

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

Excise Appeal No.E/50667/2018-EX [SM]

[Arising out of Order-in-Appeal No.BHO – EXCUS – 002 – APP
-340 – 17 -18 dated 26.10.2017 passed by the Commissioner
(Appeals), Central GST, Central Excise & Customs, Raipur]

M/s. Vandana Global Ltd. ...Appellant

Vs.

CCE & ST, Raipur ... Respondent

Present for the Appellant : Ms.Priyanka, Advocates

Present for the Respondent: Ms. Tamanna Alam, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 28/11/2018
Pronounced on :17/12/2018

Final ORDER No. 53413 /2018

PER: RACHNA GUPTA

The assessee herein is engaged in manufacture of iron and steel and is also availing Cenvat Credit on inputs capital goods and input services under Cenvat Credit Rules, 2004. Department, during the course of audit of records of the appellant for the period 2011 to 2012-13 (up to December 2013) observed that the appellant had availed inadmissible input service credit on services like construction service, Civil constructions, banking and financial services, consulting

engineering services, maintenance or repair service, contract service, club membership, insurance service, rent-a-cab travel by air services etc. The Department alleged that these were not specified input services in view of Rule 2 (I) of Cenvat Credit Rules, 2004 for not being the service for manufacturing of final product of the appellant. The Department also alleged that the credit has been availed on improper documents.

2. Resultantly, vide show cause notice No.15335 dated 18.09.2015, Department of Revenue proposed to disallow the cenvat credit of service tax amounting to Rs.48,62,000/- availed in respect of above mentioned services during the period w.e.f. September, 2010 to July, 2015. The interest at the prescribed rate in accordance of Section 11AA of Central Excise Act, 1944 and penalty under Rule 15(2) of CCR, 2004 read with Section 11AC (1) (c) of CEA, 1944 was proposed. The said show cause notice was initially adjudicated by Additional Commissioner vide its order bearing No.159 dated 30th September, 2016, thereby partially confirming the demand. The input service credit of an amount of Rs.39,55,335/- was held to have been correctly taken by the appellant. The said demand was dropped. However, the cenvat credit amounting to Rs.9,06,665/- was alleged to have been wrongly availed. The proportionate interest at the appropriate rate and the penalty to the extent of 50% of the duty so determined was also imposed upon the appellant. Being aggrieved, appellant preferred an appeal before Commissioner (Appeals), who vide the order under challenge

that is the one bearing No.27 dated 26.10.2017 held that out of the services appeared at Sl.No.13 to 47 of Annexure C of show cause notice cenvat credit in respect of services depicted at Sl.No.16 and 31 amounting to Rs.8,689/- and depicted at Sl.No.37 to 47 amounting to Rs.2,32,435/- was held to be not admissible to the appellant and rest was held admissible. The demand of interest was made proportionate to the demand confirmed and penalty was also reduced to Rs.2,40,731/-. Still being aggrieved, the appeal before this Tribunal has been filed.

3. I have heard Ms. Priyanka Goel, Id. Advocate for the appellant and Ms. Tamanna Alam, Id. A.R. for the Department.

4. It is submitted on behalf of the appellant that the authorities below have denied the admissibility of cenvat credit with respect to the railway receipts as mentioned in Annexure C merely relying upon the requirement of STTG Certificate in furtherance of Notification dated 22nd August, 2014. It is impressed upon that the period in dispute for the said purpose is w.e.f. August, 2011 to March, 2012. Notification of 2014 is alleged to have wrongly been given the retrospective effect. The denial of credit as far as the railway receipts issued by the Railway for transportation of appellants goods by rail Photocopies thereof, has wrongly been denied. It is impressed upon that original receipts were retained by the Railways at the time of taking delivery of the goods transported. Order to that extent is prayed to be set aside. Case of **J.K. Cement**

Ltd. vs. Commissioner, Central Excise, Udaipur reported in 2017 (12) TMI 82 has been relied upon.

5. With respect to the services as mentioned in Annexure D of the show cause notice, it is submitted that the credit is denied for want of the contract/agreement. It is impressed upon that appellant has placed on record several invoices qua receiving those services. Those invoices contained each and every detail proving that the activities have been undertaken in relation to the business activity of the appellant. Mere absence of contract has wrongly been held to be the sole ground for denying the cenvat credit. It is also impressed upon that the amount for all these services is also the miniscule in reference to the impugned demand i.e. just Rs.30,921/- for as many as 6 of the alleged services. The Counsel has relied upon the case law of **Vinithi Organics Ltd. Vs. CCE, Kolapur reported as 2018 (2) TMI 776**. With respect to the denial of Cenvat Credit for receiving services as that of consultancy service and general insurance services for want of the Service Tax Registration. The findings are alleged to be wrong. Emphasis on case law of **Coso India Pvt. Ltd. vs. CCE, Cochin – 2017 (10) TMI 963 (Tri.-Bangalore)** has been relied upon.

