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

Appeal No. ST/172/2010

(Arising out of Order-in-Appeal No. 07/ST/BBSR-II/2010 dated 22.02.2010 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. SMC Power Generation Ltd.

Appellant (s)

Vs.

CCE & ST-BBSR-II Respondent (s)

Appearance:
Shri Alok Arora, Advocate for the Appellant (s)
Shri A. K. Biswas, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)
Date of Hearing: -19.07.2018
Order No. FO/77245/2018

PER SHRI P. K. CHOUDHARY

Briefly stated the facts of the case are that the appellants availed Cenvat Credit on GTA Services for bringing their inputs i.e. Iron and Coal. It is their contention that the raw coal received from the mines is upto 250 mm in size. The coal fines of 5 mm in size which is not suitable for use in klin are being sold as such. The Department directed them to reverse the proportional credit taken on GTA Service for the aforesaid inputs under Rule 3 (5) of the Cenvat Credit Rules, 2004. It is also the case of the appellants that the said rule is applicable to inputs only for capital goods and not to input service. In support of their submissions, they relied upon the following decisions:-

(i) Chitrakoot Steel & Power Pvt. Ltd. Vs. CCE, Chennai reported in 2008 (10) S.T.R. 118 (Tri-Chen.).

(ii) CCE, Chandigarh-I Vs. Punjab Steels reported in 2011 (21) S.T.R. 5 (P & H).

(iii) Seven Star Steels Ltd. Vs. CCE & ST, BBSR-II reported in 2013 (30) S.T.R. 532 (Tri.-Kolkata)

(iv) Real Ispat & Power Ltd. Vs. CCE, Raipur reported in 2016 (335) E.L.T. 325 (Tri.-Del.).

(v) Lafarge India Ltd. Vs. CCE & ST, Bilaspur reported in 2017 (48) S.T.R. 466 (Tri.-Del.)

2. Heard both sides and perused the appeal record.

3. We find that Rule 3 (5) of Cenvat Credit Rules, 2004 provides that 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". It is clear from the above that Rule 3 (5) ibid, is not covering the input service. We find that the Hon'ble High Court of Punjab and Haryana in the case of CCE Chandigarh vs. Punjab Steels (Supra) has decided the issue in favour of the assessee on similar facts and circumstances. The relevant paragraphs of the aforesaid judgment are reproduced below:-

> ***3.*** *The Revenue is in appeal before this Court against the order dated 25-6-2009, passed by the Customs, Excise and Service Tax Appellate Tribunal. New Delhi (for short, the 'Tribunal') raising the following substantial question of law :*
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> *"Whether the credit of input service availed at the time of receipt of inputs is required to be reversed at the time of clearance of inputs as such when the said service tax credit is in respect of or related to such inputs?"*

4. *Briefly, the facts, as have been mentioned in the memo of appeal, are that the respondent-assessee is engaged in the manufacture of non-alloy steel ingots. It is registered under the Central Excise Act as well as for payment of service tax. Apparently finding that the assessee contravened the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004 (for short, 'the Rules') while not reversing the input credit on service tax paid on transportation of goods by road, the adjudicating authority vide order dated 13-10-2006 raised a demand of ` 2,75,684/-, besides imposing equal amount of penalty. The order was confirmed in appeal by the Commissioner (Appeals), Customs & Central Excise, Chandigarh. However, the Tribunal vide its order dated 25-6-2009 reversed the orders passed by the lower authorities and set aside the demand. It is against this order that the Revenue is before this court raising the aforesaid substantial question of law.*

5. *Learned counsel for the Revenue submitted that once the assessee had reversed the cenvat credit availed of on the goods purchased by him, which were brought in the factory but were disposed of without use or consumption, he was duty bound to reverse even the input credit availed of on account of service tax in respect of the transportation of goods. He referred to the provisions of Rule 3(5) of the Rules to submit that once the inputs or capital goods, on which cenvat credit had been taken are removed as such from the factory, he is required to reverse the credit availed of to that extent even of service tax paid for availing transport services. Reliance was placed upon Rule 5 of the Rules, which deals with refund of cenvat credit stating therein that when an assessee is entitled to refund of the tax paid on inputs or input service, it is even bound to reverse the credit taken with respect to both things and cannot retain the benefit with regard to the input service while reversing the same with regard to excise duty of inputs.*

6. *On the other hand, learned counsel for the assessee submitted that there is material difference in the language used by the rule-making authority in Rule 3(5) and Rule 5 of the Rules. Rule 3(5) only talks about reversal of cenvat credit on inputs or capital goods, whereas Rule 5 talks about cenvat credit on input or input service. He further referred to Rule 2(k) and (l) of the Rules to show that 'input' and 'input service' have been separately defined under the Rules, where the 'input' means certain materials, whereas the input service' means the services availed of. The submission is that once there is no provision in the Rules for reversal of the credit taken on account of input service merely on analogy, the revenue cannot direct the assessee to reverse the credit.*

7. *Heard learned counsel for the parties and perused the paper book.*

8. *The Tribunal reversed the orders passed by the lower authorities with the following observations and relying upon its earlier order passed in Chitrakoot Steel & Power Pvt. Ltd. v.*

Commissioner of Central Excise [2008 (10) S.T.R. 118 (Tri. - Chennai)] :

"I have carefully considered the submissions from both the sides and perused the records. The appellant had received certain inputs and for transporting those inputs to the factory, had availed GTA service in respect of which service tax paid was Rs. 275684/- and the credit of this service tax on GTA service had also been taken. Subsequently, when the appellant removed those inputs as such, he reversed only the credit of excise duty' paid on inputs. The Department's contention is that on the removal of the goods as such, in addition to the credit of Central Excise Duty, the GTA service tax credit availed in respect of those inputs should also have been reversed. I find that on this very issue, the Tribunal in the case of Chitrakoot Steel & Power Ltd. v. CCE, Chennai (supra) has held that when the Cenvat availed inputs or capital goods are removed from the factory of the assessee as such, sub-rule 3(5) provides for recovery of the amount of the Cenvat credit availed in respect of such inputs or capital goods and there is no provision to reverse the credit of service tax availed in respect of such goods or capital goods. Following the judgment of the Tribunal, I hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed."

9. *It has been specifically mentioned in the memo of appeal by the Revenue that no appeal was preferred by it against the judgment relied upon by the Tribunal.*

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(l) 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. Reference can be made to the observations of a Constitution Bench of Hon'ble the Supreme Court in Mathuram Agrwal v. State of Madhya Pradesh, (1999) 8 SCC 667 :*

"The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow

> *from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. The subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."*

4. By respectfully following the aforesaid decision of the Hon'ble High Court, the impugned order is modified to the extent that the demand of Service Tax along with interest is set aside and the penalty imposed under Section 78 is also set aside. The appeal filed by the appellant is allowed.

Sd/-	**Sd/-**
(Bijay Kumar)	**(P.K. Choudhary)**
Member (Technical)	**Member (Judicial)**

Pooja