CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 12.04.2017
Date of Pronouncement: 06.06.2017

Appeal No. E/55756, 55778/2014-EX[DB]
[Arising out of the Order-in-Appeal No. 27-28/Commr/CEX/ADJ/STN/2014 dated 28.08.2014, passed by the Commissioner of Central Excise, Bhopal]

Northern Coalfields Ltd. … Appellant

Vs.

CCE Bhopal ... Respondent

Appearance:

Present Shri Rajeev Agarwal, Advocate for 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

FINAL ORDER No. 53672-53673/2017

Per V. Padmanabhan:

These 2 appeals are against the order in original number 27-28/2014 dated 28.08.2014 passed by Commissioner, Bhopal. Since the issues involved are common for different periods, both the appeals are decided through this common final order.

2. The appellant is a PSU and was a 100% wholly owned subsidiary company of Coal India Ltd and is engaged in producing coal at its mines located in Madhya Pradesh. Coal has been made liable to Central Excise Duty for the 1st time w.e.f

01/03/2011 from which date the appellant started paying Central excise duty and availing the facility of CENVAT credit on various inputs, input services and capital goods as per the Cenvat credit rules, 2004. The dispute in the present appeal relates to the denial of CENVAT credit in respect of certain inputs which was claimed by the appellant. The periods involved are March 2011 to March 2012 and April 2012 to June 2012. Cenvat credit have been disallowed amounting to Rs. 85,79,745/- during the period March 2011 to March 2012 and Rs. 36,16,580/- during the period April 2012 to June 2012. Aggrieved by the impugned order present appeal has been filed.

3. With the above background we have heard Shri Rajeev Agarwal, Advocate for the appellant and Shri M.R. Sharma, DR for the respondent.

4. Credit stands disallowed on lubricants / lubricating oils which have been used by the appellant for dumpers which have been used in mines. Dumpers are classifiable under chapter 87 and since these are not classifiable as capital goods, in the impugned order it has been held that the appellant will not be eligible for credits on lubricants. The claim of the appellant is that lubricating oils are used in or in relation to the manufacture of final products. The definition of inputs as per Rule 2(k) is reproduced below: (w.e.f 01.04.2011)

"(k) "input" means–

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

© capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. – For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

5. As can be seen from the above definition, it nowhere provides that any machinery in which input is used must be a capital goods as defined under rule 2 (a)(A) of the Cenvat credit rules. The only criteria for admissibility of Cenvat credit on input is that the same must be used in the factory by the manufacturer of the final product. There is no dispute that heavy earthmoving machinery such as dumpers are used in the production of coal and for proper functioning of the said machines the appellant uses the lubricant. For the production of coal, the entire mine becomes the place of manufacture and since the disputed goods are no doubt used in relation to the manufacture of excisable goods, the said goods will fall under the purview of the definition of input for availment of Cenvat credit. Consequently, the credits on these goods cannot be denied.

6. Cenvat credit also stands disallowed in respect of the water sprinkler system. This system is used in the coal mines for minimizing the emission of dust and it is also mandatory in terms of the Coal Mines Regulations 1957 to install water sprinkling systems to check emissions from coal crushing operations etc. From the definition of inputs above, it is evident

that the use of water sprinkler systems is within the mine area and these goods are very much covered under the definition of inputs. Consequently, the credit on these goods cannot be denied.

7. Next, we turn to the denial of Cenvat credit on certain inputs services. To appreciate the eligibility of the appellant to avail such credits, it is necessary to reproduce the definition of the term input services as per rule2(l):

"input service" means any service,-

i) used by a provider of taxable service for providing an output service; or

ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) Specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the

Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) Construction of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital good,

Except for the provision of one or more of the specified services; or

(B) Specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) Such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

8. The credit stands denied in respect of the service tax paid on tyre re-treading services, maintenance of vehicles and security services availed at residential colonies. The credit on tyre re-treading services as well as maintenance of vehicles stand denied on the same lines as the denial of credit on lubricants. The essence of the ground is that heavy earthmoving

vehicles such as dumpers are not considered as capital goods and hence the services incidental to their maintenance will not be eligible to take credit. The definition of input service is inclusive and wide in nature and includes any service used in or in relation to the manufacture of final products. It is not in dispute that the subject services are used in relation to dumpers which are used in mines for producing coal on which excise duty has been paid. Consequently, we find no reason to deny the credit on these input services.

9. Credit has also been sought to be denied on security services which admittedly have been availed at residential colonies. The appellant has admitted that they are not entitled to the credit on such services and have already reversed the credit along with applicable interest on the above input service without disputing the same well before the issue of show cause notice. In this regard the only plea of the appellant is that the penalty imposed by the adjudicating authority may please be set-aside. They have submitted that the duty of Central excise was newly introduced on coal w.e.f. March 2011. The concept of excise duty and Cenvat credit eligibility was encountered by the appellant for the 1st time. Their plea is that the wrong credit availed by them was on account of their bonafide mistake and it cannot be said that this was attributable to any fraud or suppression with the intent to evade payment of duty. They have also placed reliance on the decision in the case of ***Castrol India Ltd Vs. CCE 2013 (291) STR 469 (Tri-Ahm).***

10. We find that the appellant has taken credit for the Security service used for housing colony by mistake. Upon realization of their mistake, they have promptly reversed the said amount along with applicable interest even before the same was noticed by the Department and show cause notice was issued for reversal of the same.

11. Under the circumstances, we are of the view that the availment of credit was by mistake and no penalty is impossible as has been held by the coordinate bench in the case of ***Castrol India Ltd.*** (Supra).

12. In view of the above discussions, we find that the impugned order cannot be sustained and hence it is set aside and the appeals are allowed.

[Order Pronounced in the open court on 06.06.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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