

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

REGIONAL BENCH – COURT NO.1

Excise Tax Appeal No. 76159 of 2018
Excise Tax Appeal No. 79684 of 2018

(Arising out of Order-in-Appeal No. 58/Kol-III/2018 dated 20.04.2018 passed by the Commissioner of CGST & CX, (Appeals-I), Kolkata.)

M/s. Phoenix Conveyor Belt India

(Muragachha Road, Gayeshpur,
Kalyani, Nadia, West Bengal-741234.)

...Appellant

VERSUS

Commr. Of CGST & Central Excise, Kolkata North Commissionerate

(180, Shantipally, Rajdanga Main Road, Kolkata-700 107.)

...Respondent

With

Excise Appeal No. 75454 of 2019

M/s Phoenix Conveyor Belt India

(Muragachha Road, Gayeshpur,
Kalyani, Nadia, West Bengal-741234.)

...Appellant

VERSUS

Commr. Of CGST & Central Excise, Siliguri Commissionerate

(Harendra Mukherjee Road, Hakimpara, Siliguri-734001)

...Respondent

Present for the Appellant : Mr. Anupam Samadder, Senior
D.G.M.

Present for the Respondent : Mr. S. S. Chattopadhyay

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER(JUDICIAL)

Final Order No. 76196/2023

Date of Hearing : 28.06.2023

Date of Decision : 28.06.2023

PER R. MURALIDHAR :

The Appellant is a manufacturer of conveyor belts under chapter 40 of the CET. During period of June 2011 to August 2011 they have taken Cenvat Credit or the input services used by them. The Department issued show cause notice on the ground that the input services were not used in relation to the

manufacture goods. In the due course, the demands came to be confirmed by the lower authorities. Being aggrieved, the Appellant is before the Tribunal. The authorize representative of the Appellant's company submits that the demand is on account of various inputs services as per the following Table :

Description of Service on which on which input credit denied	Appeal No.79684/2018 - Period of dispute June to August 2011	Appeal No.76159/2018 - Period of dispute September 11 to May 12	Appeal No.75454/2019- Period of dispute June 12 to May 13	Comments
	Input denied	Input denied	Input denied	
Way bill generation: to facilitate entry of input in West Bengal from outside the State	3,502.00	7,416.00	13,356.00	
Belt jointing services: to install conveyor belt at customer premises to make it final product	93,240.00	1,10,279.53	10,506.00	Out of Rs.93,240/- , Rs.87,668/- prior to 01.04.11 (Invoice no.665& 666)
HO Rent: Activites carries on at HO are Canvassing & procurement of export and domestic order, preparation of export documentation rate negotiation and finalisation of sale, rate negotiation for import and domestic procurement, Audit etc	75,906.00	1,51,811.70	-	
HO car parking : Car parking used for foreign and domestic customer, foreign and domestic supplier, auditor, Co's own executive etc.	46,350.00	92,700.00	83,430.00	
HO other services: Other service include Water supply, Lift	38,625.00	77,250.00	69,525.00	

service,				
Generator & security service,				
Generator & security service,				
TOTAL(INR)	2,57,623.00	4,39,457.23	1,63,461.00	

2. His submissions on various headings under the above table are as under:

i) Way Bill Generation : The appellant has engaged the services of a service provider who generates proper documents for entry of their inputs in West Bengal when such inputs are received from other States. Thus, it is an essential service used for procurement of their inputs, which are ultimately used in the manufactured products. Therefore, the service falls within the scope of Rule 2(I) of Cenvat Credit Rules 2004.

ii) Belt Jointing Services: The appellant supplies the goods to their customers which are situated in different parts of the country. The conveyor belts are sent in CKD condition to the customers. The Conveyor Belt is installed at their premises where the Jointing Work is taken up by the service provider. Therefore, as this is also an essential service to complete the sale of finished goods, the Appellant is eligible to take the Cenvat credit of the inputs services rendered by the installations service provider.

iii) H.O. Rent :The Appellant pays rent alongwith Service Tax for the Head Office premises of the manufacturing unit. All the essential works of purchase, marketing, accounting, audit and administrative works are all carried out from this premises. The presence of Head Office is essential for carrying out that business activity of the Appellant. Therefore, they have correctly taken the Cenvat credit of the Service Tax for the rent paid to the Landlord of the Head Office premises.

iv) H.O. Car Parking :As described above, the Head Office is carrying on all the business activities of the Appellant. The Appellant is also taking the car parking space on rent for the officials working at the Head Office. Therefore, even this service forms part of the business activities of the Appellant.

v) H.O. other Services :At Head Office, the Appellant engages various services towards water supply, lift service, generator and garbage service etc. All these are essential to carry out the business activity at the Head Office. Therefore they are eligible to take the Cenvat credit in respect of such services.

