CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

Court IV

Date of hearing: 07.12.2017

Appeal No. ST/52806/2016–ST [SM]
[Arising out of the Order-in-Appeal No. 184(AK)ST/JPR/2016 dated 17/05/2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Jaipur]

Bajaj Electricals Ltd. … Appellant

Vs.

CCE & ST, Jaipur-I … Respondent

Appearance:
Present Shri Vikas Khandelwal & Ms. Richa Khandelwal, Advocate for the appellant
Present Shri K. Poddar DR for the respondent

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

FINAL ORDER No. 58326/2017

Per S.K. Mohanty

1. Brief facts of the case are that the appellant operates a depot in Jaipur to deal with the products manufactured in Chakan, Pune (a fan unit) and Ranjangaon, Pune (for poles and accessories thereof). Futher, the appellant company has also an Engineering and Project Division at Mumbai, which provides various taxable services. The depot of the appellant is registered with the Service Tax department at Jaipur, as an input service distributer, for distributing credit of Service Tax paid on input service to its above manufacturing units. In this case, the allegation of the Department is that the appellant had distributed inadmissible input service credit to its manufacturing units in respect of services obtained beyond the place of removal. In other words, the contention of the Department is that the depot cannot be considered as a place of removal and the credit taken in respect of the services utilized within the depot is not permissible

and the same cannot be distributed by the appellant. The show cause notice issued in this regard was adjudicated vide order dated 28/03/2012, wherein demand of Rs. 2,74,726/- was confirmed along with interest and equal amount of penalty was imposed on the appellant. Further, the said order also imposed penalty under Section 76 of the Finance Act, 1994. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 14/06/2016 has denied the credit on clearing forwarding agents service.

2. The Ld. Consultant appearing for the appellant submits that the sole allegation in the show cause notice was that the appellant was not entitled to take credit on various services used/utilized in its depot on the ground that the depot is not to be considered as a place of removal. He further submits that the Ld. Commissioner (Appeals) vide the impugned order has accepted the submissions of the appellant that depot is also place of removal and the Service Tax paid on the services utilized therein should be eligible for Cenvat benefit. By referring to both the show cause notice as well as the impugned order, the Ld. Consultant submits that the impugned order has travelled beyond the scope of show cause notice, in as much as, once the Commissioner (Appeals) has held that depot is also a place of removal, he should have stopped the proceedings then and there and there was no requirement of proceeding further to hold that credit is not available on C & F Agents Service.

3. On the other hand, Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and examined the case records.

5. I find that the show cause notice has alleged that the depot of the appellant should not be considered as the place of removal and as such, Service Tax paid on the services utilized therein should not be eligible for distribution of credit to its manufacturing units. However, the Commissioner (Appeals) has decided the appeal in favour of the appellant with regard to the allegation leveled in the show cause notice, holding that the depot should be considered as the place of removal. Since, the Commissioner (Appeal) has addressed the basic issue raised in the show cause notice, he should have concluded his findings only to that extent as alleged in the show cause notice. Since he has decided the issues, which were not the part of allegation in the show cause notice, it is evident that he has travelled beyond the scope of the show cause notice, which will not stand for judicial scrutiny.

6. Therefore, 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.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha