IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/75111/18

(Arising out of Order-in-Appeal No. 29/ST/BBSR-GST/2017 dated 25.10.2017 passed by the Commissioner (Appeals), CGST,CX & Customs, Bhubaneswar.)

M/s. J.K.Paper Ltd.

Appellant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, BBSR-I

Respondent (s)

Appearance:
Shri P.K.Jena, Advocate for the Revenue
Shri S.S.Chattopadhyay, Suptd.(AR) for the Appellant (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing/Decision: -08.05.2018

ORDER NO.FO/76522/2018

PER SHRI P.K.CHOUDHARY

The appellant is engaged in the business of manufacture of paper and paper board classifiable under Chapter 48 of the Central Excise Tariff Act, 1985 (CETA). A Demand-cum-Show Cause Notice dated 18.10.2012 was issued for alleged wrong availment of Cenvat Credit on Service Tax during the period 2008-2009 to 2010-2011 (upto September, 2010).

2. The Adjudicating Authority disallowed Cenvat Credit amounting to Rs.9,49,430/- along with interest and also imposed penalty of equal amount with an option that the penalty should be reduced to 25% if the noticee paid the demanded amount with interest and penalty within 30 days of communication of the adjudication order.

3. On appeal, the Ld. Commissioner (Appeals) rejected the appeal by upholding the Adjudication Order.

4. Appellant is in appeal before the Tribunal against the Order passed by the Commissioner (Appeals), who disallowed the credit of Service Tax paid for services received by the appellant-assessee.

5. I find that the Appellant-Assessee has availed Cenvat Credit of Service Tax paid on input services.

6. Ld. Advocate appearing on behalf of the appellant, company made the Bench go through the entire case records and both the orders of the Lower Authorities. Further, he explained the difference between the definition of “input” and “input service” and stated that in the case of input service related to business activity, it would be eligible for Cenvat Credit on any services which is in relation to their business activity.

7. The Ld. DR reiterates the order of the Adjudicating Authority.

8. Heard both sides and perused the appeal records.

9. The issue involved in this case is regarding the availment of Cenvat Credit of the Service Tax paid on various Services which were utilized for the appellant’s business activities. It is the case of the Revenue that such credit is incorrectly availed by the assessee. The appellant’s claim is that having included expenses in the cost of production, they are entitled to avail Cenvat Credit. I observe that the Hon’ble Supreme Court, Hon’ble High Courts and the Tribunal in various decisions have specifically held that any expenditure incurred by an assessee, if it forms part of the price of the final product, on which Excise Duty is paid, Cenvat Credit must be allowed on the said Service Tax, if the manufacturer can demonstrate that the said expenses are in relation to the manufacture of final product. The Central Excise Duty paid by the appellant on their finished goods is on ad-velorom which has been arrived at after considering all the expenses that had gone into

manufacturing of the finished goods. In so far as the present facts of the case is concerned, it is not in dispute that the credit of Service Tax has been availed on services such as maintenance and repair of colony area which were received and used by the assessee for the purpose of manufacture of the final product and these cost formed part of the excisable value on which Excise Duty was discharged.

It is relevant to note here that factories are generally set up at remote location which are several hundred kilometres away from big towns and cities. Given this fact, most companies are compelled to create an integrated township within the factory, either in the same campus of the factory or at some distance so that they are able to attract and retain qualified personnel as also workmen at such remote locations. Without Such townships, these companies would find it virtually impossible to conduct their business operations as they would not be able to arrange for the required personnel for undertaking the business operations. In fact, in many locations, where a factory is located, in extremely remote location, such townships also have in house schools, hospitals etc. and there can be no denying the fact that such townships are set up in relation to ultimate activity of manufacturer as without such townships in place, competent personnel will not be available for operation of the manufacturing activity.

10. I find from the records that the maintenance and repair service of various civil and electrical work, carpenter work has been availed at the school, colony and the club maintained by the appellant for its employees. However, it is my considered view, that Cenvat Credit of Service Tax Paid on service availed at the club premises cannot be allowed.

11. I have considered the rival submissions made before me. The period involved is prior to 01/04/2011, when the definition of input service during

the relevant period had wide ambit as it included the words "activities related to business". The definition which included these words has been discussed in detail by various High Courts.

12. In view of the above discussions, I hold that the appellant, assessee is eligible for availing credit of Service Tax paid on the Services availed for the purposes of its business activities except the services availed in respect of the staff club.

13. In view thereof, the appeal filed by the appellant assessee is thus partly allowed.

(Operative part of the order was pronounced in the open court.)

Sd/

(P.K. Choudhary)
Member (Judicial)

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