3. The authorized representative of the Appellant submits that all the above services are covered within definition of input services in terms of Rule 2(l) of Cenvat Credit Rule 2004. Hence he submits that impugned OIAs are required to be set aside on merits.

4. He further submits that the Appellant has been filing their monthly Returns regularly where the details are given for the Cenvat credit taken. All three show cause notices have been issued within one year from the date of taking the Cenvat credit without involving any extended period. Therefore, there is no suppression on their part. In spite this, in all the impugned orders, the penalties have been imposed under Section 11AC to wherein lower authorities have imposed the penalty in all the three cases. He submits that as there is no suppression their part, the penalty imposed under Section 11AC is also legally not sustainable.

3. The Ld. AR reiterates the submissions of the lower authorities. He submits that in case of Belt Jointing Services, the services have been rendered at the end of the buyer. Therefore, as the services have been rendered subsequent 'to the removal of the goods from the factory premises', the same would not be eligible for Cenvat credit.

4. Heard both sides perused the documents.

5. In respect of Belt Jointing Services, admittedly the Appellant has cleared the Conveyer Belts in CKD and the same is installed at the premise of the buyer. It would be relevant to go through the provision of Rule 2(I) of Cenvat Credit Rule 2004, reproduced below:

“Rule 2(I),, “input service” means any service,-
(i) used by a provider of [output service] for providing an output service; or
(ii) used by a 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 factory, premises of provider of output service or an office relating to such factory or 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;”

6. As per above definition, the Cenvat credit will be eligible only for the services which are used “up to the place of removal”. In this case, the Appellant has taken a stand that the sale is taking place at the end of the buyer. As the removal is taking place at the end of the buyer’s premises, he submits that the buyers place would be the ‘place of removal’. This argument of the Appellant is not acceptable. It has been clearly held in the case of **CCE Nagpur vs. Ispat Industries Limited** by the Hon’ble Supreme Court that the ‘place of removal’ cannot be the place of buyer under any circumstances.

The Hon'ble Supreme Court had also noted that when the invoices are made at the factory premises and the Sale Tax on goods are discharged with the jurisdiction authorities of the factory premises, the sale is to be taken as taking place at the factory premises only which would be the 'place of removal'. Therefore, in this case also as the Appellant has cleared the goods to the buyer in CKD from the factory premises, "the place of removal" in this case would be that of the Appellant's factory only. Therefore, I hold that the Belt Joining Services used by the Appellant at the buyers' end, would not be an eligible service for taking Cenvat credit.

7. The provision that the Cenvat credit would be eligible only "up to the place of removal" has come into effect from 01.04.2011. Therefore, in this case if any of the demand is on account of input services towards Belt Joining Services were received prior to 01.04.2011, they would be eligible for the Cenvat credit. This fact is required to be verified by the Adjudicating Authority and should be allowed by him in such cases.

8. In respect of the other services namely, Way Bill Generation, H.O Rent, H.O Car Parking and H.O other Services, I find that the input services used are essential for carrying out the business activities of the Appellant. Therefore, I hold that they are eligible for the Cenvat credit only. The appeal to this extent is allowed.

9. Taking into consideration that the Appellant has properly filed Service Tax Return showing detail of Cenvat credit therein, I hold that no case of suppression has been made out by the Department. Further, it is seen that in respect of four out of the five services, it has been held that the Appellant is eligible for Cenvat credit. Even in the case of Belt Jointing Services, the amendment came into effect only from 01.04.2011 only. Therefore, the penalty imposed under Section 11AC is not called for and the same is set aside.

10. To summarize :

- i) In respect of Way Bill generation, H.O. Rent, H.O. Car Parking and H.O. other Services, the appeal is allowed.
 - ii) In respect of Belt Jointing Services if any service has been rendered prior to 01.04.2011, the same is eligible for Cenvat credit.
 - iii) For the Cenvat credit taken for Belt Joining Services received after 01.04.2011, the Appellant is not eligible to take the Cenvat credit. The appeal to this extent is dismissed.
 - iv) Penalty imposed under Section 11AC is set aside.
11. Accordingly, the appeal is disposed of.

(Dictated and pronounced in the open court)

**Sd/-
(R. Muralidhar)
Member (Judicial)**

Pinaki

