

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 11.05.2017

ST Appeal No. 60294 of 2013-SM

(Arising out of order-in-appeal No. 219/ST/DLH/2013 dated 30.09.2013 passed by the Commissioner (Appeals) Central Excise, New Delhi).

M/s RSPL Limited

Appellant

Vs.

CCE, Delhi-I

Respondent

Appearance:

Sh. A. P. Mathur, Advocate for the appellant

Ms. K. V. Kumar, AR for the Respondent

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53291/2017

Per: **B. Ravichandran:**

The appeal is against order dated 30.09.2013 of Commissioner (Appeals), Delhi-I. The brief facts of the case are that the appellant are engaged in the manufacture of detergent cake and powder. The products were manufactured with the brand name of M/s Ghari Industries Pvt. Limited. The appellant paid royalty charges alongwith service tax for use of the brand name. They have availed credit of service tax paid on such royalty charges. An amount of Rs. 29,27,822/- was availed as credit on such service tax paid through invoice dated 28.07.2007. The appellant company and M/s Ghari Industries Pvt. Limited (brand owner) were merged pursuant to an amalgamation order dated 01.02.2008 passed by the High Court of Allahabad. The High Court ordered for amalgamation w.e.f. the appointed date 01.04.2006. The Revenue entertained a view that in terms of the High Court

order the two entities become one and as such there is no warrant for payment of royalty by the appellant to the brand owner and the invoice for such payment become “infractuous” for the purpose of availing that credit. Accordingly, the credit availed was held to be inadmissible.

2. Ld. Counsel for the appellant submitted that the Allahabad High Court order was much later, though giving effect to the amalgamation from the appointed date of 01.04.2006. At the time of availing credit the appellant were rightly entitled and in fact they have discharged service tax on taxable services and their eligibility to credit is not disputed on any other ground. The High Court approved the amalgamation with retrospective date, is not relevant to decide the credit eligibility of the appellant during the material time when effectively there were two legal entities. Ld. Counsel further submitted that the impugned credit amount is also part of total demand on the same issue, issued to their Kanpur Head Office vide show cause notice dated 01.12.2011 by the Commissioner of Central Excise, Kanpur. Accordingly, he said that there were duplicate demands on the same credit.

3. Ld. AR submitted that the credit availed by the appellant was disputed on legal grounds that the amalgamation is made effective from 01.04.2006 by a judicial order of the High Court. As such during the material time there was no two entities to provide or to receive service on which due service tax could be paid.

4. I have heard both the sides and perused the appeal records. Admittedly, the dispute arose mainly because of the order of Allahabad High Court giving approval of amalgamation of two units from the retrospective date of

01.04.2006. However, during the material time when ST was discharged by the appellant the same was legally paid and credited to the Government. As such tax paid on input service has been correctly utilised by the appellant in terms of Cenvat Credit Rules, 2004. I note that the eligibility of credit on merit has not been disputed by the lower authorities. It is not clear as to how a later order passed by the Hon'ble High Court will make the tax paid invoice as "infractuous". The said observation and reasoning adopted by the impugned order is legally as well as factually unsustainable. When the service tax was paid duly on the taxable service availed by the appellant and the credit was also duly availed within the scope of Cenvat Credit Rule, 2004, later development that too on a different proceedings under the provisions of company law cannot make duly paid service tax availed credit during the material time as improper. It may also be noted that if there were no two legal entities during the material time, as observed by the lower authorities relying on the High Court order, the question of rendering service, paying service tax does not arise. In other words there will be only self service or no taxable service at all. The financial transaction between two legal entities as existing during the relevant time were valid and legal and the same does not become "infractuous" simply because these legal entities were amalgamated later, though effective date for record has been mentioned as 01.04.2006.

5. Considering the above factual position, I find no merit in the impugned order. Accordingly, the same is set-aside. The appeal is allowed.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Pant