CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.50593 of 2019 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-449-18-19 dated 29.11.2018 passed by the Commissioner (Appeals), Central Goods and Service Tax, Central Excise & Customs, Raipur]

M/s.Raipur Power and Steel Limited **Appellant**
Plot No.75-76, Borai Industrial Growth Centre,
Rasmada, Distt.-Durg (CG).

VERSUS

Commissioner of Central Excise & Central Goods & Service Tax and Customs, **Respondent**
Central Excise Building,
Tikrapara, Dhamtari Road,
Raipur (C.G.).

APPEARANCE:

Shri Kamaljeet Singh, Advocate for the appellant.
Shri P. Juneja, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51607/2021

DATE OF HEARING/DECISION :21.06.2021

ANIL CHOUDHARY:

The appellant is engaged in the manufacture since 2009 of sponge iron, silico manganese, etc., which is dutiable and are registered with the Department. The Auditors of Accountant General (Audit) vide Audit Report No.IR2016-21(C.Ex) observed that the appellant during the year 2015-2016 have availed cenvat credit of service tax on banking and finance service. Rs.25,14,532/-, is attributable to setting up of new Pelletizing Plant. It has been observed that this service was not related to the manufacture of their finished goods, therefore, it does not qualify as input service as defined under Rule 2 (l) of CCR. In response to the reply to the Department, the appellant submitted their letter dated 4.4.2017 stating that during the month of March, 2016, they have availed total input service tax credit of Rs.33,65,288/-, out of which, Rs.25,14,532/- (Rs.10,10,600/- + Rs.9,88,428/- + 5,15,504/-) has been taken for their new Pelletizing Plant (Term loan) and the remaining amount has been taken for their existing plant. They also submitted copy of the ledger account for 2015-2016 and also three invoices in support of the credit taken for March, 2016. The total of three invoices as regards the service tax credit is Rs.25,14,532/-.

2. Show cause notice dated 19.04.2017 was issued to the appellant as it appeared to Revenue that the credit of Rs.25,14,532/- attributable for the Pelletizing Plant is not allowable in terms of Rule 3 read with Rule 2 (l) read with Rule 9(6) of CCR. It further appeared that from the definition of 'input service' in Rule 2 (l) that the word in the inclusive part – "setting-up" has been omitted by the amendment notification no.3/2011-CE(NT) dated 1.3.2011 w.e.f. 1.4.2011. Accordingly, it was proposed to demand the cenvat credit with further proposal to impose penalties under Rule 15 of CCR.

3. The show cause notice was adjudicated on contest and the proposed disallowance of cenvat credit was dropped by the Asstt. Commissioner, observing that in spite of dropping of the words "setting-up" from Rule 2(l) relying on the subsequent notification no.28/2012-CE(NT), wherein inclusive clause has been substituted – wherein the service of works contract and construction services includes services listed under Clause (b) of Section 66 E of the Finance Act, used for construction or execution of works contract of a building or a civil structure or a part thereof; or laying of foundation or

making of structure for support of capital goods, has been kept in exclusion clause. Further, observed that it means the amendment in the definition of "input service" by deleting the words "setting up", the Government intends to avoid the ambiguity for taking cenvat credit. In the instant case, on verification of the documents, the Asstt. Commissioner found that the appellant has obtained the term loan from various banks viz. Bank of Baroda, Union Bank, IDBI Bank Ltd., for setting up of Pellet Plant in their existing factory premises during 2015-2016. For sanction of term loan, the appellant have paid service tax on processing fee, lead bank fee, upfront fee, legal fee, appraisal fee and inspection charges and have taken credit of service tax on these services under the head "Banking and Finance Services". It was further observed that Banking and Finance services are covered under the definition of input service, wherein in the inclusive part the word "financing" is mentioned. Further, reliance was placed in the ruling in the case of M/s.BS & B Safety Systems India Ltd. - 2017 (52) STR 174 (T-Chennai), wherein it has been held that the words used in inclusive part of definition in Rule 2 (l) of CCR, are not restrictive in nature. This definition to be considered as examples of genre of input services and would be admissible for cenvat credit. It was also observed that definition of 'input service' is very wide as "input service" is defined as any service used directly or indirectly' in or in relation to the manufacture of final products' , and also includes various services used in relation to the business – whether prior to manufacture or after manufacture. Thus, Rule 2 (l) extends to all services having direct or indirect nexus, or integrally connected with the business of manufacturing of the final product. It was further observed that the said Pelletizing Plant set up in the same factory premises of the appellant is expansion, or the modernisation of the existing plant, which is essential part of the existing business. Further, the activities of expansion or modernisation of the plant had resulted in more efficient manufacture of the products/output, which is cleared on payment of duty. Thus, the conditions for allowance as input service under Rule 2 (l) are fulfilled. Accordingly, the proposed demand was dropped.

