CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70684 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-35-21-22 dated 01.06.2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Simbhaoli Sugars Ltd., **.....Appellant**
(Simbhaoli District-Hapur U.P.-245207)

VERSUS

Pr. Commissioner of Central GST, Noida **....Respondent**
(C-56/42, Renu Tower Sector-62, Noida U.P.-201301)

APPEARANCE:

Shri S. C. Kamra, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70236/2024

DATE OF HEARING : 10 May, 2024
DATE OF DECISION : 10 May, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-001-APP-35-21-22 dated 01.06.2021 passed by learned Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the Appellant is a manufacturer of Sugar & Molasses falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. During the period from December, 2015 to June, 2017, it was observed that the Appellant had taken Cenvat credit of Rs.7,93,793/- which was paid by them on Civil Construction Work. The Department entertained a view that this Cenvat credit was not available to them and accordingly show cause notice[1] dated 23.10.2017 was issued proposing to disallow and recover the

[1] SCN

Cenvat credit availed by the Appellant. The Adjudicating Authority confirmed the demand as proposed in the SCN alongwith applicable interest and also imposed penalty of equal amount under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. On appeal before the first Appellate Authority, the learned Commissioner (Appeals) rejected the appeal by observing as under:-

> *"5.1 In this case, the issue revolves around the definition of Input Service, hence first of all I go through the definition of the Input Service, which is as below;*
>
> > *[(l) "input service" means any service, -*
> > *(i) used by a provider of [output service] for providing an output service; or*
> > *(ii) used by a 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,*
>
> *and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*
>
> *[but excludes], -*
>
> *[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –*
>
> *(a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
>
> *(b) laying of foundation or making of structures for support of capital goods,*

After going through the above definition of Input Service, it is obvious that service portion in the execution of a works contract and construction services used for construction or execution of works contract of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods do not fall within the purview of definition of "Input Services" in terms of Rule 2(1) (A) of the Cenvat Credit Rules, 2004. I also perused the copy of list of Cenvat Credit taken on Civil Construction work from December-2015 to June-2017, as provided by the appellant, and observed that in the last column of the list the appellant have shown Nature of Input used on which the Cenvat Credit has been taken. In the said column, the nature of Input Service has been described mainly as a Civil Construction work which has been excluded from the definition of Input Service. I also fail to understand how the Input Service credit taken on "Making of Poultry House Structure" and "Poultry House Roof repairs" is related to the services used in manufactured product of the appellant. Thus the credit taken by the appellant on Civil Construction Works is not available to them.

5.1 As regards the applicability of interest, the appellant contended that they did not utilize the credit as they were having substantial amount of credit and such credit is continuing with the appellant till now, on account of that no interest liability arises against them. I find the force in the contention of the appellant and refer the Rule 14 of Cenvat Credit Rules, 2004, which says that "Where the CENVAT credit has been taken wrongly but not utilized, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;" In the instant case, since the wrongly taken *credit has not been utilized as claimed by the appellant and the same has not been controverted by the adjudicating authority in his impugned order, hence the applicability of interest does not arise.*

5.2 As regards penalty, I find that the appellant had already made the reversal twice on the same issue and even then they again took the inadmissible Cenvat credit knowingly and willfully on the same services, on which they had made reversal. Therefore, they contravened the provisions of Rule 2(l)(A), 2 & 3 of CCR, 2004, and attracted penal clause under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944.

6. In the light of the above discussion, the impugned order is modified to the above extent and appeal filed by the appellant bearing No.304/CE/Noida/APPL/NOI/2020-21 dated 28.08.2020 is rejected in terms of above."

3. Being aggrieved the Appellant filed the appeal before this Tribunal.

4. Heard both sides and perused the appeal records.

5. I find that the Appellant had taken Cenvat credit on Civil Construction Work on account of maintenance & repairs work of the factory which was done for smooth running of the plant. I also find that the service tax was paid on repairs renovation/maintenance work in the factory and is covered by the Board's Circular No.943/4/2011-CX dated 29.04.2011 wherein at para 4 the issue and the clarification is there which is being reproduced:-

Sr. No.	**Issue**	**Clarification**
4.	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

6. In view of the above clarification by CBEC, I find that the Cenvat credit involved in the dispute is related to the service tax paid on services used for repairs and renovation of the factory and as such is eligible as Cenvat credit. I also find that the definition of input services as contained in Rule 2(l) specifically includes services used in relation to modernization, renovation or repairs of a factory. The said definition was amended w.e.f. 01.04.2011 wherein construction of the factory was excluded. As there is no exclusion in respect of the services relatable to renovation or repair, I find no reasons to hold that such services were not cenvatable.

7. In view of the above discussion, the impugned orders cannot be sustained are therefore set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS