CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH – E-Hearing

Excise Appeal No. 60846 of 2019

(Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2375 dated 07.05.2019 passed by the Commissioner (Appeals), Ludhiana)

M/s Signify Innovations India Pvt Ltd **......Appellant**
(ms Philips Lighting India Ltd. Industrial Area Focal Point Phase-9, Mohali (Punjab))

VERSUS

C.C.E & S.T. Ludhiana **......Respondent**
(Commissionerate, Ludhiana, F Block, Rishi Nagar, Ludhiana)

APPEARANCE:

Ms. Krati Somani, Advocate for the Appellant

Shri Taurn Kumar, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60417 of 2020

DATE OF HEARING: 09.12.2020
DATE OF DECISION: 09.12.2020

PER ASHOK JINDAL:

The Revenue has filed an application for virtual hearing of the matter in the Covid-19 Pandemic. The request of the Revenue was allowed and the appeal was taken up for consideration.

2. This appeal has been filed by the appellant against the impugned order wherein various input services has been denied during the period April, 2011 to March, 2014. The services in question are mainly service of repairs and renovation of factory

premises of Rs. 9,32,087/- the manpower service for running health centre of Rs.3,34,319/- and disposal of hazardous waste Rs. 6,171/-.

3. The case of the appellant is that the service of repairs and renovation of factory premises are admissible to Cenvat credit in terms of amended definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004. It is a submission that during the course of audit an objection was raised that the appellant is not entitled to avail Cenvat credit on the service but in the show cause notice the allegation has been made that the appellant has taken Cenvat credit on construction of building which is factual incorrect, therefore, they are entitled to avail Cenvat credit.

4. With regard to service of running health centre, it is a submission that the appellant is having more than 500 employees in their factory premises and under statutory provisions of the Factories Act, 1948, they are required to maintain health centre in the factory in case of emergency for the treatment of factory employees, therefore, they are entitled to avail Cenvat credit on the said service and the said issue has been decided by this Tribunal in the case of ***M/s Rallis India Limited Vs. CCE & ST, Pune-I*** reported ***in 2018 (11) TMI 1452- CESTAT, Mumbai,***.

5. With regard to disposal of hazardous waste, the Ld. Counsel submits that on merit the Cenvat credit has been allowed to the tune of Rs. 37,17,304/- on the said service but the impugned order does not speak about the denial of Cenvat credit of Rs. 6,171/- therefore, the said Cenvat credit also admissible to them.

6. On the other hand, Ld. AR reiterated the findings of the impugned order.

7. Heard the parties and considered the submissions.

8. On going through the records placed before me, I find that as per letter dated 19.05.2014 issued by the office of Superintendent Central Excise Range-II Mohali, an objection was raised with regard to service tax credit on repairs/maintenance of civil structure/building the same is reproduced as under:-

> *"Service Tax Credit on Repair/Maintenance of civil Structure/Building*
>
> *You have reportedly been availing cenvat credit on services relating to the Repair and Maintenance of various Civil Structures/Building which being not covered in the definition of Input Service, is irregular and is recoverable from you."*

the said objection has been replied by the appellant in their reply to the audit objection and the same is reproduced as under:-

> *"It is submitted that our factory is running since 1985 in the same premises, prior to Philips from 1985 to 2001 it was register as M/s Punjab Anand Lamps ltd and from 2001 onward it is register as Philips India Limited so all the services are related to repair and maintenance service which relates to modernization, renovation or repair of building & plant and machinery which are specifically mentioned as eligible nature of service for manufacturing units and allowed as input service under Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, cenvat credit taken by us is admissible."*

but it is a very strange to see that in the show cause notice the audit objection has been converted into allegation holding that service relating to construction of various civil structures or building/laying of foundation or making structures for support of capital goods. On going through the entire record placed before me, I do not find any such service to allege that the appellant has taken Cenvat credit on the services relating to construction of various civil structures or building/laying on foundation or making structure for spot capital goods. The allegation in the show cause notice to deny service tax is without any basis and nobody bother about to find out what was the audit objection and what is the allegation in the show cause notice, both authorities below as did not pay any head to the request of the appellant to go through the factual position of the case. Instead of doing so, both the authorities has supported the show cause notice which does not have any basis. On this along ground, the whole show cause notice can be quashed but in the interest of justice, the merits of the case are required to be discussed.

9. Admittedly, in this case the appellant has taken Cenvat credit on repairs and maintenance of factory premises for building which is allowed as Cenvat credit in terms of definition of input service under Rule 2(l) of the Cenvat Credit Rules, 2004, therefore, I hold that the appellant is entitled to avail Cenvat credit on the services for repair and renovation of factory premises to be tune of Rs. 9,32,087/-.

10. With regard to entitlement of Cenvat credit of manpower service for running health centre, I find the said issue has been dealt by this Tribunal in detail in the case of ***M/s Rallis India Limited*** wherein this Tribunal observed as under:

> *"Admittedly, health services are put under exclusion clause in 2012 amendment to CENVAT Credit Rules, 2004. Therefore, such health services if provided by a manufacture or service provider to its employees generally is no more to be treated as admissible*

credit but when there is statutory requirement to have provisions for first aid facility and primary treatment for employees in case of accident and injuries sustain by them and the said service made available to other employees additionally without any extra expenditure, it cannot be excluded from the preview of availment of credit since to obtain licence and run such hazardous manufacturing unit, emergency health care facility by way of OHC is a basic requirement and the same has a relation to the manufacturing process. It is surprising that if availability of such a facility is utilized for the benefit of other employees at the time of their basic health needs, at no extra cost, such facility is held to have lost its identity and become a health service centre when there was no Doctor or nursing staff was appointed by the appellant and the same OHC was being run by a compounder and assistant to meet emergencies. Denial of CENVAT credit on the ground that they fail to keep records of emergency treatment would not deprive the appellant to avail such credit, since it is made to meet a contingency/emergency situation and without any such hazardous accident also, the manpower engaged are entitled to get their remunerations. Hence the order."

11. Admittedly, in the case in hand the appellant is required to maintain health centre in terms of Factories Act, 1948, therefore, the appellant are entitled to avail Cenvat credit on health services in question. Accordingly, the Cenvat credit of Rs. 3,34,319/- is allowed.

12. Disposal of hazardous waste

I find that as per show cause notice the total Cenvat credit of Rs. 37,23,475/- was proposed to disallow to the appellant, but the Ld. Commissioner (Appeal) hold that the appellant is entitled to avail Cenvat credit on the said service but allowed Cenvat credit only to the tune of 37,17,304/-. The reasons are best known to the Ld. Commissioner (Appeal) for denial of Cenvat credit of Rs. 6,171/- for the service of disposal of hazardous waste, as the reasons have not been disclosed by the Ld. Commissioner (Appeal), in the impugned order for denial of Cenvat credit of Rs. 6,171/- the act of ld. Commissioner (Appeal) cannot be appreciated. Therefore, I hold that the appellant is entitled to avail Cenvat credit of Rs. 6,171/- .

13. In view of the above discussion, I do not find any merit in the impugned order or in the show cause notice itself, therefore, I set aside the same and allow the appeal with consequential relief (if any).

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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