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

E/41888, 41889 & 41890/2016 - SM

[Arising out of Order-in-Appeal Nos.237, 238 & 239/2016 (CXA-II), dated 24.06.2016 passed by the Commissioner of Commissioner of Central Excise (Appeals-II), Chennai]

M/s. DIAMOND ENGINEERING (CHENNAI) PVT. LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-IV RESPONDENT

Appearance:

For the Appellant Ms. S. Srivevi, Adv.

For the Respondent Shri K.P. Muralidharan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **17-05-2017**

FINAL ORDER NO. A. 40707 - 40709/2017

Per Archana Wadhwa:

The appellants are manufacturers of various structural fabrication items falling under Chapter 73 and 84 of the First Schedule to the Central Excise Tariff Act, 1985 and were availing the benefit of Cenvat Credit of duty paid on various inputs as also on various input services. As the appellant had availed Cenvat credit of service tax paid on Motor Vehicle Insurance, Vehicle Maintenance Charges, Clearing and Forwarding Services and Port Services and, in as much

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as, Revenue was of the view that such services cannot be considered to be cenvatable, they ~~are~~ were issued three different show-cause notices for three different periods proposing to deny the Cenvat credit. The show-cause notices were adjudicated by a common order of the original adjudicating authority denying the credit in respect of the services.

2. On an appeal against the above order, the Commissioner (Appeals) allowed the credit in respect of Clearing and Forwarding Services and Port Services but denied the credit in respect of Motor Vehicle Insurance and Vehicle Maintenance Charges on the ground that the same cannot be considered to be cenvatable input services. Hence, the present appeal.

3. After hearing both sides, I find that the issue involved in the present three appeals is as to whether the Motor Vehicle Insurance and Vehicle Maintenance Charges can be considered to be eligible input services for the purpose of Cenvat credit. Without going into the details of the arguments advanced by both the sides, I find that the issue is no more *res integra* and stands settled by various decisions of the Tribunal and reference can be made to the following decisions:-

(i) *Hindustan Zinc Ltd. Vs Commissioner of Central Excise, Jaipur reported in 2015 (37) S.T.R.608 (Tri.-Del.);*

(ii) *DCM Engineering Products Vs Commissioner of Central Excise & Service Tax, Chandigarh-II reported in 2014 (33) S.T.R. (Tri.-Del.); and*

(iii) *Commissioner of Central Excise, Jaipur-II Vs J.K. Cement Works reported in 2009 (14) S.T.R.538 (Tri.-Del.).*

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4. It is ~~said~~ stated in all the above decisions that insurance of vehicles and their maintenance has to be treated as input services in terms of Rule 2(l) of Cenvat Credit Rules, 2004, In as much as, they are related to the manufacturing activities of the assessee. By following the said judgments, I hold that the credit availed by the assessee prior to 01.04.2011, which is the period involved in two of the appeals, is admissible to the appellant.

5. However, it is seen that in one of the matters, the period involved is post-01.04.2011, when the definition of input services was amended and there was a specific exclusion of the Motor Vehicle Insurance or Vehicle Maintenance Charges, from the definition of "Input Services". Learned advocate appearing for the appellant is not disputing the non-availability of the credit for the period post-01.04.2011. However, they are challenging the confirmation of interest and imposition of penalty. It is the ~~confusion~~ contention of the learned advocate that the law was amended on 01.04.2011 and the appellant-company was unaware of the same and went on availing the credit. She, further, clarifies that the credit so availed by them was not used by them and during the entire period was lying only as an account entry. In such a scenario, the interest liability would not arise. For such proposition, she relies upon the Hon'ble Karnataka High Court's decision in the case of Commissioner of *Central Excise & Service Tax, Bangalore Vs Bill Forge Ltd.*, reported in *2012 (279) E.L.T. 209 (Kar.)* as also the Hon'ble High Court of Madras in the case of *Commissioner of Central Excise, Madurai Vs Strategic Engineering (P) Ltd.* reported

in *2014 (310) E.L.T. 509 (Mad.)*. However, learned advocate fairly admits that there is another decision of the Madras High Court in the case of *Commissioner of Central Excise, Chennai Vs Delphi TVS Diesel Systems Ltd.* reported in *2015 (322)E.L.T.279 (Mad.)* laying down that even if the credit initially taken was reversed before utilization of the same, the interest liability would arise. She submits that the said decision is prior to the decision of the same High Court in the case *Strategic Engineering (P) Ltd.* (supra), should be adopted being later in point of time and on the principle of latter the better. She also submits that the High Court's decision in the case of *Strategic Engineering (P) Ltd.* (supra) had also taken into consideration, the Karnataka High Court's decision in the case of *Bill Forge Ltd.* (supra) and which should be followed.

6. In as much as, the appellants are not disputing their liability to reverse back the credit availed post-04.04.2011, I uphold the denial of the same. As regards, interest, though the appellant have taken a stand that the said credit was not utilized by them but the said ~~fact is~~ fact is required to be verified by the lower authorities. If the credit has not been utilized and remained only as a paper entry in their Cenvat Credit Account, the appellant would not be saddled with any interest liability in terms of the law declared by the Hon'ble High Court of Karnataka in the case of *Bill Forge Ltd.,* (supra) and the Hon'ble High Court of Madras in the case of *Strategic Engineering (P) Ltd.* (supra).

7. As regards penalty, I find that the period involved in respect of the ~~three~~ this case~~s~~ is from Apr.'11 to Oct.'11 and appreciating the appellant's contention that such an amendment was not brought to their notice and they continued to avail credit and appreciating the fact

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that the entire credit was availed by reflecting the same in their Cenvat Credit Account, in respect of which returns were filed, I am of the view that there is no malafide on the part of the assessee so as to invite any penal action against them. Accordingly, penalty imposed on them is also set aside.

8. In a nutshell, Appeal Nos.**E/41888 & 41889/2016** are allowed in toto. Appeal No.**E/41890/2016** is disposed of by confirming the denial of the credit, remanding the matter in respect of interest and setting aside the penalty.

(Dictated and pronounced in open court)

17/5/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
17-05-2017

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