IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/Misc./40416/2017 and E/40211/2017

(Arising out of Order-in-Appeal No.228/2016 (CXA-I) dated 21.10.2016 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

M/s. Uniply Decors Ltd. — Appellant

Vs.

CCE, Chennai – II — Respondent

Appearance

Shri M.A. Mudimanna, Advocate for the Appellant
Shri R.Subramaniam, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **31.05.2018**

Final Order No. **41678 / 2018**

The appellants are manufacturers of plywood and are availing the facility of CENVAT credit on inputs and input services. During the period from May 2011 to May 2012, they availed input service credit of Rs.1,41,477/- in respect of invoice dated 25.8.2011 issued by Consulting Engineer towards service rendered for construction of their office building. Department was of the vie that such credit is not eligible as these services fall under works contract service and is not eligible for credit as per the definition of input service with effect from 1.4.2011.

Show cause notice dated 21.1.2014 was issued to the appellant proposing to disallow the said credit and recover the same along with interest and for imposing penalty. After due process of law, the original authority confirmed the recovery of credit along with interest and imposed penalty of Rs.70,700/-. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri M.A. Mudimannan submitted that the services were received in respect of renovation and modernization of their office. A portion of the land was acquired by the Highways Department for broadening the road and as their old office building was damaged, they had renovated the same into a new office building. This is not setting up of office building and was merely a renovation / modernization. Even after 1.4.2011, credit availed on such renovation / modernization cannot be denied. In any case, appellant had completed the services prior to 1.4.2011 and most of the advance payments were paid before 1.4.2011. Only the final bill was raised after 1.4.2011 on which the appellant had availed credit. The Board vide its Circular No.943/4/11-CX dated 29.4.2011 has clarified that when the provision of service is completed prior to 1.4.2011, the credit on such services is eligible after 1.4.2011. he relied upon the decision in the case of Ion Exchange (I) Ltd. Vs. Commissioner of Central Excise, Surat – 2018 (12) GSTL 302.

3. Against this, the ld. AR Shri R. Subramaniam supported the findings in the impugned order. He submitted that the office

building of the appellant was demolished when the road was acquired for broadening of the highway road. The appellant had set up a new building and therefore after 1.4.2011, the credit is not eligible as the words "setting up of office / factory" is deleted from the definition of input service. He adverted to the reply to show cause notice and submitted that the appellant has stated that the construction of their office building was started in the month of December 2010 and completed in July 2011. Therefore, the case of the appellant that the services were availed prior to 1.4.2011 is incorrect. He argued that after 1.4.2011, the definition of input services expressly excluded activities 'relating to construction of building / civil structure of part thereof'. The authorities below have rightly disallowed the credit.

4. Heard both sides.

5. The main two arguments put forward by the ld. counsel for appellant is that the services were availed prior to 1.4.2011 and therefore they are eligible to credit as clarified in the Board circular cited supra. Secondly, it is argued by him that the office building was not a newly constructed one and it was only modernization / renovation of the existing office building. Though the ld. counsel has vehemently argued that the existing building was repaired and modernized, therefore credit is eligible there is no record to show it was a newly constructed building. The document with respect to permission or approval from by the concerned local bodies or other authorities as

approving the construction of new building etc. has to be verified. The department though alleges that the appellants have constructed a new building has not been able to throw light into this aspect. I therefore deem it fit that the issue has to be remanded to the adjudicating authority to consider and verify whether the building has been newly constructed or whether it was repairs and modernization of existing building. The ld. counsel also contended that they had completed the construction prior to 1.4.2011 and therefore they are eligible for credit. From reply issued by the appellant to the show cause notice, it is brought out that the construction was completed in July 2011 only. Therefore, this aspect has also to be verified by the adjudicating authority. In case the appellant has completed services after 1.4.2011, they will be eligible for proportionate credit for that part of the services that have been availed prior to 1.4.2011. These facts have to be relooked by the adjudicating authority and therefore I remand the matter to the adjudicating authority to reconsider the issue. The appellant shall be given an opportunity of personal hearing. The impugned order is set aside and the appeal is allowed by way of remand.

6. The miscellaneous application filed by appellant for change of cause title is allowed.

(Operative portion of the order was
pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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