CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 729 of 2010

(Arising out of Order-in-Original No. 02-03/2010(CE) dated 01.02.2010 passed by the Commissioner of Central Excise, Jaipur-I)

DATE OF HEARING : 15.02.2017
DATE OF DECISION : 15.02.2017

M/s Instrumentation Ltd. …. **Appellants**
(Rep. by Sh. Karan Sachdev, Adv.)

VERSUS

CCE, Jaipur-I …. **Respondent**
(Rep by Dr. Neha Garg, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51897/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the impugned order-in-original no. 02-03/2010(CE) dated 01.02.2010 passed by the Commissioner of Central Excise, Jaipur-I. The period in dispute is September, 2004 to March, 2009.

2. The brief facts of the case are that, the assessee-Appellants are manufacturer of telecommunication equipments, UPS systems and primary & secondary instruments falling under Chapter 85, 90 & 93 of the

Central Excise Tariff Act, 1985. The assessee-Appellants are registered as a service provider for provision of consulting engineering service, erection, commissioning and installation services and management, maintenance and repair services. During the course of business activities, the assessee-Appellants are procuring both input and input services. While procuring, input or input services, the assessee-Appellants are paying duty/service tax. The assessee-Appellants take credit in their cenvat account of duty/service tax paid. It is admitted fact that the assessee-Appellants are maintaining a common account of cenvat credit for their manufacturing activity as well as providing services. The assessee-Appellants are filing their returns regularly. In their service tax return, the assessee-Appellants claimed credit in their cenvat credit account both for duty/tax paid on inputs and input services. During the course of audit, it was observed that the assessee-Appellants were not maintaining separate account of cenvat credit for their manufacturing activity as well as for providing services. Hence, according to the Department, they are not entitled to claim whole credit lying in their cenvat credit account for payment of duty on output services. A show cause notice was issued for disallowing the credit availed by them and demands were confirmed along with interest and penalty. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Karan Sachdev, learned counsel for the assessee-Appellants and Dr. Neha Garg, learned DR for the Department, and perused their written submissions.

4. It may be mentioned that an identical issue has come up before the Hon'ble Bombay High Court in the case of **Commissioner of Central Excise, Pune-I vs S.S. Engineers,** 2016 (42) STR 3 (Bom.),

wherein the claim of the assessee-Appellants was allowed by observing that :

> '*It is on the subject of cross-utilization of credit on inputs and input service. The Tribunal, therefore, has rightly come to the conclusion that there are certain restrictions on the utilization of particular type of duty and for that purpose it has relied on Rule 7 of Cenvat Credit Rules. A reference to that also does not vitiate the impugned order inasmuch as Rule 7 states that input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the conditions stipulated therein. In such circumstances, the cross utilization of credit on goods and services being not covered by any restrictive provision, leave alone any prohibition or embargo, the Tribunal's order does not call for any interference. The interpretation placed on the Rule is a probable and a possible view. That cannot be termed as perverse. Further, there is no revenue deficit muchless any loss."*

5. In view of the above, we find no merit in the impugned order and the same is hereby set aside.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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