Appellant**
Anand Sojitra Road, V.V. Nagar
ANAND, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-I **.......Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:
Shri Mrugesh Pandya, Advocate for the Appellant
Shri Sharad Airan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 11292-11293 /2020

DATE OF HEARING: 05.11.2020
DATE OF DECISION: 05.11.2020

RAJU

These appeals have been filed by the appellant against the denial of Cenvat credit on the services used for the Repair and Maintenance Service, etc of wind mills located far away from the factory.

2. Learned Counsel for the appellant argued that the issue is squarely covered by the decision of Tribunal in their own case reported by the Order No A/ 13251-13254/2017 dated 16.10.2017.

3. Learned (AR) pointed out that since passing of this order Cenvat Credit Rule have been amended and following the provision have been inserted.

> (i)Vide Notification No. 6/2015-CE(NT) dated 01.03.2015, the below mentioned explanation was inserted under Rule 6(1) of the CENVAT Credit Rules,2004 viz.
> Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) or rule 2 shall include non-excisable goods cleared for a consideration from the factory.
> (ii)clauses (d) & (h) of Rule 2 of the CCR 04, state as follows:
> (d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;
> (h) "final products" means excisable goods manufactured or produced from input, or using input service;

4. Learned (AR) argued that in these circumstances, since the law itself has changed the earlier decision in the appellant’s case cannot be followed.

5. Learned Counsel for the appellant at this point vehemently asserted that they have never sold any electricity generated from the wind mill to anybody and , therefore, they are not hit by the mischief Rule, 6(1) of Cenvat Credit Rule,2004.

6. Considering the submission made by the Revenue I find that the explanation inserted to Notification No. 6/2015- CE (NT) dated 01.03.2015 come in to play if the appellant sold the electricity generated the appellant’s counsel has confirmed that they never sold electricity generated from the wind mill. In this circumstance the facts of the case do not change and the order in the appellant’s own case becomes the valid precedent.

7. Relying on the order of the Tribunal for the appellant’s own case in the identical circumstances the impugned order is set aside and appeals are allowed.

(RAJU)
MEMBER (TECHNICAL)

Prachi