CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision: 17.6.2016

Central Excise Appeal No.1229 of 2007

Arising out of the order-in-appeal No.130 (HKS) CE/JPR-II/2007 dated 1.3.2007 passed by the Commissioner (Appeals II), Customs & Central Excise, Jaipur.

J.K. Industries Ltd. … Appellant

Vs.

C.C.E, Jaipur .. Respondent

Appearance:

Present Mrs. Sukrit Das, Advocate for the appellants
Present Shri R. Maji, A.R. for the Respondent/Revenue

Coram: Hon'ble Mr. S.K. Mohanty, Judicial Member

Final Order No. 56502/2016

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 1.3.2007 passed by the Commissioner (Appeals II), Customs & Central Excise, Jaipur.

2. Brief facts of the case are that the appellants are engaged in the manufacture of tyres, tubes & flaps falling under Chapter 40 of the Central Excise Tariff Act, 1985. During the month of May to July 2005, the appellants had availed Cenvat credit in respect of service tax paid on the GTA service for outward transportation of goods from the factory to the buyer's premises and also transportation of goods up to the port of export. The cenvat credit was taken by the appellant on the ground that service tax paid on transportation charges for transporting goods beyond the place of removal should be considered as input service in terms of definition contained in the Cenvat Credit

Rules, 2004. However, the cenvat benefit was denied by the authorities below. Hence, this appeal is before the Tribunal.

3. Mrs. Sukriti Das, ld. Advocate appearing for the appellant submits that the main part of definition of 'input service' takes within its ambit the clearance of final product from the place of removal and inclusive part of such definition takes various other services for the purpose of consideration as input service for availment of cenvat credit. Thus, the ld. Advocate submits that services availed for transportation of goods merits consideration as input service. The ld. Advocate has relied on the following judgments to strengthen the case of appellant:

i) Commissioner of Central Excise & Customs vs. Parth Poly Woven Pvt. Ltd. – 2012 (25) STR 4 (Gujarat)

ii) Madras Cements Ltd. vs. C.C.E., Bangalore – 2015 – TIOL – 1682 – HC – KAR – CX

iii) Commr. of Cus. & C.Ex, Hyderabad III vs. Grey Gold Cements Ltd. – 2014 (34) STR 809 (AP).

4. On the other hand, Shri R. Maji, the ld. DR for Revenue has reiterated the findings recorded in the impugned order.

5. I find that the issue in hand is squarely covered by the judgment of the Hon'ble Gujarat High Court in the case of C.C.E. & Customs vs. Parth Poly Woven Pvt. Ltd. (supra). The relevant paragraphs in the said judgment are extracted herein below:

> ***18.*** *Bearing in mind the above judicial pronouncements, if we revert back to the definition of the term 'input service', as already noticed, it is coined in the phraseology of "means and includes". Portion of the definition which goes with the expression means, is any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such*

> *service should have been used for the manufacture of the final products or in relation to manufacture of final product or even in clearance of the final product from the place of removal. The expression 'in relation to manufacture' is wider than 'for the purpose of manufacture'. The words 'and clearance of the final products from the place of removal' are also significant. Means part of the definition has not limited the services only upto the place of removal, but covers services used by the manufacturer for the clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term 'input service' is wide and expansive and covers variety of services utilized by the manufacturer. By no stretch of imagination can it be stated that outward transportation service would not be a service used by the manufacturer for clearance of final products from the place of removal.*
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> ***19.*** *When we hold that outward transportation would be an input service as covered in the expression 'means' part of the definition, it would be difficult to exclude such service on the basis of any interpretation that may be offered of the later portion of the definition which is couched in the expression 'includes'. As already observed, it is held in several decisions that the expression 'includes' cannot be used to oust any activity from the main body of the definition if it is otherwise covered by the expression 'means'. In other words, the expression 'includes' followed by 'means' in any definition is generally understood to be expanding the definition of the term to make it exhaustive, but in no manner can the expression 'includes' be utilized to limit the scope of definition provided in the main body of the definition. To our mind this was also not the intention of the Legislature in the present case.*

5. Further, the Hon'ble Andhra Pradesh High Court in the case of C.C. & C.Ex, Hyderabad III vs. Grey Gold Cements Ltd. (supra) have held that if the value of taxable service is not forming part of the value of excisable goods, still cenvat credit is available on the input service for the reason that service tax is consumption based tax and is borne by the consumer and to avoid cascading effect, the benefit is only extendable to the assessee/manufacturer.

6. In view of the settled position of law, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

(S.K.Mohanty)
Judicial Member

scd/