IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/75795/2018

(Arising out of Order-in-Appeal No. 22/KOL-III/2017 dt. 29/11/2017 passed by the Commissioner of CGST & CX, (Appeal-I), Kolkata.)

Titagarh Wagons Ltd. Appellant (s)
Vs.
Commissioner of CGST & CX, Kolkata North Respondent (s)

Appearance
Shri Pratik U. Shah, CA for the Appellant
Shri A. Roy, Suptd. (A. R.), for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
Date of Hearing-09.08.2018

ORDER NO. FO/77285/2018
ORDER

The facts of the case in brief are that the appellant is engaged in the manufacture of Railway Wagons and parts thereof classifiable under Chapter 86 and other misc-items classifiable under Chapter 72, 73 & 84 of the First Schedule to the Central Excise Tariff Act, 1985.

2. Show Cause Notice dt. 23/06/2009 was issued alleging availment of irregular Cenvat Credit. During the period from October, 2006 to March 2008, the Adjudicating Authority dropped the proceedings initiated vide Show Cause Notice. Department filed appeal before the Commissioner (Appeals). The Ld. Commissioner (Appeals) modified the Adjudication Order and allowed the appeal by confirming the demand of Rs.2,05,058 /- along with interest and also imposed a penalty of equal amount under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944. Hence, the assessee has filed the present appeal before the Tribunal.

3. The Ld. Counsel appearing on behalf of the appellant filed written submission and submits that the issue is confined to one item i.e. Bailey Bridge supplied to Government of Tripura, where the price is conclusive of rate plus Service Tax upto the destination. He further submits that the sale has taken place at the destination point since the ownership of goods and the property remain with the appellant upto the buyer's doors step. It is also submitted that the outward transportation charges forms an integral part of the price of the goods.

4. The Ld. DR reiterates the impugned order.

5. Heard both sides and perused the appeal record.

6. I find that the appellant is entitled for credit of GTA Service Tax in terms of the Board's circular. Further, the issue is no more res-entigra in view of the decision of the Hon'ble Supreme Court in the case of CCE, Belgaum vs. Vasavadatta Cements Ltd. The Hon'ble Apex Court has observed thus:-

> ***4.*** *We may make it clear that in the instant appeals, we are concerned with the first part of the definition. Insofar as second part is concerned, certain contentions, which have been raised by some of the assessees, have been rejected and that aspect is decided in favour of the Department. Since these appeals are filed by the Department questioning the interpretation that is given by the CESTAT as well as the High Court in respect of first part, we are not making any comments insofar as judgment of the CESTAT pertaining to second part is concerned.*
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> ***5.*** *Coming back to the first part of the definition as to what input service means, the Full Bench of the CESTAT held that all input services which are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products from the place of removal are concerned, they are treated as input services and Cenvat credit in respect of expenditure incurred in relation to such services would be admissible. The expression with which the CESTAT was concerned, and which was the subject matter of discussion, was as to what would be the meaning of "from the place of removal". Obviously, any input service given for clearance of the final products "from the place of removal" and tax paid thereon the Cenvat credit has to*

be given. The question is from the place of removal up to what place. The assessees had claimed the tax paid on the transportation of final products from the place of removal (i.e. the place of manufacture) to either the place to their respective depots or transport upto the place of the customers, if from the place of removal the goods were directly delivered at customers place. It is made clear that only first set of transportation from the place of removal was claimed. To put it otherwise, in those cases where the tax paid on transportation on the goods from the place of removal upto the place of depot only that was claimed and if there was any such tax again paid from the place of depot to the place of customers, the Cenvat credit thereof was not claimed and there is no dispute about it.

6. *The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the High Court.*

"30. The definition of 'input service' contains both the word 'means' and 'includes', but not 'means and includes'. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of 'input service' deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase 'clearance of final products from the place of removal' is used, it includes the transportation charges. Because, after the final products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer's/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of 'input service'. However, as the legislature has chosen to use the word 'means' in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the 'input service' used by the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word 'includes'. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in that portion of the definition. Thereafter, the words 'activities relating to business' - an omni-bus phrase is used to expand the meaning of the word 'input service'. However, after using the omni-bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words 'inputs' or 'capital

> *goods'. But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the customer. Therefore, 'input service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.*
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> *7. As mentioned above, the expression used in the aforesaid Rule is "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.*

7. In view of the ratio as laid down by the Hon'ble Supreme Court, the impugned order cannot be sustained and accordingly, the same is set aside. The appeal filed by the appellant is allowed with consequential benefit to the appellant.

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

Pooja