

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. E/11091/2018-SM

(Arising out of OIA No. VAD-EXCUS-002-APP-586-2017-18 dated 06/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Vadodara-ii)

Ramdev Chemical Industries Ltd. - **Applicant**

Vs.

C.C.E. & S.T.- Vadodara-ii - **Respondent**

Represented by:

For the applicant : Shri Vinay Kansara, Advocate
For the respondent : Shri Amit Kumar Mishra, Asst. Commr. (AR)

CORAM:

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing/Decision: 28/12/2018

ORDER NO. **A/12996/2018**

Per: Raju

The issue involved in the present case is admissibility of Cenvat credit on the duty paid as a service recipient on manpower services recipient. The credit is denied on the ground that the appellant was not required to pay the Service Tax on reverse charge mechanism. Therefore, the credit taken is inadmissible.

2. The Ld. Counsel has brought to our notice the decision of Tribunal in the case of Gujarat Agrochemical issued vide order no. A/11815/2018 dated 24.08.2018 wherein similar circumstances, following has been observed:

" As regard the issue that the appellant was not liable to pay service tax, therefore credit is not admissible, I find that no proceeding was initiated against the service provider. If the contention of the Revenue is accepted then there is short payment on the part of the service provider and in such case, proceeding for demand of 50% service tax should have been initiated against the service provider. In any case, the total service tax paid by either

party i.e. by the service provider or service recipient is legally payable on the said service. The actual liability of service tax was discharged though 50% by service provider and 50% by the appellant. Therefore, on the service tax paid by the appellant credit is legally available and it cannot be said that amount paid by the appellant is not service tax and on this ground, credit cannot be denied. Moreover, by not initiating proceedings against the service provider, it has been accepted by the revenue that total service tax has been paid on the input service received by the appellant. Therefore, I do not see any reason to deny the Cenvat Credit of the service tax, which was legally paid and accepted by the Revenue.

Relying on the aforesaid decision in identical circumstances, the appeal is allowed.

(Dictated and pronounced in the open Court)

(Raju)
Member (Technical)

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