

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

E/370 & 371/2008

(Arising out of Order-in-Original No. 3/2008 dated 2.5.2008
passed by the Commissioner of Central Excise, Chennai)

M/s. Kaleesuwari Refinery Pvt. Ltd.
Commissioner of Central Excise, Chennai - III Appellants

Vs.

Commissioner of Central Excise, Chennai - III
M/s. Kaleesuwari Refinery Pvt. Ltd. Respondents

Appearance

Shri C. Saravanan, Advocate for the Assessee
Shri A. Cletus, Addl. Commissioner (AR) for the Department

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing : **03.08.2017**

Date of Pronouncement: **08.08.2017**

Final Order No. 41520-41521/2017

Per Bench

The issue involved in the both these appeals being the same, they were heard together and are disposed by this common order. The parties herein are referred to as assessee and department for the sake of convenience.

2. Brief facts are that the assessee is engaged in manufacture of refined sunflower oil by processing refined



crude oil. They are also processing duty paid refined sunflower oil for trading purposes. Such duty paid oil is exempt under Sl. No. 244 (c) of Notification No. 6/2002-CE dated 1.3.2002 as amended. Thus, refined sunflower oil and the duty paid sunflower oil manufactured by them are taken through pipelines to service tank where the two types of oil get mixed and after filtration are packed in different unit container and sold. The assessee is also engaged in providing clearing and forwarding services for other manufacturers and is registered with the Service Tax Department for this output service.

2. On perusal of records, it was noticed by the department that the assessee used the credit availed on packing materials namely 'film', 'tins' and '5 liter cans' for both the manufactured refined oil as well as exempted refined oil. The assessee did not maintain separate accounts for the use of any packing materials for the duty payable and exempted refined sunflower oil and a show cause notice was issued proposing demand for a sum of Rs.3,77,87,826/- being the 8% and 8.2% of the total value of clearances of exempted refined oil for the period March 2004 to 9.9.2004.

3. Secondly, the assessee used credit availed on common inputs and input services in the manufacture of exempted refined oil during 10.9.2004 to February 2005. They failed to maintain separate account and a demand was proposed for this



period for a sum of Rs.3,69,02,769/- being the 10.2% on the total value of clearances of exempted refined oil.

4. Thirdly, assessee availed credit of the service tax on input services pertaining to the period June 2003 to February 2005 and has a manufacturer of dutiable products, assessee was allowed to take credit of service tax paid in respect of taxable services only with effect from 10.9.2004 (the date on which CENVAT Credit Rules, 2004 came into force). For this reason, a demand was raised for an amount of Rs.39,09,242/- for the period June 2003 to 9.9.2004 alleging wrongful availment of credit as per the provisions of Rule 3 read with Rules 9 and 11 of CENVAT Credit Rules, 2004.

5. Fourthly, assessee had taken ineligible credit on the input furnace oil on the basis of improper documents for which a demand was proposed for a sum of Rs.2,10,816/- under Rule 14 of CENVAT Credit Rules, 2004.

6. Alleging the above, a Show Cause Notice No. 16/2005 dated 6.4.2005 was issued proposing recovery of the irregularly availed credit along with interest and also for proposing penalties.

7. The assessee was issued a further show cause notice bearing No 19/2005 dated 14.6.2005 alleging wrongful availment of credit of service tax paid on input services namely advertisement services and insurance services for the period from April 2003 to September 2004 proposing to disallow

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credit to the tune of Rs.49,00,194/- alleging that advertisement services and insurance services were in no way connected with the output services rendered by assessee namely clearing and forwarding service.

8. Both the show cause notices were adjudicated and vide common Order-in-Original, which is impugned herein, the Commissioner of Central Excise dropped the demand of Rs.3,77,87,826/- for the period 3/2004 to 9.9.2004, dropped the demand of Rs.3,69,02,769/- for the period 10.9.2004 to February 2005, dropped the demand of Rs.39,09,242/- being the credit of service tax paid on input services for the period 6/2003 to 9.9.2004, dropped the demand of Rs.2,10,816/- being the credit availed on furnace oil. However, the Commissioner, disallowed the credit of Rs.49,00,194/- which was a demand raised in the second show cause notice and ordered for recovery of the same along with interest. No penalty was imposed. Thus, on the disallowance of credit of Rs.49,00,194/- the assessee has filed Appeal No. E/370/2008. Against the dropping of the demand of Rs.39,09,242/-, the department has filed Appeal No. E/371/2008.

9. Before proceeding to discuss the facts as well as the issue, it is to be stated that the demand pertaining to Rs.39,09,242/- which was dropped by the Commissioner is for the period 6/2003 to 9.9.2004 and the demand of Rs.49,00,194/- confirmed by the very same Commissioner is

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for the period 4/2003 to 9/2004. Thus, there is overlapping of the periods in the above amounts.

