

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

Appeal No. E/40955/2017

(Arising out of Order-in-Appeal No.47/2017 (CXA-I) dated 17.2.2017 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

M/s. Elgi Rubber Products Ltd.

Appellant

Vs.

CCE, Chennai – III

Respondent

Appearance

Ms. Sweta Giridhar, Advocate for the Appellant

Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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

Date of Hearing / Decision: **27.10.2017**

Final Order No. 42468/2017

Brief facts are that the appellants are manufacturers of reclaimed rubber and are registered with the Central Excise Department. They availed CENVAT credit on service tax paid towards windmill maintenance charges. According to the department, the credit availed on service tax paid on windmill maintenance is not eligible for credit as the windmills are situated outside the factory. Show cause notices were issued proposing to disallow the credit and after due process of law,



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the original authority disallowed the credit confirming the demand, interest thereof as well as imposed penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. At the time of hearing, the Id. counsel Ms. Sweta submitted that the issue stands covered by the decision of the Larger Bench of the Tribunal in the case of Parry Engg. & Electronics P. Ltd. Vs. Commissioner of Central Excise – 2015 (40) STR 243 (Tri. LB) as well as the decision of the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise Vs. Endurance Technology Pvt. Ltd. – 2017 (52) STR 361 (Bom.).

3. The Id. AR Shri S. Govindarajan reiterated the findings in the impugned order.

4. Heard both sides.

5. The issue whether the credit availed on service tax paid on windmill maintenance charges is eligible for credit or not is settled by the decisions in the cases cited supra. The Hon'ble High Court of Bombay in the case of Endurance Technology Pvt. Ltd. (supra) has observed as under:-

"5. On perusal of these Rules, it becomes clear that the management, maintenance and repair of windmills installed by the respondents is input service as defined by clause "I" of Rule 2. Rule 3 and 4 provide that any input or capital goods received in the factory or any input service received by manufacture of final final product would be susceptible to CENVAT credit. Rule does not say that input service received by a manufacturer must be received at the factory premises. The judgments referred to above, also interpret the word "input" service in similar fashion.



(Signature)

In the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. [cited supra], the Division Bench of this Court held that the definition of "input service" is very wide and covers not only services which are directly or indirectly used in or in relation to manufacture of final product but also includes various services used in relation to business of manufacture of final product. The expression "activities" in relation to business is also discussed in this judgment by referring to judgment of Apex Court.

In the case of Deepak Fertilizers & Petrochemicals Corporation Ltd. v. C.C.Ex. Belapur [cited supra] the Division Bench held as under :

"The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in subclauses (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to 'the provisions contained in Rule 2(l). The first part of Rule 2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(l) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process."

6. In view of this discussion, we have no hesitation to hold that the answer to question No. (1) is in affirmative. Despite this settled position, learned counsel for the appellant tried to submit that the judgment cited at Sr. No. (2) is being challenged before Supreme



Court. This submission does not really help us in deciding the appeals. Both appeals are dismissed."

6. Following the ratio in the above decisions, I am of the view that the disallowance of credit is unjustified. The impugned order disallowing the CENVAT credit is set aside and 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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