CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 53632 & 53696 of 2014

(Arising out of Order-in-Original No. 12/Commr/Cex/Sgr-II/2014 dated 27.03.2014 passed by the Commissioner of Central Excise (Appeals), Indore)

DATE OF HEARING : 14.06.2017
DATE OF DECISION : 14.06.2017

M/s Bharat Oman Refineries Ltd. …. **Appellants**
M/s Thermax Limited .... (Rep by Sh. Amit Jain, Adv.)

VERSUS

CCE, Bhopal …. **Respondent**
(Rep. by Sh. R.K. Mishra, DR)

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

FINAL ORDER NO. 53990-53991/2017

PER B. RAVICHANDRAN :

Both the present appeals are filed against the order-in-original no. 12/Commr/Cex/Sgr-II/2014 dated 27.03.2014 passed by the Commissioner of Central Excise (Appeals), Indore.

2. The main Appellant, M/s Bharat Oman Refineries Ltd., has set up a refinery at Bina (Madhya Pradesh). In this connection, they have entered into a contract with M/s Thermax Limited (**Appellant**

No. 2) for supply of Heater Package for Delayed Coker Unit, as a part of their refinery unit. The dispute in the present appeals mainly relates to the input credit availed by the first Appellant with reference to the work executed by the second Appellant. The Revenue is of the view that the second Appellant executed the work in terms of the contract with the main/Appellant No. 1 and discharged the Service Tax by availing the abated rate of tax as per composition scheme available under the Works Contract Service. Accordingly, the Revenue has held that the Appellant No. 1 is not eligible to avail any credit on inputs supplied by the Appellant No. 2. Further, some portion of credit was sought to be denied on the ground that the goods were supplied not in the name of Appellant No. 1 and as such they are not eligible for the credit on such goods. Proceedings initiated against the Appellants were concluded by adjudication by the Commissioner resulting in the impugned order. The original authority held that the Appellant No. 1 is not eligible for Cenvat Credit of Rs. 1,68,32,109/- on the goods supplied by the Appellant No. 2. He imposed equal amount of penalty on the Appellant No. 1 in terms of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. He also imposed a penalty of Rs. 10,00,000/- on the Appellant No. 2 under Rule 25 of the Central Excise Rules, 2002.

3. The learned counsel representing both the Appellants assailed the impugned order mainly on the following grounds :

(a) The original authority has committed an error in observing that the Appellant No. 2 discharged the Service Tax on abated rate in terms of composition scheme available to Works Contract Service. This is factually incorrect. He drew our attention to the invoices raised by the Appellant No. 2 for execution of the work. He emphasised that they have discharged full applicable rate of Service Tax for the services which are mainly under the category of "Construction Services", "Design & Engineering Services" etc;

(b) The original authority erroneously concluded that the goods supplied by Appellant No. 2, which were excise duty paid, cannot be considered for credit at the end of Appellant No. 1, on the ground that Appellant No. 2 has utilized the same in the execution of the work in the abated scheme of the payment of Service Tax on which no credit on the goods is available to the recipient of the service;

(c) The learned counsel for the Appellants submits that there were also errors in calculating the Cenvat Credit disallowed to the Appellant No. 1. The total amount comes to only Rs. 1,34,64,153/-, whereas the original authority confirmed the denial of credit to Rs. 1,68,32,109/-. It is the case of the Appellants that there is an error in computation which they can explain and prove with supporting documents; and

(d) A credit of Rs. 7,74,500/- was disallowed on the ground that the invoices were in the name of Appellant No. 2, and Appellant No. 1 cannot avail the credit of the same. The learned counsel submitted that the documents clearly mention Appellant No. 1 as consignee of the products. These products were, in fact, received by the Appellant No. 1 to be used in their project. They have suffered duty. Accordingly, there is no legal basis for denial of credit on these items, though they were purchased through Appellant No. 2.

4. The learned DR reiterated the findings recorded in the original order.

5. We have heard both sides and perused the records. On perusal of the impugned order, it appears that the original authority has repeatedly mentioned in his findings that Appellant No. 2 has paid Service Tax @ 4% on the gross value availing composition scheme in terms of Rules, 2007. This apparently is not correct. On *prima facie* perusal of the documents submitted it would appear that Appellant No. 2 did not avail composition scheme and paid Service Tax on the service portion specifically identified in the contract, at the full rate applicable during the relevant period. This has been categorically asserted by both the Appellants with supporting documents.

6. Further, regarding computation error of credit availed by the Appellant No. 1, we note that the same requires cross-verification.

7. Regarding credit denied on the documents which bear the name of both the Appellants, we note that as long as the input has

suffered duty and bear the name of the Appellant No. 1 as the consignee and the said inputs having been received in the premises; utilized for the intended purpose, there is no legal basis for denial of such credit.

8. In view of the above factual position, we find that the original order, as it stands, cannot be sustained. Accordingly, the same is set aside and the matter is remanded back to the original authority to examine afresh in line with above observations by giving reasonable opportunity to the Appellants to present their case.

9. In the result, the appeals are allowed by way of remand.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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