4. Being aggrieved, the Revenue preferred appeal before the Commissioner (Appeals) on the ground that the services used for setting up of factory are not covered under the definition of "input service" in view of the dropping of the word "setting up" w.e.f. 01.04.2011.

5. Ld. Commissioner vide ex parte impugned order-in-appeal observed that in view of the amendment w.e.f. 1.4.2011, in the definition of "input service" , means that service, which has been used in relation to the setting up of factory on or after 1.4.2011, would not be eligible as input service. Hence, he was of the view that services used in relation to setting up of a new plant would not be available as input service, as it has no relation with the manufacture of final product in the existing plant. Accordingly, reversing the order of the Asstt. Commissioner and allowing the appeal of the Revenue, it has been held that the credit of Rs.25,14,532/- is not available and the same was ordered to be recovered along with interest. Further, penalty of equal amount was imposed under Rule 15 (2) of CCR read with Rule 11 AC (1)(c) of the Act.

6. Being aggrieved, the appellant/assessee is before this Tribunal on the ground that banking and other financial services have been defined in Section 65 (12) as the various services provided by banking companies or

financial institutions including by NBFC or any other body corporate, etc. viz. (i) financial leasing services, including equipments leasing and higher purchase;

(ii) ....

(iii) Merchant Banking Services;

(iv) ....

(v) ....

(vi) ....

(vii).......................

(viii)........................

(ix) other financial services viz. lending, issue of pay order, etc.

7. Further, taxable service in respect of the banking and financial services have been defined under Rule 65(105)(zm) as --

> ---means any [service provided or to be provided], [to any person], by a banking company, etc. in relation to the banking and other financial services. Thus, service in dispute qualify under the head 'Banking & Financial Services'. Further, urged that "input services" means any service
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> --used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final product and clearance of final products up to the place of removal and includes services used in relation to the <u>modernisation,</u> renovation or repairs of a factory premises, etc...financing and outward transportation up to the place of removal. Further, there is no express exclusion in the exclusion portion, as contained in Clause (A), (B), (BA), (C).

(emphasis Supplied)

8. It is further urged that admittedly, the appellant have extended and modernised their existing manufacturing facility by adding Pelletizing machinery for manufacture of their final products, which are dutiable.

9. "Pelletizing machine or plant" makes spherical lumps, formed by agglomeration of crushed iron ore fines in presence of moisture & binder, on subsequent induration at around 1300 degree Celsius, which suits the requirements of downstream process of manufacture of sponge iron. The inputs are converted or formed into pellets so that they can be fed easily in the manufacturing stream (furnace). For setting up the pelletizing plant, the appellant have obtained bank loans mainly in the nature of term loan for which the banks have charged and collected processing charges etc, which qualify under the head banking and financing services. As 'finance' is included in the inclusive part in the definition of 'input service', the same is allowable. Further, the activity of the setting up of the pelletizing plant amounts to 'modernisation', which still exists in the inclusive part of the definition in Rule 2 (l) after 1.4.2011 also. Ld. Commissioner (Appeals) have failed to consider the aspect of modernisation and/or expansion, and have mis-directed himself in passing the impugned order. Further, it is not disputed that the Pelletizing plant has been added to the existing manufacturing facility since 2009, for the purpose of more efficiency and better quality of output. Accordingly, He prays for allowing their appeal.

10. Reliance is placed on the ruling of this Tribunal in the case of **Jubilant Biosys Ltd. – 2016 (42) STR 729 (Tribunal-Bangalore).**

11. Ld. Authorised Representative relied upon the impugned order.

12. Having considered the rival contentions, I find that the setting-up of Pelletizing machine/plant is undisputedly for modernisation of the existing manufacturing facility for better efficiency and better quality of finished products, which amounts to modernisation. Further, hold modernisation is allowable, and any service used by appellant/manufacturer for modernisation of their manufacturing facility, is allowable input service. Under the admitted facts and circumstances, I hold that the input credit of Rs.25,14,532/- is allowable credit under Rule 2(l) read with Rule 3 read with Rule 9 of CCR, 2004. The impugned order-in-appeal is held to be erroneous and mis-conceived and accordingly is set aside. The order-in-original is restored. The appellant is entitled to consequential benefits in accordance with law.

[Operative portion of the order already pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.