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

E/MA(EH)-77446/2018
And
Appeal No. E/76785/2016

(Arising out of Order-in-Original No. 05-09/COMMR/CE/KOL-III/2016-17 dated 21.07.2017 passed by the Commissioner of Central Excise, Kolkata.)

M/s. Electrosteel Casting Ltd.
Appellant (s)

Vs.
Commr. of Central Excise Kolkata-III Respondent (s)

Appearance:
Shri P. K. Chattopadhyay, Consultant for the Appellant (s)
Shri S. S. Chattopadhyay, Suptd. (A.R.) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)
Date of Hearing: -07.01.2019
Order No. MO/75027/2019 & FO/75074/2019

PER SHRI P. K. CHOUDHARY

The present Miscellaneous Application has been filed for early hearing of the appeal.

2. In view of the submissions as mentioned by the Ld. Advocate for the appellant and in view of the reasons explained in the application, the early hearing is granted.

3. We observe that the issue in appeal lies in a narrow compass and accordingly, the appeal itself is taken up for hearing with the consent of both sides.

4. Brief facts of the case are that M/s. Electrosteel Casting Limited, the Appellant, is engaged in the manufacture and export of Ductile Iron pipes and fittings classifiable under Chapter 73 of the CETA. The appellant operates under the CENVAT Credit Scheme and had availed Cenvat Credit

of service tax on inter alia 3 services, viz. Customs House Agent (CHA), Port Services and Steamer Agent Services at the Port of shipment for export of its finished goods on F.O.B. basis. Proceedings were initiated against the Appellant vide Show-cause Notice dated 25/01/2012, proposing to deny the Cenvat Credit of service tax on these three services used by the Appellant for exporting its finished goods on the purported ground that the services were used outside the factory premises and not being in relation to manufacture of their finished goods and therefore, did not qualify as an input service within the meaning of Rule 2 (I) of the CENVAT Credit Rules ('CCR'), 2004 as prevalent during the period upto March, 2009.

5. After the due process of adjudication, vide the impugned orders, CENVAT Credit was denied by Department. Aggrieved by the impugned orders, the present appeal is filed.

6. With the above background, we heard Shri P. K. Chattopadhyay, Consultant for the appellants and Shri S. S. Chattopadhyay, Suptd. (A.R.) for the Department.

7. It is the submission of the Ld. Counsel for the appellant that the Adjudicating Authority has accepted the fact that the place of removal in the case of export is the port of shipment. However, he submitted that the three services have been denied on the ground that these services were used for clearance "from the place of removal and not upto the place of removal". He further, submitted that CENVAT Credit on services used upto the place of removal including the port has been allotted under the category of input services in the case of export of goods. He cited the following case laws in support of his argument:

i) Commr. of Central Excise Vs. Inductotherm India pvt. Ltd. [2014 (36) STR 994 (Guj.)]

ii) Coca Cola India Pvt. Ltd. Vs. Commr. of Central Excise, Pune-III [2009 (15) S.T.R. 657 (Bom.)]

iii) Kenrametal India Ltd. Vs. Commr. of C. Ex., LTU, Bangalore [2016 (46) S.T.R. 57 (Tri.-Bang.)

iv) Ballarpur Industries Ltd. Vs. Commr. of C. Ex., Pune-III [2014 (36) S.T.R. 1122 (Tri.-Mumbari)

v) Adani Port & Special Economic Zone ltd. Vs. C.S.T., Ahmedabad [2016 (42) S.T.R. 1010 (Tri.-Ahmd.)

vi) Lamtuf Plastics Ltd. Vs. Commr. of Central Excise, Customs & Service Tax, Hyderabad-II [2016 (46) S.T.R. 388 (Tri.-Bang.)

vii) Hema Engineering Industries Ltd. Vs. Commr. of C. Ex., Delhi-III [2016 (46) S.T.R. 439 (Tri.-Del.).

viii) Monarch Catalyst Pvt. Ltd. Vs. Commr. of C.E., Thane-I [2016 (41) S.T.R. 904 (Tri.-Mumbai).

ix) CBEC Circular No. 999/6/2015-CX dated 28/02/2015

X) Commr. of C. Ex., Nagpur Vs. Ultratech Cement Ltd. [2010 (20) S.T.R. 577 (Bom.)]

(xi) Bell Ceramics Ltd. Vs. Commr. of C. Ex., Bangalore [2011 (21) S.T.R. 417 (Tri.-Bang.)]

(xii) M/s. DSCL Sugar Vs. Commr. of Central Excise, Lucknow [2012-TIOL-963-CESTAT-DEL]

(Xiii) Commr. of Central Excise, Ahmedabad Vs. Ms. Encore Natural Polymers Pvt. Ltd. [2012 (12) TMT 926-CESTAT AHMEDABAD]

8. Ld. D. R. justified the impugned order. He justified the denial of CENVAT Credit for the reason that such services were used to clear the goods from the port but not utilized to clear the goods upto the place of removal.

9. After hearing both sides and on perusal of the record of the case, we find that the department has denied the CENVAT Credit of the following services:-

(i) CHA Services

(ii) Port Services

(iii) Steamer Agent service

Such services have been denied during the period Feb 2011 to May 2014. Admittedly, such services have been utilized by the appellant in carrying out the export of the goods manufactured in their factory. During the period, the definition of input service under Rule 2 (1) of the CENVAT Credit Rules, 2004 is as under:-

"*1[(1) "Input service" means any service-*

(i) Used by a provider of 2[output 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, upto the place of removal,

And includes services used in relation to modernization, renovation or repairs of a factor, premises of provider of output service or an office relating to such factory of premises, advertisement or sales promotion, market research, storage upto 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 upto the place of removal.]"*

10. There is no dispute about the fact that the goods have been exported. In such cases the place of removal is the port where the export of goods is loaded on to the vessel. Inspite of the same, the Adjudicating Authority has denied such credit. We note that Hon'ble High Court of Gujarat in the case of inductotherm India Pvt. Ltd. (Supra) has granted the credit of CENVAT Credit for Cargo Handling Services used for clearance of final product from the port for export. The Hon'ble High Court observed that:

> "22. The question that begs the decision is as to whether cargo handling services can be said to have been used in or in relation to manufacture and clearance of final product upto the place of removal, which is port. Admittedly, there is no express inclusion of cargo handling service in the definition of 'input service'. However, in light of the decisions rendered in this area, such interpretation can be made holding that in case of export of final product, place of removal would be port of shipment and not factory gate and therefore, the manufacturer would be entitled to avail the amount claimed towards cargo handling as 'input service' under the Cenvat Credit Rules."

11. Even though, the Hon'ble High Court has held that with regard to 'Cargo Handling service', we find that the same ratio will be applicable to all three services which are in dispute before us since, all of them have been rendered in the port for export of goods.

12. By following the decision of the Hon'ble High Court, we conclude that the appellant will be entitled to CENVAT Credit. Accordingly, the impugned orders are set aside and appeals are allowed.

Sd/-	**Sd/-**
(V. PADMANABHAN)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Pooja