

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
MISC APPLICATION No.ST/MISC/70338/2018
In APPEAL No.ST/71110/2018-ST[DB] &
ST/70907/2018-ST[DB]**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1886-17-18 dated 21/03/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

Commissioner, Central Tax, Noida

(In Appeal No.ST/71110/2018-EX[DB])

M/s Polyplex Corporation Ltd.

(In Appeal No.ST/70907/2018-CU[DB])

Vs.

M/s Polyplex Corporation Ltd.

Commissioner, Central Tax, Noida

...Appellants

...Respondents

Appearance:

Shri B.L. Narasimhan (Adv.) & Shri Hrishikesh Jha (Adv.) for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 27/12/2018

FINAL ORDER NO. **72937-72938 / 2018**

Per: Ashok Jindal

Both the sides have preferred appeals against the impugned order. The Revenue has also filed an application for stay of operation of the impugned order.

2. As the appeal filed by the assessee is listed today itself and Revenue is praying to stay the operation of the

impugned order, therefore, the appeals filed by both sides are taken up today itself for disposal.

3. The assessee is manufacturer of excisable goods and clearing their goods on payment of duty, therefore, assessee is availing cenvat credit on various input services availed by them. The dispute raised in both the appeals pertaining to only two of the such services

(a) Admissibility of Credit of Service Tax paid on Commission to Selling Agents.

(b) Admissibility of Credit of Service Tax paid on Air Travel Agency Service.

No other dispute has been raised by either of the side in their appeals, therefore, we are dealing these issues.

4. With regard to admissibility of cenvat credit of service tax paid on commission to selling agents. We find that the said issue has been considered by this Tribunal and held that the commission paid to selling agents is eligible to cenvat credit to manufacturer of goods, as the said services have been availed by the assessee for selling their goods as held by this Tribunal in the case of M/s

Samco Auto India Pvt. Ltd. V/s CCE & ST, Meerut-I vide Final Order No.71020/2017 dated 11/09/2017. Therefore, we hold that learned Commissioner (Appeals) has rightly allowed cenvat credit of service tax paid on commission to selling agents.

5. With regard to the admissibility of cenvat credit of service tax paid on Air Travel Agency Service, we find that the said issue had attained finality by the Tribunal in the case of Commissioner of Central Excise, Delhi-III V/s Mindarika Pvt. Ltd. reported at 2015 (39) S.T.R. 309 (Tri.-Del.) where this Tribunal has allowed cenvat credit as the said service has been availed by the assessee in the course of manufacture of their final product and without air travel, they are not able to manufacture the final goods. In that circumstances, we hold that assessee is entitled to avail cenvat credit on air travel services.

6. We have also seen in the impugned order, the learned Commissioner (Appeals) has disallowed cenvat credit on repairs of Vehicle and insurance of cars. The said part of the order is affirmed as not challenged.

7. In view of the above observation, no penalty is imposable on the assessee in the facts and circumstances of the case.

8. In result the appeal filed by Revenue is dismissed along with stay application and the appeal filed by the assessee is allowed.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

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