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

Appeal No.ST/41978/2016

[Arising out of Order-in-Appeal No.138/2016 (CXA-I) dt. 12.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Chennai]

Superfil Products Pvt. Ltd. Appellant

Versus

Principal Commissioner of Central Excise, Chennai-I Respondent

Appearance:

Shri N. Viswanathan, Advocate
For the Appellant

Shri L. Paneerselvam, AC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 12.04.2017

FINAL ORDER No. 40622/2017

The facts of the case are that appellants are a manufacturing unit. On verification of records, it appeared to the department that appellants had wrongly availed credit of service tax paid on security services during the period July 2012 to August 2013. For this belief, department relied upon Notfn No.30/2012-ST dt. 20.06.2012 which ordains that provider of said services, if provided to business activity registered as a body corporate, are liable to only 25% of the service tax payable and service recipient being a body corporate is liable to pay balance

Customs, Excise & Service Tax Appellate Tribunal

75% of the service tax payable. Department alleged that as the service provider of security service discharged 100% of the tax liability, they have paid in excess 75% of service tax. Further, since liability to pay 75% has not been discharged by the appellant, that amounts to non-payment of service tax to that extent and hence they have appeared to have availed excess cenvat credit. Accordingly, SCN dt. 16.05.2014 was issued to the appellant, inter alia, proposing recovery of allegedly wrongly availed cenvat credit of Rs.53,094 during July 2012 to August 2013 along with interest liability thereon and imposition of penalties under relevant provisions. These proposals were confirmed by the original authority and also upheld by the Commissioner (Appeals) vide impugned order dt. 12.07.2016.

2. Aggrieved, appellants are before this forum.

3. Today when the matter came up for hearing, Shri N. Viswanathan, Ld. Advocate, appearing for the appellant submits that tax liability though discharged 100% by the service provider of the appellant, was very much billed to them by the service provider and was also paid to them along with other charges. Service provider has also filed returns informing these facts. He submits that all these documents in support of these contentions had been submitted by the appellant before both lower authorities. He placed reliance on the ratio of the following Tribunal decisions :-

(i) *Kerala State Electronic Corporation Vs CC Kochi* 1996 (84) ELT 44 (Tribunal) which inter alia held that modvat credit is to be allowed as per the amount of duty indicated in the duty paying documents and whether the duty short paid or paid in excess is not relevant.

(ii) Final Order No.40510/2017 dt. 17.03.2017 which followed jurisdictional High Court decision in CCE Vs 2006 (202) ELT 753 (Mad.) and held that when input duty paid that has gone into the process not disputed by Revenue manufacturer-appellant cannot be denied credit thereof.

4. On the other hand, Ld. A.R supports the impugned order. He submits that since as per the notification, appellant is liable to pay 75% of service tax and service provider to pay 25% and unless that share has been discharged by appellant, tax credit cannot be availed by them.

5. Heard both sides and gone through the facts of the case.

6. There is no dispute that tax liability involved in the matter has been discharged fully to the extent of 100%. The only quibble is that such tax has not been discharged in the matter as required by the notification No.30/2012-ST dt. 20.06.2012 and as per the ratio of 75 : 25 by service recipient and service provider respectively, hence appellant will not be eligible to take 100% credit. I fail to see any reason in such a proposition. The said notification only provided for distribution of tax liability between service recipient and service provider. However, it does not anywhere proclaim that in case 100% tax liability is discharged by the service recipient and suffered by the service recipient, the said recipient cannot avail the credit thereof. The notification only lays down proportion of tax liability which service recipient and service provider are "liable to pay". However, that cannot be a bar to

Customs, Excise & Service Tax Appellate Tribunal availment of the cenvat credit if cenvat credit that has been discharged in the activity involved and has also passed on / suffered by the service recipient-appellant. Rule 3 of Cenvat Credit Rules, 2004 is very clear on this issue. According to the said Rule, a manufacturer or producer of final products or provider output service shall be allowed to take credit of the duties, cess, tax etc. specified in sub-rule (1) thereof, which are leviable under the relevant statutory provisions, provided such duty, tax etc. leviable has also been paid inter alia on any input service received by the manufacturer of final products or by provider of output service. I am unable to find any breach of these conditionalities in the matter before me. There could no dispute that service tax leviable has been fully paid. This fact will therefore satisfy the requirement of Rule 3 ibid and particularly, when such tax liability has been passed on to the appellant and they have also made payment thereof to the service provider, there can be no denial to them of such cenvat credit. The case laws relied upon by Ld. Advocate also support such an interpretation. Appeal is therefore is allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

18 04 2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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