

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

REGIONAL BENCH- COURT NO.3
Excise Appeal No.10416 of 2019
Excise Misc. Application (EH) No. 10282 of 2021

(Arising out of OIA-RAJ-EXCUS-000-APP-023-2018-19 dated 18/04/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Bhavani Industries
Ganjiwada, Bhavnagar Road,
Rajkot, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Rajkot
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat
360001

.....Respondent

APPEARANCE:

Sh. Rahul Gajera (Adv.) for the Appellant
Sh. Rajesh P Parekh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL Order No. A/ 12367 /2021

DATE OF HEARING: 21.09.2021
DATE OF DECISION: 21.09.2021

RAMESH NAIR

Shri. Rahul Gajera, Learned counsel appearing on behalf of appellant submits that the issue involved is the Cenvat Credit in respect of Product Liability and Product recall insurance policy. He submits that this is a periodical case, in the earlier period this tribunal has already decided the matter in favor of the appellant in the case reported as M/s. Bhavani Industries V/s. C.C.E. & S.T. Rajkot 2018 (10) TMI 626 CESTAT AHMEDABAD.

02. Shri. Rajesh. P. Parekh, Learned Authorized Representative (AR) appearing for the revenue reiterates the finding of the impugned order.

03. I have carefully considered the submissions made by both the sides and perused the records. I find that the issue that whether the appellant is entitle for the Cenvat Credit in respect of product liability and product recall insurance policy has already been decided by this tribunal, in the case cited (Supra) wherein, the tribunal has passed the following order:-

This issued involved in the present case is that whether the appellant eligible is for Cenvat credit in respect of Service Tax paid on Insurance services of "Product Liability & product Recall Insurance Policy". The policies is in respect of goods manufacture and sold by appellant. The adjudicating authority denied the Cenvat Credit on the ground that the Insurance is for post removal activities, therefore, on such Insurance Policies credit is not admissible. The Ld. Commissioner (Appeals) upheld the disallowance of the credit ordered by the adjudicating authority, therefore the present appeal.

2. Shri. Rahul Gajera, Ld. Counsel appearing on behalf of the appellant submits that the Insurance for product recall is determined before supply of the goods, as this is one of the condition of the sale of the goods, therefore, it cannot be called as a post removal activity. He submits in the identical case of the other assessee M/s Orbit Bearing India Pvt.Ltd vide order No. Raj/EXCuS/000/APP/208/16/17 dated 28.03.2017 the authority allowed the credit in respect of Product Recall Insurance Policy. As per the submission of the Ld. Counsel, Revenue has accepted the order. He submits that the Ld. Commissioner (Appeals) has mentioned in the order that this order is not binding on him. He also placed reliance on the following judgment.

- *ROTORK CONTROL (INDIA) PVT.LTD. Vs. COMM. OF C. EX., CHENNAI-2010 STR 684 (Tri. Chennai)*
- *HARSHA ENGINEERS LTD Vs. COMMISSIONER OF C.EX., AHMEDABAD-2012 (27) STR 164 (Tri. Ahmd.)*
- *COMMISSIONER OF C. EX., TIRUNELVELI Vs. india cements ltd. - 2014 (313) ELT 714 (Tri.- Chennai).*

3. Shri. Amit Kumar Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records. I find that the issue lie in narrow compass that whether the appellant is eligible to Cenvat Credit in respect of Service Tax paid by Product Recall Insurance Policy. As per the facts of the case the Product Recall Insurance Policy is taken by the appellant, as per condition of sale of the goods, without the said condition the goods cannot be sold to customer, the Product Recall Policy is pre-decided before supply of the goods. Therefore, it cannot be said that the Product Recall Policy Expenses is a post removal expenses, once it is pre-determined the goods can be supplied only after the Product Recall Policy is taken then it becomes part of cost of the final product, during the manufacturing of the same. I also perused the order of the Commissioner (Appeals) in case of different assessee case i.e in Orbit Bearing India Pvt. Ltd (Supra). The Commissioner (Appeals) after detailed finding by interpreting the definition of the inputs service came to the conclusion that credit cannot be denied in respect of Product Recall Policy. The Ld. Commissioner (Appeals), in the impugned order though referred this order but discarded the same on the ground that it is not binding on him, without appreciating the views on merit taken.

5. In my considered view, unless until there is serious infirmity in order of the Commissioner (Appeals), in order to follows the principle of judicial discipline, the Ld. Commissioner (Appeals) should have given regard to that order of the other Commissioner (Appeals) who gone through the definition of the inputs service prevailing wherein the inclusive Clause of the services mentioned is 'security'. In the present case the Product Recall Policy expenses is born for the purpose of security of the goods. Therefore, for his reason also the service falls under the definition of input services.

6. As per my above discussion, I am of the considered view that the Service Tax paid in respect of product recall policy for sale of the finished goods is eligible for Cenvat Credit. Hence, impugned orders are set aside. The appeals are allowed.

In view of the above order which was passed in respect of the same appellant for the earlier period, the issue is no longer *res-integra*.

04. Accordingly, following the above decision of tribunal the impugned order is not sustainable and the same is set aside. Appeal is allowed.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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