10. On behalf of the assessee, learned counsel Shri C. Saravanan submitted that the assessee is confining the challenge only to the amount of Rs.39,09,242/-. He argued that the assessee was discharging output service of clearing and forwarding service for other manufacturers. Service tax was paid on insurance services and advertisement services which are input services used for providing the output services rendered by the assessee. That therefore the assessee has availed the credit rightly. The credit is sought to be denied by the department alleging that assessee being a manufacturer cannot avail the credit upon input services prior to 10.9.2004 that the date on which CENVAT Credit Rules, 2004 came into existence. He explained that prior to 10.9.2004, the output service provider was eligible to avail CENVAT credit on input services under the Service Tax Credit Rules, 2002. The assessee has availed the credit under such provision. The department has sought to deny the credit in the second show cause notice for the same period alleging that such input services are not connected with the output services provided by the appellant. Learned counsel argued that the assessee was eligible for the credit which was availed under the erstwhile Rule 6 of Service Tax Credit Rules, 2002 since such services were used for providing output services of clearing



and forwarding agent service. Further, that Rule 11 of CENVAT Credit Rules, 2004 provided the transitory provision whereby the assessee was eligible to utilize the CENVAT credit that has been accumulated. That department has wrongly interpreted Rule 11 by observing that only if the credit is accumulated under CENVAT Credit Rules, 2002, can the assessee avail credit under the new legislation namely CENVAT Credit Rules, 2004. He, therefore, submitted that the Commissioner has rightly dropped the demand of Rs.39,09,242/- but however has erred in demanding the very same amount as well as further sum by confirming the demand in the second show cause notice to the tune of Rs.49,00,194/-.

11. The learned AR Shri A. Cletus reiterated the grounds of the departmental appeal. He submitted that in the impugned order, in para 31, the Commissioner has noted that the eligibility of credit of Rs.39,09,242/- has a point of dispute on merits which has to be decided later in the order. But, on perusal of the impugned order, it can be seen that there is no such discussion made by the Commissioner on this point later in the order. The learned AR submitted that since the appellant did not maintain separate accounts, they are not eligible to avail the credit of input services which was availed by them under the erstwhile Rule 6 of Service Tax Credit Rules, 2002. Further, that the advertisement and insurance services have



no nexus with the clearing and forwarding agent service undertaken by the appellant.

12. We have heard the submissions made by both sides.

13. On perusal of the impugned order, in the operation portion, the Commissioner has dropped the demand of Rs.39,09,242/- which pertains to the period June 2003 to 9.9.2004. The department has issued the second show cause notice dated 14.6.2005 overlapping for the same period which is for April 2003 to 9.9.2004 and to demand an amount of Rs.49,00,196/-. The main allegation in the show cause notice is that the credit is not eligible as it was availed by the assessee under the erstwhile Rule 6 of Service Tax Credit Rules, 2002 and also for the reason that the advertisement and insurance services have no nexus with the output service of clearing and forwarding agent service. The learned counsel for assessee has submitted that they are confining their contest to the amount of Rs.39,09,292/- alone. We, therefore, confine our discussion also with respect to this amount. It is brought out from the records as well as submissions made by both sides that the main allegation raised by department is that these inputs do not have nexus with the output services provided by the assessee. In a catena of decisions, it has been held that when input services, are related to the business activities of the assessee, are eligible 'input services'. The second allegation that the assessee is not eligible for availing



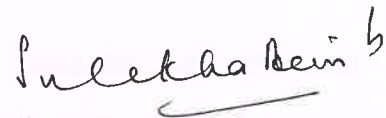
credit is that since the same was availed under the erstwhile Rule 6 of Service Tax Credit Rules, 2002. This is without any basis. Rule 11 of CENVAT Credit Rules, 2004 provides for the transitory provision to avail and utilize the credit which was accumulated prior to coming into existence of the new legislation of CENVAT Credit Rules, 2004. On such score, we find that disallowance of Rs.39,09,292/- for this reason also is unjustified. The impugned order dropping the demand of Rs.39,09,292/- is upheld and the order passed by the Commissioner disallowing the credit of Rs.49,00,192/- is modified to the extent of allowing the credit of Rs.39,09,242/- and disallowing the balance.

14. In the result, the appeal (E/370/2008) filed by the assessee is partly allowed in the above terms and the appeal (E/371/2008) filed by the department is dismissed.

(Pronounced in open court on 08.08.2017)



(**Madhu Mohan Damodhar**)
Member (Technical)



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

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