CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. ST/2610/2011

(Arising out of Order-in-Appeal No.50/2011 (H-II) S.Tax dated 30.06.2011 passed by CCCE & ST (Appeals-II), Hyderabad)

M/s Uni Ads Ltd
7-1-212/8, Shivbagh, Ameerpet,
Hyderabad – 500 016 **......Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad – II
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004 **......Respondent**

and

Appeal No. ST/2757/2011

(Arising out of Order-in-Appeal No.50/2011 (H-II) S.Tax dated 30.06.2011 passed by CCCE & ST (Appeals-II), Hyderabad)

Commissioner of Customs, Central Excise & Service Tax, Hyderabad – II
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004 **......Appellant**

VERSUS

M/s Uni Ads Ltd
7-1-212/8, Shivbagh, Ameerpet,
Hyderabad – 500 016 **......Respondent**

Appearance
Present for the Assessee: Shri B.V. Kumar, Advocate.
Present for the Department: Shri P. Sudhakar Reddy, Authorized Representative.

Coram:
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30655-30656/2019

Date of Hearing: 06.06.2019
Date of Decision: 06.06.2019

[Order per: P. VENKATA SUBBA RAO.]

1. These two appeals arise out of the same impugned Order-in-Appeal and hence are being disposed of together.

2. Appeal ST/2610/2011 is filed by the assessee against denial of Cenvat credit while appeal ST/2757/2011 is filed by the department against non-imposition of penalties.

3. We heard both sides and perused the records.

4. The issue which falls for consideration in this case is whether the assessee, who renders advertisement services, is entitled to Cenvat credit on angles, shapes, sections and channels etc., used for erection of "Unipoles"/hoardings which are fixed to the earth and on which the appellant/assessee displays advertisement. It is not in dispute that the assessee is involved in rendering advertisement services and has been paying service tax on them. The only question is whether the assessee is entitled to the Cenvat credit on these materials. It is the case of the department that they are not entitled to the benefit of Cenvat credit on these goods since these are not inputs used for rendering output services and further the hoardings and unipoles are fixed firmly to the foundations in the earth with nuts and bolts and therefore, they cease to be goods. Once they are not goods they no longer qualify as inputs or as capital goods. Rule 2(k) of Cenvat Credit Rules (CCR), 2004 defines inputs as goods. Rule 2(a) defines what capital goods are. The inputs on which the Cenvat credit has been availed being fixed to the earth they cease to be goods and therefore no Cenvat credit is admissible on them. It is the case of the assessee that prior to 07.07.2009 the definition of 'inputs' did not exclude cement, angles,

channels, CTD bars, TMT bars, etc., used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. Therefore, during the relevant period they were entitled to the benefit of Cenvat credit. At any rate, the inputs which they have obtained i.e., angles, channels etc., which are by themselves not fixed to the earth but after the structure is made, it is fixed to the earth. Therefore, they qualify as goods and they are entitled to Cenvat credit on the same. Learned counsel for the appellant further submits that the Hon'ble Supreme Court has clarified as to what cease to be goods when they are fixed to the earth and what do not, in its judgment in Solid & Correct Engineering Works reported in 2010 (5) SCC 122, also reported in 2010 (252) ELT 481 (SC). After examining the matter in depth the Hon'ble Apex Court held that the General Clauses Act does not define the term "attached to the earth". However, Section 3 of the Transfer of Property Act gives the following meaning to the expression "attached to the earth".

> *"(a) Rooted in the earth as in the case of trees and shrubs;*
>
> *(b) Embedded in the earth as in the case of walls and buildings;*
>
> *(c) Attached to what is so embedded must be for the permanent beneficial enjoyment of that to which it is attached."*

5. Learned counsel submits that in this case the hoardings are attached to the foundation embedded in earth with nuts and bolts. Such attachment is not for the benefit of the foundation; on the other hand, the foundation supports the hoardings. The hoarding in question is not by itself either rooted in the earth or is embedded in the earth. It can easily be removed by removing the nuts and bolts through which it is attached to the foundation. Therefore, in terms of the ratio of the judgment of the Apex Court also the goods in question cannot be held to be attached to the earth and do not cease to be goods. He further submits that for the period in question, the

question of availability of Cenvat credit on steel bars, cement, etc., used in construction of capital goods which are, in turn, used for rendering services has been well settled by the jurisdictional Hon'ble High Court of Andhra Pradesh in Sai Samhita Storages Pvt Ltd [2011 (270) ELT 33 (AP)]. In that case the appellant was rendering warehousing services and sought Cenvat credit on the steel and cement used for erecting the warehouses which were allowed by the Tribunal in 2010 (255) ELT (0091) and this decision was upheld by the aforesaid order of the Hon'ble High Court of Andhra Pradesh. He further submits that the same ratio was followed in the case of Mundra Ports and Special Economic Zone Ltd [2015 (39) STR 726 (Guj)], India Cement Ltd [2012 (285) ELT 341 (Mad)], Thiru Arooran Sugars [2017 (355) ELT 373 (Mad)], Vimala Infrastructure India P Ltd [2018 (13) GSTL.57 (Chhattisgarh)], Vandana Global Ltd [2018 (16) GSTL.462-Chhattisgarh]. He would therefore urge that they are entitled to the Cenvat credit on the goods in question.

6. Learned departmental representative reiterates the findings of the lower authorities and asserts that the assessee's appeal needs to be dismissed. He further argues that the only error in the impugned order is the first appellate authority not imposing penalty upon the appellant.

7. We have considered the arguments on both sides and perused the records. We find the issue is no longer *res integra*. It has been held by the jurisdictional High Court of Andhra Pradesh in the case of Sai Samhita Storages Pvt Ltd (supra) that steel and cement used in erecting structures which were in turn used for rendering services are eligible inputs for availing Cenvat credit. Similar decisions were also taken in the case of Mundra Ports & Special Economic Zone Ltd (supra), Thiru Arooran Sugars (supra). It is only with effect from 07.07.2009 cement, angles, channels, CTD bars and

TMT bars etc., have been excluded from the definition of inputs under Rule 2(k). In view of the above, we find that the assessee's appeal needs to be allowed and we do so. Consequently, the department's appeal seeking imposition of penalty needs to be set aside and we do so.

8. The assessee's appeal is allowed with consequential relief. The department's appeal is rejected.

(Operative part of this order was pronounced in the open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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