CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/20590, 21129/2017-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-067-16-17 dt. 19/01/2017 & No. BEL-EXCUS-000-APP-SP-03-17-18 dt. 18/04/2017; passed by Commissioner of Central Excise (Appeals), Mysore]

Gujarat NRE Coke Ltd.
Road No.16, 1st Cross,
KIADB, Belur Industrial Area,
Dharwad – 580 011.

Appellant(s)

Versus

Commissioner of Central Excise(Appeals)
Mysore-570 011.

Respondent(s)

Appearance:

None — For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

Date of Hearing: 04/01/2018
Date of Decision: …………………

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. / 2018

Per : S.S GARG

The appellant has filed these two appeals against the impugned orders dt. 19/01/2017 and 18/04/2017 whereby the Commissioner(Appeals) has rejected the appeal of the appellant. Since the issue involved in both the appeals is common, they are being disposed of by this common order.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of MET Coke of various grades falling under Chapter 27 of CETA, 1985. The appellants are availing the credit of duty paid on inputs, capital goods and service tax on input services under the provisions of CENVAT Credit Rules, 2004. The appellants informed that they would be paying service tax on works contract service, manpower supply service, rent-a-cab service and GTA under reverse charge by utilizing the cenvat credit from December 2013 onwards. It appeared that the appellants are contravening the provisions of sub-rule (4) of Rule 3 of CENVAT Credit Rules, 2004, as the CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay the tax is the service recipient. The adjudicating authority held that Notification No.28/2012-C.Ex(NT) amended Rule 2(d) and Rule 3 to include the explanation wherein it is clarified that CENVAT credit cannot be used for payment of service tax where the person liable to pay tax is the service recipient and accordingly has disallowed the payment of service tax through CENVAT credit and order for recovery of the cenvat credit so utilized for payment of works contract service, manpower supply service, rent-a-cab service and GTA besides confirming interest and imposition of equivalent penalty. Aggrieved by the said order, appellant filed appeals before the Commissioner(Appeals) who rejected the same. Hence these appeals.

3. None appeared for the appellant. But the appellant vide his letter dt. 26/12/2017 has requested the Tribunal to decide the case on the basis of their written submissions.

4. I have heard the learned AR and also gone through the grounds of appeals and the impugned orders.

5. The appellant in the grounds of appeal has submitted that the impugned orders are not sustainable in law as the same are contrary to the facts and the law. It is further submitted that the CENVAT credit is available to service provider who are in turn liable to pay service tax and it could not be the intention of the legislature to make such a benefit unavailable to persons liable to pay service tax under the reverse charge mechanism. It has also been submitted in the grounds of appeals that the situation is revenue neutral and payment of utilization of CENVAT credit available with the appellant is the same as discharged the liability by cash and the whole issue is not of non-payment of service tax by them. They have also stated that they are facing financial crisis and therefore they were not even in a position to pay the service tax in cash and therefore they resorted to pay through CENVAT credit. They have also stated that they facing lot of litigations in various courts.

6. On the other hand, the learned AR defended the impugned orders and submitted that the learned Commissioner(Appeals) has passed recent order after considering various provisions of CENVAT Credit Rules,

2004. He further submitted that the appellants are liable to pay service tax in cash because CENVAT credit cannot be used for payment of services tax on works contract service, manpower supply service, rent-a-cab service and GTA etc. as service recipient and the same is in clear violation of Rule 3 of CENVAT Credit Rules, 2004. After considering the submissions of the learned AR and the material on record, I find no infirmity in the impugned orders. It is pertinent to reproduce the relevant finding of the Commissioner(Appeals), which is reproduced hereinbelow:-

> *6. … …. ….The short issue for determination is about the utilization of cenvat credit for payment of service tax on WCS, MRS and Rent-a-cab services by the appellant for the period from December 2013 to September 2014. As seen from the impugned order, the appellants are availing the benefit of cenvat credit scheme on inputs / input services and capital goods. The appellants have utilized so availed cenvat credit for payment of service tax on WCS, MRS and Rent-a-Cab services from December 2013 to September 2014. The appellants have putforth argument that reverse charge mechanism was introduced as administrative convenience, easier collection of service tax, legislature intention, etc. These facts appears to be correct, but the Act and Rules provided herein are for implementation and not to study the logic or feasibility of the legislature. Explanation to Rule 3 of Cenvat Credit Rules, 2004, incorporated with effect from 01.07.2012 clearly prohibits the usage of cenvat credit for payment of service tax in respect of services where the person liable to pay tax is the service recipient. The wordings used in the said explanation is 'CANNOT' and is in the nature of mandate and the usage of cenvat credit for payment of service tax on WCS, MRS etc. as service recipient, is clear violation of Rule 3 of Cenvat Credit Rules, 2004. As seen from the said explanation, there is no option or no scope for interpreting the usage of cenvat credit for the said services. The explanation is clearly worded and does not require any verbs to be added or deleted for understanding its implementation. The findings of the lower authority at para 16 to 20 of the impugned order is upheld in toto.*

7. In view of the well reasoned orders of the Commissioner(Appeals), I do not find any infirmity in the impugned orders and the same are upheld by dismissing the appeals of the appellant.

(Pronounced on …………………………..)

S.S GARG
JUDICIAL MEMBER

Raja...