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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76194 of 2016

(Arising out of Order-in-Appeal No.17/Kol-V/2016 dated 12.04.2016 passed by Commr. of Central Excise (Appeals), Kolkata)

M/s Kwality Metal Box Mfg.Co.Pvt. Ltd.
88, B.L.Saha Road, Kolkata-700053.

Appellant

VERSUS

Commr. of Central Excise, Kolkata V
180, Shantipally,
Rajdanga Main Road,
Kolkata-700107

Respondent

APPERANCE :

Shri N.K.Choudhary, Advocate for the appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.77077/2019

DATE OF HEARING : 17.12.2019
DATE OF DECISION : 17.12.2019

PER P.K.CHOUDHARY :

The Appellant is engaged in the manufacture of corrugated boxes and liner classifiable under Chapter 48 of the Central Excise Tariff Act, 1985. The Appellant had availed Cenvat credit on the service tax paid towards Goods Transport Service used for carrying the final product from the factory of the Appellant to the buyers' premises. It is the case of the Department that the Appellant could not have utilised the said Cenvat credit, as it constituted utilisation of credit beyond what was permitted in law. Therefore, recovery of the alleged irregularly utilised

Cenvat credit amounting to Rs.2,77,588/- was sought along with interest and penalty.

2. The Appellant filed an appeal before the Commissioner (Appeals), which was rejected without granting the Appellant an opportunity of personal hearing. The Appellant filed an appeal before this Tribunal, wherein this Tribunal remanded the matter to the Commissioner (Appeals) to afford the Appellant an opportunity of hearing before deciding the matter. Thereafter, the Commissioner (Appeals) heard the Appellant and upheld the Adjudicating Order. Hence, the present appeal before this Tribunal.

3. Heard both sides and perused the appeal records.

4. I find that the period of dispute in the present case is from April 2006 to March 2008. The Appellant contended that there were two aspects to the payment of service tax on freight. In some cases, the freight was integrated in the price of the goods whereas in certain cases, it was separately realised from the buyer. In cases where the freight was integrated in the price of the goods, the Appellant delivered the goods to the buyers' doorstep and contented that Cenvat credit was available to them as per the definition of input service, prior to its amendment w.e.f. 01st March, 2008.

5. I find that the issue at hand is no more Res Integra. The Hon'ble Supreme Court in Commissioner of Customs, Central Excise & Service Tax, Guntur v. Andhra Sugars Ltd. [2018 (10) GSTL 12 (SC)] has held that outbound transportation from the place of removal during the relevant period gets covered by the definition of input service.

In view thereof, the appeal filed by the Appellant is allowed.

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

Sd/-
(P. K. Choudhary)
Member (Judicial)

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