

the ECI services, the appellant was also awarded contracts for supply of goods used in providing ECI services. The appellants, for the supply of materials and for rendering of ECI services to various electricity boards, has been availing services of several commission and consulting agencies who assist the appellant in procuring the materials used in completing the ECI contracts as well as in preparation of tenders for obtaining of ECI contracts. For this purpose, the appellants have been paying commission to the agents who have been facilitating them in supply of materials and in obtaining ECI contracts. These commission agents have been paying applicable service tax on the commission charged by them and credit of such service tax paid by the commission agents have been availed by the appellant for further utilization in payment of service tax leviable on the output service provided by them. The department took a view that they are not entitled to cenvat credit of the service tax paid by them on the commission charged by the commission agents as the service of commission agent does not have a direct link in providing the output services, or in the manufacture of their finished goods. Accordingly, a demand of Rs.1,65,44,428/- was raised on the appellant vide show cause notice dated 3.6.2013 primarily on the following grounds :

- (i) That since the value of the material did not form part of the taxable ECI service, the credit taken on service tax paid on

the basis of value of the material was not admissible as provided under the provisions of Rule 2(1) and Rule 3 of Cenvat Credit Rules, 2004.;

- (ii) The commission agents services relating to supply of material cannot be construed as input service because their services were not used in providing taxable output service or for manufacture of goods; and
- (iii) The appellant has willfully suppressed the facts of availment and utilization of such cenvat credit.

2. The show cause notice was adjudicated vide Order-in-Original dated 10.2.2015 wherein the learned Commissioner confirmed the demand of duty under section 73(2) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004 and imposed an equal amount of penalty as per the provisions of Rule 15 (3) of the Cenvat Credit Rules, 2004 read with section 78 of the Finance Act, 1994.

3. The appellants are before us against the impugned Order-in-Original.

4. It is the contention of the learned Counsel that the contracts which were awarded to them by various electricity boards are composite contracts, i.e. they involve both the supply of goods as

well as ECI services and that without the supply of goods, the basic services of ECI cannot be performed. Learned Counsel pointed out that for setting up of an electricity distribution sub station, necessary goods and equipments need to be provided before the actual work of erection, commissioning and installation of electricity distribution sub station takes place and therefore, the services of commission agent who helps them in procurement of material required for such erection, commissioning and installation is an input for providing the ultimate output service of ECI and therefore, as per the provisions of Rule 2(l) and 3 of the Cenvat Credit Rules, the activity of services provided by the commission agents is covered under the definition of input services. It has therefore, been contended that they are entitled for credit of service tax paid on such services. It is also been submitted that this Tribunal in [2016 (10) TMI 578- CESTAT-New Delhi] decided this issue in their favour. Learned Counsel also cited several other decisions on the similar issue and submitted that the issue of cenvat credit of the service tax paid has been decided by the Tribunal and other higher forums. The various case law relied by learned Counsel are as follows:

- (i) ***Genus Power Infrastructure Ltd. vs. CST, Jaipur 2016 (10) TMI 578-CESTAT-New Delhi;***
- (ii) ***Commissioner vs. Lakshmi Technology & Engineering Industries Ltd.[2011 (2) TMI 1275-CESTAT-Chennai];***

- (iii) ***R G Pigments Pvt. Ltd. vs. CCE, Jaipur 2017 (9) TMI 421-CESTAT New Delhi;***
- (iv) ***CCE, Pune vs. SS Engineering [2016 (40) TMI 108-Bombay HC]; and***
- (v) ***CCE vs. V Thangavel & Sons (P) Ltd. [2014 (7) TMI 895 CESTAT-Chennai]***

5. We have also heard the learned DR who has reiterated the findings given in the Order-in-original.

6. We find that the matter is no longer res integra as the issue has already been decided in the appellants own case by Final Order No. 53526/2016 dated 14.9.2016. The relevant extract of this decision is reproduced hereinbelow:

“5. In the impugned order, a part of the Cenvat credit taken on input services has been sought to be denied. To decide on the question whether this is proper or not we will need to examine :

- (i) whether the credit on such input services were properly taken and
- (ii) whether the credits taken as above have been properly used for making payment of excise duty/service tax on output service.

The ‘Input Service’ is defined in Rule 2 (l) of the Cenvat Credit Rules as follows :-

- “(l) “input service” means any service, -
- (i) used by a provider of taxable service for providing an output service ; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from 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 ;”

Credit has been availed by the appellant on commission agent services as well as insurance services. The commission agent services have been used by the appellant for procurement of Turnkey orders from DISCOMS. Since part of such orders are for supply of goods manufactured by the appellant and the other part is for supply of services, such services qualify as input service. This view is also supported by several decisions. For example in the case of **Commissioner vs. Ambika Overseas** reported in **2012 (25) S.T.R. 348 (P&H)**, the Punjab and Haryana High Court has upheld the order of the Tribunal in which it was held that overseas commission agents used for procuring orders would be covered under input service. Similar views have been held by the Tribunal in the case of **Carrier Air conditioning & Refrigeration Limited vs. Commissioner** reported in **2016 (41) S.T.R. 1004 (Tri. – Del.)**. Similarly insurance services availed for the goods and services would also

be eligible as input service. Thus, we conclude that the Cenvat credits on the input services have been correctly availed.”

7. Since the facts are identical in this case also, we follow the above decision of this Tribunal and hold that order-in-original dated 10th February, 2015 deserves to be set aside and is set aside. The Appeal is, accordingly, allowed.

(operative part of the order pronounced in the open Court)

(C L Mahar)
Member (Technical)

(Justice Dilip Gupta)
President

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