CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Excise Appeal No. 42498 of 2018

(Arising out of Order-in-Appeal No. 444 to 447/2018 (CTA-I) dated 23.08.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Chemplast Sanmar Ltd. (PVC Division) : Appellant
Melavanjore Village,
T.R. Pattinam Panchayat,
Karaikal – 611 002

VERSUS

The Commissioner of G.S.T. & Central Excise, : Respondent
Puducherry Commissionerate,
No. 1, Goubert Avenue, Beach Road,
Puducherry – 605 001

WITH

(i) Excise Appeal No. 42499/2018 (M/s. Chemplast Sanmar Ltd.);
(ii) Excise Appeal No. 42500/2018 (M/s. Chemplast Sanmar Ltd.);
(iii) Excise Appeal No. 42501/2018 (M/s. Chemplast Sanmar Ltd.);

(Arising out of Order-in-Appeal No. 444 to 447/2018 (CTA-I) dated 23.08.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

APPEARANCE:

Shri. V.S. Manoj, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NOs. 40768-40771 / 2019

DATE OF HEARING: 06.05.2019

DATE OF DECISION: 06.05.2019

Brief facts are that the appellants are manufacturers of Caustic Soda and Ethylene-di-chloride. They are availing the facility of CENVAT Credit of duty paid on inputs and capital goods and service tax paid on input services. It was noticed that for various periods, the appellants had availed ineligible credit of input services, for which Show Cause Notices were issued proposing to disallow the credit. After due process of law, the Original Authority partially confirmed the demand along with interest and imposed penalty. In appeal, the Commissioner (Appeals) vide impugned order dated 23.08.2018 upheld the same. Hence, these appeals.

2.1 On behalf of the appellant, Ld. Advocate Shri. V.S. Manoj appeared and argued the matter. He submitted that the entire period in all the five Show Cause Notices is prior to 01.04.2011. The definition of "input service" had a wide ambit during the relevant period and included almost all the services availed by the appellant and disputed in these Show Cause Notices. The appellant has received these services for the business of manufacture and therefore, is eligible for credit.

2.2 He adverted to the period involved in Show Cause Notice dated 02.05.2012 and submitted that though the period is mentioned as April 2011 to September 2011, the annexure to the Show Cause Notice would show that the provision of service was prior to 01.04.2011. Therefore, the credit availed by the appellant may be allowed.

3. Ld. AR Shri. L. Nandakumar appearing on behalf of the respondent supported the findings in the impugned order. He submitted that the appellant has not established any nexus with the manufacture and therefore, is not eligible for credit.

4. Heard both sides.

5.1 For better appreciation, the table showing the disputed input services, period involved and amounts is given as under :

Sl. No.	**SCN No. & Dt.**	**Period involved**	**Amount of duty involved (including Cess)**	**Input services covered in SCN**
1.	SCN No. IV/16/7/2008 -S.Tax dated 16.10.2008	April 2007 to March 2008	Rs. 4,807/-	Taxi Service
2.	SCN No. 195/2009-JC dated	April 2008 to May 2009	Rs. 6,04,979/-	Garden Maintenance, Manpower Supply activity at marine terminal, Plant

	26.06.2009			civil works, Micro Concrete Civil Work, Cable laying from plant to marine terminal, landscaping, construction of helipad, pest management, cleaning of bushes and disposal, construction of lorry parking area, fencing work at colony, painting work at colony, civil and plumbing work at colony, laying of drinking water line colony, grass cutting – earth filling, landscaping
3.	SCN No. LTUC 198/2010 dated 05.07.2010	June 2009 to May 2010	Rs. 68,683/-	Landscape services, garden maintenance, civil and plumbing works at residential colony, Air Travel Agency Service, tour operator/rent-a-cab service.
4.	SCN No. LTUC 212/2011 dated 30.06.2011	June 2010 to March 2011	Rs. 19,121/-	Travel Agent, video coverage, tourist operator, manpower recruitment for residential colony, works contractor for residential colony, cleaning services for residential colony, maintenance and repair at residential colony.
5.	SCN No. LTUC/171/2012 dated 02.05.2012	April 2011 to September 2011	Rs. 25,639/-	Colour washing at colony, construction of hazardous material storage shed, plumbing work at colony.

5.2 It is seen that in four Show Cause Notices, the period involved is prior to 01.04.2011. Though the period involved in the Show Cause Notice dated 02.05.2012 is mentioned as April 2011 to September 2011, on going through the Annexure, it is seen that the rendition of service was prior to 01.04.2011. Thus, though the appellant has availed the credit after 01.04.2011, when the provision of service has been completed prior to 01.04.2011, as per the Master Circular dated 28.02.2011 issued by the Department, the appellants would be eligible for credit.

5.3 On going through the description of the services, it is seen that most of these services are availed by the appellant for carrying out the business of manufacture. During the relevant period, the definition of "input service" had a wide ambit as it included the phrase "activities relating to business". Various decisions of the Tribunal as well as the Hon'ble High Courts have held the above services to be eligible for credit. The following decisions are noteworthy in this regard :

(i) M/s. UltraTech Cement Ltd. Vs. C.C.E., Jaipur-II – 2017 (47) S.T.R. 237 (Tri. – Del.);

(ii) M/s. Raymond Uco Denim Vs. C.C.E., Nagpur – 2017 (7) G.S.T.L. 346 (Tri. – Mum.);

(iii) M/s. KLA Tencor Software India Pvt. Ltd. Vs. C.S.T., Chennai-III – 2016 (45) S.T.R. 242 (Tri. – Chennai);

(iv) M/s. Sanmar Foundries Ltd. Vs. C.C.E., Trichy – 2016 (43) S.T.R. 362 (Tri. – Chennai).

6. After appreciating the facts as well as following the above decisions, I am of the view that the disallowance of credit is unjustified. The impugned order is set aside to the extent of disallowing the credit on the above services.

7. The appeals are allowed with consequential reliefs, if any, as per law.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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