6. Similarly with respect to membership charges, the findings are alleged as wrong because the club is sponge iron manufacturers association only. The membership is not for the personal entertainment of the employees, but for the

employees to remain acquainted with the developments in the industry. Hence, it was very much in relation to the business activity of the appellant. The case of **CCE, Bangalore vs. ITC reported in 2017 (6) TMI 151 (Tri.-Bang.)** is relied upon for the purpose. Finally, it is submitted that show cause notice dated 18.09.2015 is barred by limitation. Since there is no allegation even in the show cause notice qua evasion of the duty on part of the appellant, the allegation of wrong availment of cenvat credit is apparently false. In view of the settled decisions, the Department was not entitled to invoke the extended period of limitation. No question of imposition of penalty arises. Order under challenge is prayed to be set aside.

7. Ld. DR while rebutting these arguments has placed emphasis on para 8.2 of the order under challenge, wherein the Commissioner (Appeal) has been clear enough to hold that the appellants have not provided sufficient evidence to prove their submissions. No details regarding the works as that of agreement/contract or / and design/drawing etc. have been submitted by the appellant. In absence whereof, the admissibility of cenvat credit (as confirmed by the Commissioner (Appeals)) cannot be decided. It is impressed upon that in view of the said findings there appears no infirmity in the order under challenge. Appeal is prayed to be dismissed.

8. After hearing both the parties and perusing the entire record alongwith the order under challenge, I am of the opinion as follows:-

9. The credit to the appellant has been denied by the Department on two counts:-

(1) For want of invalid documents for the credits as mentioned in Annexure 'C' to the show cause notice.

(2) For want of services to not to be the input service as detailed in Annexure 'D' to the show cause notice.

10. The denial for want of invalid documents is mainly with respect to availment of cenvat credit by the appellant qua the service of transportation of their final product received from railways. Perusal of the orders of adjudicating authorities below show that the said credit has been denied for want of STTG Certificate as is required by Notification dated 22nd August, 2014. Apparently and admittedly, the period for receiving the service from railway is w.e.f. August 2011 to March, 2012. The Notification as has been relied upon is the post requirement to the said period. The Notification not being beneficial to the assessee and for want of any expressed retrospective effect thereof, cannot be applied retrospectively. Hence, disallowing the credit for want of such a document which was not statutorily required for the period in question is definitely a wrong finding.

11. No doubt, Rule 9 of Cenvat Credit Rules, require the assessee to mandatorily submit such documents as are mentioned therein. But perusal of record shows that details of bills have duly been submitted by the appellant as has also been acknowledged by the adjudicating authorities. Those details contains the relevant description as is required to be furnished vide Rule 9 of CCR. Proviso to Rule 9 (2) is clear enough to say that if the document does not contain all the particulars but contains the details of duty or Service Tax payable, description of goods or taxable service, assessable value, Central Excise or Service Tax Registration No. of the person issuing the invoice, name and address of factory or warehouse or the premises of first or second stage dealers or provider of output services the Dy. Commissioner/Assistant Commissioner of Central Excise after being satisfied that the goods or services covered by the said document have been received and accounted for in the books of accounts of the receiver, he may allow the cenvat credit. The bare perusal makes it clear that even if the documents as mentioned in Rule 9 (1) are not available, the competent authority as mentioned has a discretion to still allow the credit. In the present case, the documents placed have all the above mentioned details except for Service Tax Registration. There is no allegation in the show cause notice that the services have not been received by the appellant nor that they have not been accounted in the books of accounts of the appellant. In such circumstances, the

denial of cenvat credit for want of STTG Certificate is not sustainable.

12. This Tribunal in **J.K. Cement (supra)** case has held that when it is an admission that the appellant has availed taxable service of transporting imports by the railways and did suffer a Service Tax (the same is true for the present case as well) the Assistant Commissioner/Dy. Commissioner can allow the credit in terms of proviso to Rule 9. It was also appreciated in the said case that the said discretion has been given in order to facilitate the assessee who avails credit of input services to avail such credit even in the case of certain infirmity in the documents supporting the tax payment. Rule 9 is basically to ensure that no assessee shall avail the credit which is not due to them. Denial of credit merely on the said procedural lapse when admittedly the taxable service of transporting inputs by Railways is admitted by the Department, is not sustainable. The denial of credit for want of STTG Certificate from Railways is therefore set aside.

13. Now coming to another aspect of non-availability of Service Tax Registration, I rely upon the decision of **Hon'ble High Court of Karnataka in the case of Commissioner vs. Bill Forge Pvt. Ltd. reported as 2012 (279) ELT 209**, wherein the credit was denied with regard to input services on the ground that in the bills Service Tax Registration is not mentioned and that the bills are not in the prescribed format.

