IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/57212/2013-EX[DB]

(Arising out of Order-in-Appeal No.294-CE/MRT-II/2012 dated 28.12.2012 passed by Commissioner(Appeals), Customs & Central Excise, Meerut-II.)

M/s. Polyplex Corporation Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Meerut-ii

RESPONDENT (S)

APPEARANCE

Shri Atul Gupta (Advocate) & Shri Ayush Agarwal (Advocate) for the Appellant (s)
Shri Shiv Pratap Singh (Dy.Commr.) (A.R.) for the Revenue

CORAM:

SHRI AJAY SHARMA, HON'BLE MEMBER(JUDICIAL)
SHRI SANJIV SRIVASTAVA, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 28.03.2019

FINAL ORDER NO.70682/2019

Per CORAM :

This appeal is directed against Order-in-Appeal No. 294-CE/MRT-II/2012 dated 28.12.2012 passed by Commissioner(Appeals), Customs & Central Excise, Meerut-II. By the said order Cenvat credit has been denied to the appellants on the ground that no proper documents as prescribed under Rule 9 of the Cenvat Credit Rules 2004 was produced.

In respect of issue of outward freights credit has been denied on the ground of admissibility etc..

2. We have heard Shri Atul Gupta, learned Advocate for the appellants and Shri Shiv Pratap Singh, learned Dy.Commissioner(A.R.) for the Revenue.

3. Arguing for the appellants learned Counsel submitted that credits have been denied to them in respect of three issues namely –

(i) In respect of GTA Services availed by them for inward transportation of the goods/inputs paid by them through their Cenvat account.

(ii) Input services of technical consultancy services received from abroad on which again they paid Service Tax in respect of the services though received on reverse charge basis.

(iii) In respect of Service Tax paid by them against GTA Services for outward transportation of goods.

4.1 The submission of the Counsel is that credit in respect of first two have been denied only on the ground that documents produced by them for taking the credit are not the prescribed documents for the purpose of Cenvat credit as per Rule 9 of Cenvat Credit Rules. He submitted that now this issue has been settled in their favour by various decisions.

a. *CCE, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.*
[2012 (280) ELT 463 (Tri.Del.)]
b. *K.M.Sugar Mills Ltd. v. Commissioner of Central Excise, Allahabad*
[2012 (26) S.T.R. 455 (Tri.-Del.)]

4.2 In respect of issue with regard technical consultancy services he further submitted that as per the decision of the Apex Court in the case of Indian National Shipowners Association v. Union of India [2009 (13) S.T.R. 235 (Bom.)] Hon'ble Bombay High Court has stated that the provisions of payment of Service Tax on reverse charge mechanism were not applicable till the amendment made on 19.04.2006 hence even looking from that point of view, the Service Tax paid by reversal of credit was an error and should not have been paid. However, since the credit has been availed of the same he would not be pressing that.

4.3 With regard to issue of outward transportation he submitted issue is covered by the decision of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd. [2018 (11) G.S.T.L. 3 (S.C.)].

4.4 Hence, he prayed that the order of Commissioner(Appeals) be set aside.

5. Arguing for the Revenue, learned A.R. reiterated the order of the Commissioner(Appeals) and emphasized that the documents against which appellants have claimed the credit are not the one that have been prescribed in terms of Rule 9 of the Cenvat Credit Rules since these documents are not the prescribed documents credit should not be allowed.

6. We have considered the submissions made in appeal and during the course of hearing. In respect of first two issues mentioned in para (i), the issue is vis-à-vis Rule 9 of the Cenvat Credit Rules, 2004, which is reproduced below for ease of reference:-

Rule 9. Documents and accounts.-

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a)an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document: **Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax Registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVATcredit;

(3)Omitted

. . .

7.1 From the plain reading of said Rule, it is prescribed that the invoice of the service provider is a prescribed document for the purpose of availing credit. It is not the case of the Revenue that the credit which has been claimed has been claimed without the strength of such an invoice. Neither in case of reverse charge it could be so. The payment of Service Tax on reverse charge could have been made only on the basis of the invoices issued by a service provider in case of service provided from outside and invoices issued by the said service provider abroad or in case of GTA services by the said GTA service provider. When these invoices were available for determination and payment of Service Tax on reverse charge basis, obviously these invoices are available with the appeals for claiming the credit also. The documents evidencing the payment of Service Tax in this case is the debit entry in the Cenvat Credit Account. These debit entries made in Cenvat Credit registers read along with invoices issued by the service provider would satisfy the requirements of Rule 9 of Cenvat Credit Rules.

7.2 The issue in this case also has been clarified by the CBEC vide Circular dated 23.08.2007 at para 8.1 (b), which is reproduced below:-

> *(b)* ***Issue*** *: whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?*
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> ***Comments :*** *As per Rule 3 of the Cenvat Rules, 2004, Cenvat credit of, inter alia, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer or excisable goods or a provider of taxable service.*

7.3 This is also crux of decisions referred to by the learned Counsel during the course of hearing. In our view that in respect of these documents, credit needs to be allowed.

8.1 In respect of outward transportation of goods during the relevant period of time, CBEC vide Circular No.97/8/2007-ST dated 23.08.2007 clarified as follows:-

> 8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in Cenvat Credit Rules. In terms of sub-rule (t) of Rule 2 of the said rules, if any words or expressions are used in the Cenvat Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the Cenvat Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that, -
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> "place of removal" means -
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> (i) a factory or any other place or premises of production or manufacture of the excisable goods;
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> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty;
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> (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;
>
> from where such goods are removed."
>
> It is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central

Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

8.3 A doubt has been raised regarding admissibility of Cenvat credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide Circular No. 59/8/2003-S.T., dated 20-6-2003 [2003 (155) E.L.T. T7], in the context of the Service Tax Credit Rules, 2002. However, in the Cenvat Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10-9-2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods.

8.4 Input service distributor is an office or premises of the manufacturer or taxable service provider which receives bills/invoices etc., of input services. The input service distributor can distribute the eligible credit to any unit of the manufacturer or any premises/office of taxable service provider.

8.2 Even Hon'ble Supreme Court in the case of Vasavadatta Cements Ltd. (supra) held with regard to admissibility of Cenvat credit.

8.3 Accordingly we hold that this credit is also admissible.

9. In result the appeal filed is allowed.

(Dictated and pronounced in the open Court.)

SD/	SD/
(SANJIV SRIVASTAVA)	(AJAY SHARMA)
MEMBER(TECHNICAL)	MEMBER (JUDICIAL)

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