IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.75562/18

Arising out of O/A No.11/CE/BBSR-GST/2017 dated 22.11.2017 passed by Commr. of GST, Central Excise & Customs, BBSR.

M/s Bilt Graphic Papers Products Ltd.

...APPELLANT(S)

VERSUS

Commr. of CGST, C.Excise, BBSR

RESPONDENT (S)

APPEARANCE

Shri S. C. Mohanty, Advocate for the Appellant (s)
Shri S. S. Chattopadhyay, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 07. 05. 2018

ORDER NO.FO/76521/2018

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against the Order-in-Appeal No.11/CE/BBSR-GST/2017 dated 22.11.2017 passed by Commr. of GST, Central Excise & Customs, BBSR.

2. Briefly stated the facts of the case are that the appellant, M/s Bilt Graphic Paper Products Ltd. (formerly known as Ballarpur Industries Ltd.) is engaged in the manufacture of writing and printing paper classifiable under Chapter 48 of the 1st Schedule to the Central Excise Tariff Act, 1985, in its unit Sewa located at Jeypore in the district of Koraput, Odisha. The appellant is also having other manufacturing units located in the State of Maharashtra and Haryana.

The appellant availed Cenvat Credit of the Central Excise duty and countervailing duty paid on input materials such as, pulp, sodium chloride, chlorine, starch and lime. The appellant also availed input service credit on GTA service and port service used for procurement and inward transportation of above input materials, in terms of Rule 2 (l) of Cenvat Credit Rules, 2004. Subsequently, certain quantities of above input materials were removed as such by the appellant to its other sister units during the period 2011-12, for use in manufacture of final products i.e. writing and printing paper by those units. The said input materials were removed as such by the appellant under the cover of invoices, on payment of an amount equal to the credit taken in terms of Rule 3 (5) of the Cenvat Credit Rules, 2004. Show-cause notice dated 05.02.2015 was issued to disallow and recover cenvat credit of Rs.2,09,739/- alleged to have availed irregularly along with interest and to impose penalty. The Adjudicating Authority disallowed the credit amounting to Rs.2,09,739/- and ordered for recovery of the same along with interest and also imposed a penalty of Rs.1,04,870/- under Section 11AC (c) of the Central Excise Act, 1944 read with Rule 15 (2) of the Cenvat Credit Rules, 2004. On appeal, the ld.Commissioner (Appeals) upheld the adjudication order and rejected the appeal. Hence, the present appeal before the Tribunal.

3. The ld.Advocate appearing on behalf of the Appellant Company filed a written statement along with copies of relied upon decisions and submits that the recovery provisions under Rule 14 of Cenvat Credit Rules, 2004, are not applicable to the present case inasmuch as the said provisions are applicable to the cases of wrong

availment/utilization of the Cenvat Credit. Whereas in the present case, the credit was availed by the appellant against the prescribed documents issued by the service providers towards procurement and transportation of input materials from the port to the factory of the appellant. It is his submission that the extended period of limitation is not at all applicable to the facts of the present case and accordingly, imposition of penalty under Section 11AC of the Central Excise Act, 1944, read with Rule 15 (2) of Cenvat Credit Rules, 2004 is un-warranted since the issue relates to interpretation of statutory provisions.

4. The ld.D.R. appearing for the Revenue reiterates the order of the lower authorities.

5. Heard both sides and perused the appeal records.

6. I find that the assessee had cleared 2245.640 MT of inputs, viz., Pulp, Lime & Sodium Chlorate etc. as such, to its sister unit. For procuring these quantities, the appellant had received Port and GTA services and availed cenvat credit amounting to Rs.50,551/- and Rs.1,59,188/- paid on such Port services and GTA services respectively treating them as input services. The assessee had also utilized the said cenvat credit so availed towards payment of Central Excise duty payable on the final product cleared from the factory. It is the case of the Revenue that since the assessee did not use the inputs in or in relation to the manufacture of finished goods and accordingly, the services used in procuring the inputs would not qualify for availing cenvat credit. I find that the CBEC vide Instruction F.No.96/85/2015/CX.I dated 07.12.2015 has observed, on the

reversal of cenvat credit in respect of services paid on the input services, as under :

> *"B.26- Meerut Zone- CENVAT Credit – Reversal of Cenvat Credit in respect of service tax paid on Input Services :*
>
> *Issue :*
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> *Rule 3(5) of the Cenvat Credit Rules, 2004 provides as under :*
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> *" When inputs or capital goods, on which CENVAT Credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9"*
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> *An audit objection has been raised that Cenvat Credit taken in respect of service tax paid on input services like Customs Brokers charges, Clearing and Forwarding Agencies Services (C&F), GTA etc. used for procurement/transportation of inputs/capital goods, should also be reversed at the time of clearance of inputs/capital goods as such from the factory of the manufacturer. The present Rule 3 (5) of the Cenvat Credit Rules, 2004 does not mention 'Input Services' amongst the credits required to be reversed and therefore it is not possible to demand reversal of credit of input services. There is need to amend the rules so that reversal of credit taken on input services can also be achieved.*
>
> ***Discussion & Decision***
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> *The conference noted that Rule 3(5) of the CENVAT Credit Rules, 2004 does not provide for reversal in respect of input services for a reason. Input services are consumed once the inputs and capital goods are received in the factory. Thus on*

receipt of inputs and capital goods, the associated input services have to be considered as consumed within the factory and become a cost to the business. Demand for reversal o the input services credit, when such input services cannot be reused, unlike inputs and capital goods which are available for reuse would not be fair to the trade. Therefore, the conference concluded that the present rule represents the correct provision in accordance with the principles of input tax credit. Rule 3(5) of the Cenvat Credit Rules, 2004, does not need any amendment. Audit Para may be replied accordingly".

7. I find that the issue is no more res-integra in view of the various decisions of the Hon'ble High Courts and the Tribunal. This Bench of the Tribunal in the case of Seven Star Steels Ltd. Vs. Commr. of Central Excise, Customs & S. Tax, BBSR II reported in 2013 (30) STR 532 (Tri.-Kolkata) by relying upon the decision of the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. Vs. Commissioner : 2008 (10) S.T.R. 118 (Tribunal) had allowed the appeal filed by the assessee. Relevant Paras 5 & 6 of the decision of the Tribunal's decision in the case of Seven Star Steels Ltd. (supra) are reproduced below :

> ***5.*** *Heard both sides and perused the records. I find that the appellants had procured iron ores during the period April 2007 to March, 2009, which were used in the manufacture of their final product, namely, sponge iron. In bringing the said iron ores, which were used as input, the appellants had paid service tax on GTA services. Consequently, they had availed Cenvat credit on the amount of service tax paid on GTA service as the same satisfies the definition of input service prescribed under Section 2(l) of Cenvat Credit Rules, 2004. During the*

course of manufacture of sponge iron, the said iron ore was subjected to the process of screening and after completion of the said process, iron ore fines were generated. It is the case of the Revenue that these iron ore fines were not used in the manufacture of their final product, namely, sponge iron, but were sold in the market. Therefore, since the iron ores were sold as such without being used in the manufacture of products, proportionately the Cenvat credit availed on GTA services for bringing iron ore to the factory were required to be reversed under Rule 3(5) of Cenvat Credit Rules, 2004. I do not find merit in the said allegation of the Department on two counts; firstly, the input iron ores after being brought to the factory, were subjected to the process of screening and process of screening as explained by their ld. Advocate, would definitely a part of the manufacturing process. After the iron ores are subjected to the process of screening, the same could not be called as input as such. Secondly, I find that Rule 3(5) of the Cenvat Credit Rules, 2004, is directed for reversal of Cenvat credit on inputs or capital goods and the same is not applicable to the credit availed on the "input services". In this connection, the Hon'ble High Court of Punjab & Haryana in the case of Commr. of Central Ex., Chandigarh-I v. Punjab Steels (cited supra), had observed at Para 10, which reads as under :

"10. Be that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(1) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the

Finance Act, 1994. Rule 3(5) of the Rules only talks about the Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5, on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added or substituted so as to give a particular meaning. ……"

6. *The same view was taken by this Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. v. Commr. of Central Excise, Chennai (cites supra). The relevant portion of the Order of the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. is reproduced below :*

"5. On a careful study of the statutory provisions, it is seen that when the credit availed inputs or capital goods are removed from the factory of the assessee, sub-rule (5) of Rule 3 of the Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit. There is no such provision to reverse credit of service tax availed in relation to such inputs or capital goods when removed from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or

utilized wrongly. In the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. No provision exists in the Finance Act, 1994, which would render utilization of such credit erroneous for the reason that some of the inputs, transport of which yielded GTA service tax credit are returned as not suitable. The credit availed is anyway used to pay duty on the finished goods. In the circumstances, I find that the impugned order sustaining the demand of service tax and education cess to be not sustainable and accordingly, vacate the same."

The said principle has been followed in M/s. Sponge Udyog Pvt. Ltd.'s case (cited supra). In the light of the above consistent view, I do not find merit in the order of the ld. Commissioner (Appeals). Consequently, the same is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

8. In view of the above discussions, the impugned order is set aside the appeal filed by the appellant is allowed with consequential relief to the appellant, if any.

(Operative part of the order was pronounced in the open Court)

Sd/
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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