CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No.41206 of 2015

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-098-15 dated 30.04.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), No.6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

M/s.Lakshmi Machine Works Ltd. **.... Appellant**
Perianaickenpalayam,
S.R.K.V. Post,
Coimbatore 641 659.

VERSUS

The Commissioner of CGST & Central Excise **... Respondent**
Coimbatore Commissionerate,
No.6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.

APPEARANCE :

Shri M. Saravanan, Consultant, for the Appellant
Shri N. Sathyanarayanan, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40979/2024

DATE OF HEARING : 22.07.2024

DATE OF DECISION : 29.07.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in manufacture of textile machinery and spares and are registered with the Central Excise Department. M/s.Super Sales India Limited (M/s.SSIL) Coimbatore is a selling agent of the appellant and also provides erection, commissioning and installation work for the appellant. The said selling agent raises invoices for service charges including service tax on the appellant for providing erection, commissioning and installation services. The appellant availed cenvat credit of the service tax paid on such services as an input services for them. Show cause notices dt. 22.04.2014, 07.10.2014 and 19.11.2014 were issued to the appellant for the period April 2009 to July 2013, September 2013 to March 2014 and April 2014 to August 2014 proposing to disallow the cenvat credit and to recover the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand of service tax as indicated in the SCN / SODs along with interest and also imposed penalties. Aggrieved by such order, the appellant preferred an appeal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

2. The Ld. Consultant Shri M. Saravanan appeared and argued for the appellant. It is submitted that the cenvat credit has been disallowed for the reason that the impugned services i.e. erection, commissioning and installation services was rendered by the service provider after removal of the goods from the manufacturing premises of the appellant and being a post-manufacturing activity is not an eligible input service. The adjudicating authority has also held that cost of erection, commissioning and installation is not included in the cost of the final product. The original authority has concluded that the appellant has provided free supervision of installation and that the costs have been reimbursed to the appellant.

2.1 Ld. Consultant submitted that M/s.SSIL was appointed as a selling agent for the appellant who is also required to carry out erection and commissioning of the machinery outside India. The invoices indicated the cost of erection, commissioning as well as the charges that have to be incurred by the appellant in the nature of transportation charges etc. The appellant has thus included the cost of the services in the cost of final products and therefore they are eligible to take cenvat credit of the service tax paid on such services. The said services are availed by appellant directly or indirectly, in or in relation to manufacture of final products and therefore and therefore would fall within the definition of "input services" under Rule 2 (l) of Cenvat Credit Rules, 2004. The cost of the goods cleared include the cost of supervision and installation services and without providing such services, the goods cannot be installed within the customer's site.

2.2 Ld. Consultant submitted that the services are provided by M/s.SSIL for and on behalf of the appellant and the appellant has included these services in the price of the product which means the service charges are received in foreign currency while receiving the price for the goods supplied. M/s.SSIL have provided services to the appellant. Even though the machineries have been installed abroad since M/s. SSIL who is located in India has provided sales services to the appellant also who is in India the services are subject to levy of service tax at the hands of M/s.SSIL. They have correctly collected the service tax from the appellant and, in turn, appellant has availed cenvat credit of such service tax. The machinery which is sold, installed and put to work the activity of manufacturing would not be complete. The allegation that the said activity is a post-manufacturing activity and therefore not eligible for credit is without any factual basis. The Ld. Consultant prayed that the appeal may be allowed.

3. The Ld. A.R Shri N. Sathyanarayanan appeared and argued for the Department. The findings in the impugned order was reiterated.

4. Heard both sides.

5. The issue to be considered is whether the appellant is eligible for credit availed on erection, commissioning and installation services provided to them by M/s.SSIL. In the present case, the appellant has employed another entity for providing erection, commissioning and installation service of goods supplied by them. The main ground for denying the credit by the department is that the cost of erection, commissioning and installation has not been included in the assessable value of the final product and that being post-manufacturing activity the credit is not eligible. On perusal of para 6.3.3 of OIO, it is seen that the adjudicating authority has discussed the issue whether the cost of such services are included in the final products. Para 6.3 of OIO reads as under :