The Hon'ble Court held that except for Service Tax Registration, the bills have all other requisite details and the Certificate of Service Tax Registration was also placed on record. Resultantly, the denial of Cenvat Credit for want of Service Tax Registration was set aside. Once Registration is admitted fact, the absence of certificate thereof is a mere procedural lapse and a statutory entitlement of the assessee cannot be denied on the basis of the said mere procedural lapse. As was held by Tribunal, Bangalore in the case of **Mangalore Refinery and Petrochemicals Ltd. Vs. Commissioner** reported as **2007 (216) ELT 43 (Tri.-Bang.)**. Tribunal Mumbai in the case of **Commissioner vs. Techno Vision** reported in **2007 (219) ELT 942 (Tri.-Mum.)** has held that if the transaction is bonafide, credit could not be denied even if, duty paying documents are invalid, as per Rule 9 of CCR, 2004. Above all, credit taken on bonafide belief of duty payment documents evidencing payment of excise duty amount is admissible. The denial thereof by Commissioner (Appeals) is therefore not sustainable.

14. Now coming to the demand confirmed for the services as mentioned in Annexure 'D' of show cause notice, I observe that the credit has been denied on 2 scopes:

- (1) for impugned services to not to be the input services and
- (2) for want of evidence as that of contract/ agreement, drawing/design etc.

For the purpose the definition of input service as mentioned in Rule 2 (I) of Cenvat Credit Rules, 2004 as well as the definition after amendment w.e.f. 01.04.2011 are relevant for the purpose.

"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 up to 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 up to 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 up to the place of removal;"

It is pertinent here to mention that aforesaid definition of "input service" did not contain any exclusion part. It remained in force till 31st day of March, 2011 prior to its substitution w.e.f. 01.04.2011 vide Notification No.3/2011-CENT) dated 01.03.2011 whereafter the words "activities relation to business, such as "were deleted and an exclusion part was added to the definition of "input service".

5.1 The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly in or in relation to the manufacturer of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression "input service". Rule 2 (I) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii), Rule 2 (I) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs.

The definition of 'Input service' effective from 01.04.2011 onwards which is reproduced as –

"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 up to 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 up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital

goods and outward transportation up to the place of removal; but excludes services,-

(i) Credit availed on Construction charges.

7. *It may be noticed from Annexure D of impugned notice the amount of service tax in each bill pertains to construction charges/ construction service work are ranging between Rs.1492/- to Rs.37500/- which proves that each provider of taxable service had worked in Noticee factory under the Petty contract work order. In the inclusive portion of input service definition the activity of setting up, modernization, renovation or repair of a factory has been specifically specified in Rule 2 (I) of Cenvat Credit Rules, 2004. Hence denial of Cenvat credit in respect of petty works as proposed in impugned notice being contrary to Rule 2 (I) ibid is unsustainable."*

The conjoint reading of Section 65(25) (b) of Finance Act, 1994 defining commercial or industrial construction, Section 66 E.. about the services constituting declared services with that of the definition of input service in Rule 2 (I) of CCR, 2004 makes it clear that the conjoint reading of Section that the repairing and maintenance of civil constructions done by petty contractors, does not fall under the exclusion clause of Rule 2 (I) of Cenvat Credit Rules, 2004.

15. In the present case there is no allegation in the show cause noticed that services in question were not received or not utilized by the Noticee. There is not even the allegation that services were not received under the cover of invoice and that the Service Tax was not paid. The documents placed on record as also been duly acknowledged by the adjudicating

authorities below are in the form of invoices. The perusal thereof makes it clear that the payments for receiving the services mentioned therein i.e. of general insurance service, consultancy service, membership fee service etc. are being made by the company. Otherwise also the general insurance is statutory mandate. The club herein is the industrial association club. It cannot be ruled out that the services were obtained in relation to the business. Mere absence of contract or agreement, design/ drawings is highly insufficient to hold that the services were for the personal use of the employees. The findings of the Commissioner (Appeals) while denying the cenvat credit qua the service in Annexure 'D' of show cause notice is also therefore not sustainable and is liable to be set aside.

16. Finally coming to the plea of limitation, as impressed upon by the appellant, I observe that the period in dispute is w.e.f. September, 2010 to July 2015. The show cause notice is of 18.09.2015. No doubt for the period w.e.f. September 2010 to July, 2014 demand is beyond the normal period of one year. There are admittedly no allegations of evasion of duty. The availment of credit though is alleged to have been wrong, but in view of above discussion those findings are set aside. Department is opined to have proceeded on presumptions and surmises, that too on the rigid opinion about lack of documents. Despite that the relevant information required vide those documents is otherwise apparent from the other documents submitted by the appellant. There is no other

evidence of the Department to prove any act of the appellant to have an intention to evade the duty. As a result, the Department was not entitled to invoke proviso to Section 73 of Central Excise Act. The show cause notice for the demand beyond the normal period of one year is barred by time. For the demand of normal period of one year the same has already been held not sustainable, in view of above discussion. As a result, the order under challenge is hereby set aside. Appeal stands allowed.

[Pronounced in the Open Court on 17.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita