IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 12.1.2018

Appeal No. E/50771, 50946-50952/2017-DB

(Arising out of Order-in-Original No. 34-41/2017 dated 31.1.2017 passed by the Commissioner , Central Excise, Jaipur-II)

Sun Pharmaceutical Industries Ltd. Appellant

Vs.

CCE & ST, Ujjain Respondent

Appearance

Shri Huzefa Shakir, Advocate - for the appellant

Shri H. Saini, D.R. - for the respondent

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

Final Order No. 50220-50227/2018

Per **V. Padmanabhan :**

The present appeals have been filed by the appellant against the Order-in-Original No. 34-41/2017 dated 31.1.2017. The disputed period is 1.4.2011 to June, 2016.

2. The brief facts of the case are that the appellant is engaged in the manufacturing of the medicines and pharmaceuticals items in its factory. The appellant had an Annual Maintenance Contracts, including civil construction work and Central credit was claimed

under Rule 2(l) of Cenvat Credit Rules, 2004. These Rules were amended with effect from 1.4.2011, wherein exclusion clause was inserted. Accordingly construction of building or a civil structure or part thereof were excluded and laying of foundation for making of structures for support of capital goods stand excluded. So, with effect from 1.4.2011, the claim of the appellant for Cenvat credit was disallowed. Being aggrieved, the appellant has filed the present appeal.

3. With this background, heard Shri Huzefa Shakir and Shri H. Saini, ld. counsel for the parties.

4. After hearing both the parties and on perusal of record, it appears that the appellant is claiming Cenvat credit earlier for the civil construction and structural. But the Counsel categorically submitted that the appellant has not availed any Cenvat credit on civil construction services post 1.4.2011 and has specifically intimated the department to this effect. He also submitted that the Cenvat credit was availed only on the basis of the Annual Maintenance Contracts executed and hence they should be entitled to such credit.

5. On the other hand, Shri Saini, ld. DR for the department justified the impugned order. He submitted that the adjudicating

authority has denied the credit only in respect of input services like fabrication work which involved dismantled and erection work, aluminium partition and civil work etc. which are not covered under the definition of Rule 2(l) subsequent to the date of amendment.

6. After hearing both the sides and on perusal of record, we find that the appellant has entered into annual maintenance contract with various service providers in the various financial years. In the impugned order, the Cenvat credit stands allowed for the period from August, 2006 to March 2011 and dispute pertaining to that period is before us. However, from April, 2011 after the amendment the Cenvat Credit Rules, the Cenvat credit availed on certain services stand disallowed. We notice from the sample contract placed before us in the appeal that it is for certain insulation work for the year 2012. From a perusal of the details of the contract, we find no aspect of civil construction involved therein. To a query from the Bench, the ld. Counsel was not able to explain clearly what were the services which were included in the annual maintenance contract and which have been denied by the adjudicating authority. He has, however, asserted that all the services were in connection with annual maintenance which did not involve any civil construction services.

7. In the present facts of the case, we find that to come to a clear conclusion whether the Service Tax credit availed by the appellant is

hit by the amendment made to Cenvat Credit Rules with effect from 1.4.2011, it will be necessary to go through in detail the various Annual Maintenance Contracts executed by the appellant for different periods. It will also be necessary to go through, in detail, the various invoices based on which such Cenvat credits have been availed. We find that this forum will not be able to carry out such verification. It is also seen that the appeal record do not contain full details of all Annual Maintenance Contracts and the relevant invoices. In the absence of that the exact claim of the appellant made in the appeal is unable to be appreciated.

8. In the facts and circumstances of the case, we set aside the impugned order and remand the matter to the adjudicating authority to carefully consider the submissions made by the appellant vis-a-vis the relevant contracts and invoices and come to a conclusion de novo. Effective opportunity of hearing may be extended to the appellant before de novo orders.

9. In the result, the appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra) President	(V. Padmanabhan) Member (Technical)

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