

West Block No.2, R.K.Puram, New Delhi

Date of hearing: 18.04.2017

Appeal No. E/734/2008-EX[DB]

M/s. Century Pulp & Paper ... Appellant

CCE Meerut-II ... Respondent

Present for Shri Ashish Vaish, CA the appellant
Present Shri M.R. Sharma, DR for the respondent

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member**

Per V. Padmanabhan:

The appeal is against Order-in-Appeal number 21/2008 dated 31.1.2008. The appellant is engaged in the manufacture of writing and printing paper falling under chapter 48 of the Central Excise Tariff Act. The issue involved in the case is whether the cenvat credits availed by the appellant in respect of service tax paid on goods transport services on the basis of TR-6 challans is valid. The appellant availed credit to the extent of Rs.29,95,414/- during the period 01.02.2005 to 15.6.2005. Rule

9 of the Cenvat Credit Rules, 2004 were amended with notification number 28/05-CE(NT) dated 07.06.2005 (w.e.f 16.6.2005) specifying TR-6 challans as valid documents for availing the credit. Consequently, the Department was of the view that for the period prior to 16.06.2005, credits availed on the basis of TR-6 challans become inadmissible. After issue of show cause notice, revenue ordered for reversal of the Cenvat credit as above. The order of the original adjudicating authority was upheld in the impugned order. Aggrieved by the decision, the present appeal has been filed.

2. With the above background heard Sh. Ashish Vaish, CA the appellant and Sh. M.R. Sharma, DR for the respondent.

3. The learned counsel for the appellant has submitted that the Mumbai High Court in the case of **CCE, Goa Vs. Essel Propack Ltd. reported in 2015(39) STR 363 (Bom)** has held that credit in respect of service tax paid on goods transport agency availed on the basis of TR-6 challans is valid for the prior period.

4. The learner DR reiterates the impugned order.

5. We have heard both sides and perused the records.

6. We note that the issue has come up before the Hon'ble High Court of Bombay in the case of **Essel Propack Ltd. (Supra)** wherein the Hon'ble High Court has decided the issue in favour of the assesses as follows:

"6. In the present case, the respondents are availing facilities of Cenvat credit for duty paid on inputs, capital goods and input services in terms of Rule 3 of the Cenvat Credit Rules, 2004. It was the contention of the appellant

that the respondents have to reverse the Cenvat credit of Service Tax paid on goods transport agencies between the period of March, 2005 to 15-6-2005 which they did not accept. It is further the contention of the appellant that Rule 9 specified the documents on which Cenvat credit can be availed of by a manufacturer prior to 16-6-2005. In terms of clause (e) of sub-rule (1) of Rule 9, of the Rules of 2004, a challan evidencing payment of Service Tax was a specified document for the purpose of availing Service Tax credit and the entities listed in clauses (i), (ii), and (iv) of Rule 2 of the Service Tax Rules, 1994 can take the Service Tax credit on the strength of such challan. But, however, in the case of goods transport agency, although the recipient of the services has been made liable to pay Service Tax with effect from 1st January, 2005 vide Notification dated 3-12-2004, but the agency has been made eligible to take credit thereof only from 16th June, 2005, vide Notification dated 7th June, 2005, by virtue of which clause (v) of sub-rule (1) of Rule 2 of the Service Tax Rules, 1994 was inserted making the recipients of goods transport agency service eligible to take credit of the Service Tax paid on such goods transport agency services. As such, it is the contention of the appellant that the respondents who have paid Service Tax for goods transport agency services could not have taken the credit on the basis of the TR-6 Challans prior to 16th June, 2005. As, admittedly, the respondents have availed of such credit during the said period, it was the contention of the appellants that the respondents were not entitled to such credit. The fact that the respondents have paid Service Tax and, as such, are entitled to credit during the said period has not been disputed by the appellant. As per Rule 3 of the Cenvat Credit Rules, 2004, Cenvat credit of, inter alia, Service Tax leviable and paid on any input services can be availed of.

7. On going through the Cenvat Credit Rules, 2004, we find that they do not prescribe any documents for availing of

Service Tax credit during the disputed period in respect of the Service Tax paid on goods transport agency services. The appellant, in the present case, has nowhere contended which were the specified document for availing of such credit during the relevant time. If no documents have been mentioned, TR-6 Challan has to be considered as a proper document, reflecting payment of such tax. Further, it is also not the case of the appellant that Service Tax was not paid by the respondents or that they were otherwise not entitled to such credit.

8. The Punjab & Haryana High Court, in the case of CCE v. Ralson India Ltd. - (2007) 6 STT 134 = 2008 (10) S.T.R. 505 (P & H) held that if the duty paid has the character of inputs and their receipt in manufacturer's factory and utilization in manufacture of final product is not disputed, then the credit cannot be denied to such person. It is also to be noted that the Department's Circular dated 19th November, 2001 observes that once the duty payment is not disputed and it is found that the documents are genuine and not fraudulent, then the manufacturer would be entitled to Cenvat credit on duty paid inputs.

9. In the present case, the authorities below have accepted that the respondents are entitled to such Cenvat credit. The only point for consideration, in such circumstances is the type of document required to be produced to avail of such credit. The respondents have produced the TR-6 Challan which is emanated from the office of the appellants themselves to support their claim for such Cenvat credit, which material was accepted by the authorities below whilst passing the impugned order.

10. For the aforesaid reasons, the question of discarding the said Challan to avail of such Cenvat credit, as contended by the learned Counsel appearing for the appellant, cannot be accepted. The Authorities below, as such, have rightly accepted the said Challan as proof of payment of Service Tax and, as such, no infirmity can be found in the orders passed

by the Authorities below. In any event, the appellants are not entitled to rely upon Rule 9 to refuse the credit to the respondents, as Rule 9 is a procedural aspect which cannot deny the claim of the respondents to avail of such Cenvat credit which they are, otherwise, admittedly, entitled to. The substantial question of law is answered accordingly."

7. By respectfully following the decision of the Hon'ble High Court, we are of the view that the impugned order cannot be sustained. Accordingly we set aside the impugned order and allow the appeal.

[Order Pronounced in the open court on 19.05.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu