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

Appeal No. E/779/2010

(Arising out of Order-in-Appeal No. 162/2010 dated 13.9.2010 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Ultratech Cement Ltd. Appellant

Vs.

CCE, Trichy Respondent

Appearance

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

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

Date of Hearing / Decision: **23.10.2017**

Final Order No. 42438/2017

Brief facts are that the appellants are engaged in the manufacture of cement and clinker. They availed the facility of CENVAT credit on inputs, capital goods and also on the service tax paid in respect of input services. They advertised their products on Jaya TV through M/s. Excellent 2 Publicities. M/s. Excellent 2 Publicities issued invoices to the appellant showing the reimbursement of service tax paid by Jaya TV. The appellant availed credit on such service tax collected from them through M/s. Excellent 2 Publicities and paid to the Government by Jaya TV. The department was of the view that appellant is not eligible to take credit on the invoices issued by M/s. Excellent 2 Publicities or Jaya TV or on the invoices issued by Jaya TV to M/s. Excellent 2 Publicities. Show cause notice was issued proposing the demand of irregularly availed credit along with interest and also proposing to impose penalties. After due process of law, the original authority confirmed the demand of service tax along with interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri Raghavan Ramabhadran submitted that the appellant received the advertising services of publication and advertising their product on media – Jaya TV through intermediary M/s. Excellent 2 Publicities. The service tax on broadcasting agency services is paid by Jaya TV which is collected from the appellant through intermediary M/s. Excellent 2 Publicities. Thus, M/s. Jaya TV charged service tax under the taxable head of Broadcasting Service. M/s. Excellent 2 Publicities in turn raised the invoice on the appellant for reimbursement of the broadcasting charges along with the service tax paid to M/s. Jaya TV. The amount was paid by appellant along with service tax to M/s. Excellent 2 Publicities. He adverted to the Circular F.No. 341/43/96-TRU dated 1.11.1996 and argued that the amount of service tax to be paid by the advertising agency for its advertising services will not include the amount paid in respect of electronic media. For this reason, the invoices are issued by Jaya TV to the

intermediary M/s. Excellent 2 Publicities, who in-turn issued invoices to the appellant showing the reimbursement of the service tax collected from the appellant. That therefore the credit has been rightly availed by them. He also relied on the following decisions :-

(a) Indian Oil Corporation Vs. Commissioner of Central Excise – 2014-TIOL-1246-CESTAT-MUM

(b) Commissioner of Central Excise Vs. SAS & Company – 2010 (258) ELT 253

(c) Jyothi Laboratories Ltd. Vs. Commissioner of Central Excise, Puducherry – Final Order No. 41527/2015 dated 16.11.2015

3. It is also argued by the ld. counsel that Rule 9(2) does not state that the name of the service recipient should find a place in the invoice. That therefore denial of credit on the ground that invoice is issued by the broadcasting agency M/s. Jaya TV to Excellent 2 Publicities and not on the appellant is unjustified. On this submission, he relied upon the decision of the Tribunal in the cases of:-

(a) VALCO Industries Ltd. Vs. Commissioner of Central Excise – 2012 (28) STR 457 (Tri. Del.)

(b) EUPEC – Welspun Coating India ltd. Vs. Commissioner of Central Excise – 2010 (190)STR 478 (Tri. Ahmd.)

4. Against this ld. AR Shri A. Cletus reiterated the findings in the impugned order and strongly argued that the invoices issued by M/s. Excellent 2 Publicities, who is the advertising

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agency, does not show the service tax payable by the appellant. This requirement is contemplated in Rule 9(2) of the CENVAT Credit Rules. He adverted to the Circular relied upon by the ld. counsel stating that it does not relate to eligibility of CENVAT credit but only mentions about the payment of service tax by advertising agency.

5. Heard both sides and perused the records.

6. The issue is whether the appellant is eligible to take CENVAT credit on the service tax paid on the invoices issued by M/s. Excellent 2 Publicities to the appellants as well as the corresponding invoices issued by Jaya TV to M/s. Excellent 2 Publicities. On perusal of the invoices issued by M/s. Excellent 2 Publicities to the appellant, it is seen that the amount collected is reimbursement of service tax paid to Jaya TV. There are invoices issued by Jaya TV to M/s. Excellent 2 Publicities to show that Jaya TV has collected the service tax from M/s. Excellent 2 Publicities which was paid by the appellant. Thus, the document issued by Jaya TV to M/s. Excellent 2 Publicities together with the documents issued by M/s. Excellent 2 Publicities to appellant would establish that the appellant has paid service tax on the broadcasting service. In the peculiar nature of the advertisement service and broadcasting service, where the services are provided through an intermediary, especially when the Circular clarifies that the intermediary cannot include the taxable value of the broadcasting agency, a way to issue the invoices is by issuing an invoice through an

intermediary to the service recipient by showing the reimbursement of the service tax collected from them and paid to the broadcasting agency. Moreover, proviso to Rule 9(2) states that, in case, if there is any discrepancy with regard to the documents, it is for the Assistant / Deputy Commissioner to verify the accounts of the assessee and arrive at a conclusion whether credit is eligible or not. In the present case, there is no dispute with regard to the service tax paid on the said services. The dispute only confines to the set of documents issued for the transaction. In page 81 para 17 of the adjudication order, the original authority categorically held that there is no dispute with regard to the payment of service tax and the ineligibility is with regard to the documents presented for availing the credit. Moreover, the issue stands decided in the cases of M/s. Indian Oil Corporation Ltd. (supra) and SAS & Company (supra) as well as Jyothy Laboratories Ltd. (supra), which are on identical facts.

7. Following the same, I am of the considered view that the denial of credit is unjustified. In the result, the impugned order denying the credit is set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

Sulekha Beevi

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

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