

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench AHMEDABAD

COURT NO. I

Appeal No. E/10819/2016-SM

[Arising out of Order-in-Appeal No. OIA-VAD-EXCUS-001-APP-439-440-2015-16 dated 08.01.2016 passed by Commissioner (Appeal) of Central Excise & ST, Vadodara]

M/s. Admark Polycoats Pvt. Limited : **Appellant**

vs.

Commissioner of Central Excise & ST, Vadodara : **Respondent**

Appearance:

Shri Shailesh Vyas, Advocate for the Appellant
Shri S.N. Gohil, Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing/ Decision : 14.12.2018

Final Order No. A/12934 / 2018

Per : Ramesh Nair

The brief facts of the case are that the appellant have paid service tax on reverse charge basis in respect of services received from the overseas, by utilizing their Cenvat credit and after making the payment of service tax, the same amount was taken as Cenvat credit in their Cenvat account. A common order-in-original was issued wherein the demand of service tax on reverse charge basis, was confirmed on the ground that the appellant was not supposed to utilize Cenvat credit for payment of service tax in respect of services received, on reverse charge basis. In the same order, since the

payment of service tax was held illegal, the Cenvat credit of the same amount was disputed and the same was denied. The appellant filed two appeals, one bearing No. ST/10820/2016-SM related to payment of service tax by utilizing the Cenvat account and the present appeal bearing No. E/10819/2016-SM. In the present appeal, the issue is of wrong availment of credit of service tax paid in respect of services received from overseas under reverse charge mechanism.

2. Shri Shailesh Vyas, Ld. Advocate appearing on behalf of the appellant submits that as regards the payment of service tax under reverse charge mechanism by utilizing Cenvat credit, the appellant's Appeal No. ST/10820/2016-SM has been allowed by this Tribunal vide final order No. A/13545/2017 dated 20.11.2017. He submits that the whole basis for denial of Cenvat credit was that wrong payment of service tax. As per this order dated 20.11.2017, the issue of payment of service tax by utilizing Cenvat credit has been decided in their favour, therefore, the Cenvat credit is admissible to them.

3. Shri S.N. Gohil, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order. He also placed reliance on the judgments in the case of *Alstom Projects India Limited vs. CCE, Coimbatore – 2008 (12) STR 23 (Tri. Chennai)* and *Arunachal Gounder*

Textile Mills Pvt. Limited vs. CCE & ST, Salem – 2016 (46) STR 171 (Tri. Chennai).

4. I have considered the submissions made by both the sides and perused the record. I find that in common order-in-original the demand of service tax was made on service received from abroad on reverse charge basis, on the ground that the appellant had wrongly paid service tax by utilizing Cenvat credit. Consequently, in the same order, for the said service tax paid by them, the demand was confirmed. I observed from the order of this Tribunal dated 20.11.2017 that the issue of wrong utilization of Cenvat credit for payment of service tax has been decided in favour of the appellant, which is reproduced below:-

“2. Heard both sides, considered the submissions. As the issue has already been settled by various judicial pronouncements wherein it has been held that for payment of service tax, Cenvat credit can be utilised in cash first and thereafter the assessee is entitled to avail Cenvat credit. The issue came up this Tribunal in the case of *Morarjee Textile Limited vs. CCE, Nagpur – 2015- TIOL-354-CESTAT-MUM* wherein this Tribunal observed as under:

*“6. I find that to determine eligibility to pay duty from the CENVAT Credit account, the Rules namely Rule 2(r), (2)(p) and 2(q) of Cenvat Credit Rules, 2004 need to be considered read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. Rule 2(1)(d)(iv) states that in relation to any taxable service provided from any country other than India and received by any person in India under Section 66A of the Act, the recipient of the service is liable to pay service tax. Rule 2 (p) states that the output service is a taxable service provided by the provider of taxable service. The provider of taxable service is defined under Rule 2(r) to include a person who is liable to pay service tax. The person liable for paying service tax has the meaning assigned to defined in Rule 2(1)(d) of the Service Tax Rules. In the present case the person liable to pay tax is the recipient. A harmonious reading of the above provisions of law indicate that the recipient of the service in this case is a provider and therefore the plea of the Revenue that the appellant is not a output service provider is not correct. The matter is well settled now in view of large number of judgments such as the cases of *Tata AIG Life Insurance Co. Ltd. (supra)* and *Kansara Modler Ltd. (supra)*.”*

Further, I take note of the fact that as per Notification No. 28/2012-CX (NT) dated 20.06.2012 which is effective from 01 July 2012 and the provisions came into existence for payment of service tax under reverse charge mechanism from Cenvat account to be utilised. As the period involved in this case is April 2Q08 to March 2009. Therefore, the amended provisions are not applicable in this case. In that

circumstances, the impugned order deserve no merits and the same is set-aside. In result, the appeal is allowed with consequential relief, to the appellant.

5. From the above order, it can be seen that the appeal was allowed holding that the utilization of Cenvat credit for payment of service tax is correct. If that be so, then the appellant has correctly made the payment of service tax and the same is available as Cenvat credit to them. Accordingly, the appellant is entitled for the Cenvat credit in respect of service tax paid on reverse charge basis. Therefore, the impugned order is modified and the appeal is allowed.

(Order dictated and pronounced in the open court)

Ramesh Nair
Member (Judicial)