> "6.3.3. With reference to their contention the cost of such are included in the cost of final products, I would like to discuss few of the sales transaction of LMW Unit-I, which are submitted by them during the personal hearing proceedings, vide their letter dated : 03/12/2014, whereby the CENVAT credit of service tax paid on erection, commission and installation service provided to their customers through Super Sales were availed by the assesse are as follows :
>
> (i) LMW, Unit-I, vide their Proforma Invoice PI-222911 dated 19/06/2010, offered their quotes for supply of 2 Nos. of Lakshmi High Speed Draw Frames LD2 to M/s.P.T. Indah Jaya Textile Industry, Banten, Indonesia for US $ 64000 (United States Dollars Sixty-Four thousand only). With reference to various Terms & Conditions of the supply for the above proforma invoice are as follows :
>
> "***PRICE –*** *The prices quoted are in U.S. Dollars FOB Cochin. All further charges and expenses will be to your account.*
>
> *……..*
>
> ***ERECTION*** *– Out offer is inclusive* ***of free supervision of installations*** *of our machinery. However, the following will be to your account in connection with deputation of our Engineer to take-p installation of Machines :-*
>
> *** To and fro air tickets from Coimbatore to Mill site and Back*
> *** Decent boarding and lodging facilities*
> *** Local conveyance.*
> *** An out of pocket allowance equivalent of U.S. $ 35 per day per Engineer to be paid in local currency directly."*

6. It has been observed from the above invoice by the original authority that the costs of Erection, Commission and Installation are not included in the cost of machineries sold. As it is mentioned in the invoice that the appellant would be providing free supervision of the installation, the original authority has concluded that the cost of such services is not included in the assessable value of final products, and being post-manufacturing activity, the appellant is not eligible for availing input credit. The Engineers of M/s.SSIL are deputed to provide service of erection and commissioning and installation. Thus M/s.SSIL has provided ECIS to customers on behalf of appellant. In fact, M/s.SSIL has deputed their own engineer to go abroad and provide the services. The services are provided as per the requirement of the appellant and in fact M/s.SSIL has provided services to the appellant. The whole gamut of contentions and discussions has been as to whether the charges for ECIS has been included in the value of goods supplied by appellant. This issue comes into consideration only in a case where the input service is availed upto the place of removal. For eg. in the case of outward transportation of goods the credit of service tax would be eligible as an input service only upto the place of removal. The definition of 'input service' is very wide and it has a '*means*' part and '*includes*' part. The services listed in the '*includes'* part are services in the nature of accounting, advertising, sales promotion, marketing, research etc. The definition does not restrict or say that these kind of services are to be availed upto the place of removal. The definition does not say that these services have to be availed within the factory only. It is not practically possible to consume all input services within the factory. The definition of 'inputs' say that 'goods received within the factory'. Whereas in the case of input services, even if they are availed outside the factory it is eligible for credit.

7. In the present case, the service (ECIS) has been provided by M/s.SSIL outside India on the request of the appellant. This is because at the time of sale of the textile machinery, the appellant assures to carry out the activity of ECIS at the customer's premises. The appellant has outsourced this activity and the same is provided by M/s.SSIL. M/s.SSIL has issued invoices to the appellant for charges of providing ECIS on behalf of appellant and also collected the service tax. The appellant is able to sell the finished product only by assuring proper installation of machinery by experts at the customer's premises. Undeniably, the activity is in relation to manufacture of products by the appellant. The ECIS is an eligible 'input service' to the appellant. The credit availed in our view is proper.

8. For the period prior to 01.04.2011 the definition of "input services" had a wide ambit as it included the words "*activities relating to business*". Almost all services would fall within the expression *"activities relating to business"* and therefore the services of installation would be an eligible input service.

9. In the case of **Ramala Sahkari Chini Mills Ltd. Vs CCE Meerut -** 2010 (260) ELT 321 (SC) the Hon'ble Supreme Court considered the meaning of the word "*include*" used in the definition of "inputs". It was held that the word does not have a restricted meaning and should be given a wide interpretation. By employing such wide interpretation, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part. As already discussed, it is not possible to avail all services within the factory itself. When services are availed directly or indirectly, in or in relation to the manufacture and clearance of final products, the credit would be eligible. Since M/s.SSIL is an agent appointed by the appellant for providing the installation services on behalf of the appellant by incurring cost for providing such services, the service tax

collected by M/s.SSIL from the appellant is in order. The appellant is therefore eligible to avail the credit.

10. From the discussions above, we hold that the impugned order requires to be set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 29.07.2024)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(SULEKHA BEEVI. C.S)
Member (Judicial)

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