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

Appeal(s) Involved:

E/21752/2018-SM

[Arising out of Order-in-Appeal No. 293/2018-CT dated 02/08/2018 passed by the Commissioner of Central Tax, North West Commissionerate, Bangalore]

Neo Foods Pvt. Ltd.
Plot No. 107, 108, 121 & 122, KIADB
Industrial Area, Antharasanahalli,
2nd Phase,
Tumkur
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax,
Bangalore North West
Commissionerate
2nd Floor, South Wing, BMTC Bus
Stand Complex
Shivaji Nagar
Bangalore – 560 051
Karnataka

Respondent(s)

Appearance:

Mr. Girish K, Cost Accountant
No.36, Chatura Homes 2nd Main,
Meenakshinagar Near Krishna Kalyana
Mantapa, Basaveshwaranagar,
Bangalore – 560 079
Karnataka

For the Appellant

Mr. Pakshirajan, Assistant
Commissioner (AR)

For the Respondent

Date of Hearing: 02/01/2019
Date of Decision: 02/01/2019

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

Final Order No. 20009 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 02.08.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original. Briefly the facts of the present case are that the appellant is a 100% EOU engaged in the manufacture and export of Gherkins and Processed Vegetables falling under Chapter 20 of the first schedule to the Central Excise Act, 1944. Appellant filed claim for refund of Rs. 30,52,077/- (Rupees Thirty Lakhs Fifty Two Thousand and Seventy Seven only) being the unutilized cenvat credit of service tax paid on various services used for export of goods during the quarter ending July to September 2016 in terms of Notification 27/2012 dated 18.06.2012 read with Rule 5 of Cenvat Credit Rules, 2004. The refund claim filed by the appellant has been partially disallowed by the adjudicating authority to the extent of Rs. 2,04,550/- (Rupees Two Lakhs Four Thousand Five Hundred and Fifty only) vide Order-in-Original dated 28.11.2017. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the appeal. Aggrieved by the impugned order, the present appeal is being filed and in the present appeal, the appellant is challenging the disallowance of cenvat credit of service tax and rejection of refund claim to the extent of Rs. 1,91,594/- (Rupees One Lakh Ninety One Thousand Five Hundred and Ninety Four only) relating to installation of capital goods.

2. Heard both the parties and perused the records.

3. The learned consultant for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without proper verification of records and without appreciating the definition of 'input service'. He further submitted that the amount of Rs. 1,91,594/- (Rupees One Lakh Ninety One Thousand Five Hundred and Ninety Four only) relating to installation of capital goods as the said service falls in the definition of 'input service'. He further submitted that the installation of capital goods is not at all related to construction activity and the findings given by the lower authority is contrary to the material evidence on record. He also submitted that the installation of capital goods namely solar power generating system is essential for the manufacturing of the final product and the same is covered under the scope of 'input service'.

4. On the other hand the learned AR defended the impugned order.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is a 100% EOU and filed refund claim for unutilized cenvat credit of service tax paid on various services which were used for export of goods during the said quarter. Subsequently, amount of refund was allowed and the amount of Rs. 2,04,550/- (Rupees Two Lakhs Four Thousand Five Hundred and Fifty only) was disallowed. Out of the said Rs. 2,04,550/- (Rupees Two Lakhs Four Thousand Five Hundred and Fifty only), the appellant is only challenging in the present appeal rejection of refund to the tune of Rs. 1,91,594/- (Rupees One Lakh Ninety One Thousand Five Hundred and Ninety Four only) on the ground that the installation of solar power

generating system falls in the definition of 'input service' and therefore the refund has been wrongly rejected. Further I find that the appellant has produced before me two invoices relating to Rs. 1,91,594/- (Rupees One Lakh Ninety One Thousand Five Hundred and Ninety Four only) out of which one invoice related to installation and commissioning of solar power generating system on which service tax of Rs. 1,63,699/- (Rupees One Lakh Sixty Three Thousand Six Hundred and Ninety Nine only) has been paid and with regard to another invoice the appellant has paid the service tax as well as there is a supply of material for installation which according to me falls in the definition of 'Works Contract'. Therefore, out of Rs. 1,91,594/- (Rupees One Lakh Ninety One Thousand Five Hundred and Ninety Four only), I hold that input service relating to installation and commissioning of the solar power generating system, the appellant is entitled to cenvat credit of Rs. 1,63,699/- (Rupees One Lakh Sixty Three Thousand Six Hundred and Ninety Nine only) and consequently the refund to that extent is allowed by partly allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **02/01/2019**)

(S.S GARG)
JUDICIAL MEMBER

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