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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75908 of 2019

(Arising out of Order-in-Appeal No.519/HWH/CE/2018-19 dated 29.11.2018 passed by Commissioner of CGST & Central Excise (Appeals), Kolkata-II)

M/s. Walzen Strips Private Limited
(Benaras Road, Biradingi, Netajigarh, Howrah-711108)

Appellant

VERSUS

Commr. of CGST & Central Excise, Howrah Commissionerate
(Customs House, 15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :
Mr. N. K. Chowdhury, Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75814/2024

Date of Hearing : 25 April 2024
Date of Decision: 25 April 2024

PER R. MURALIDHAR:

The Appellant is manufacturer of Cold Rolled Printed/Coated Steel Strap, Non-Alloy Steel Strips etc. for which they are having Central Excise Registration No. AAACW2444BXM001. They also have Service Tax Registration No. AAACW2444BST001. This Service Tax Registration has been taken by them for undertaking various job works in different steel plants for whom they were providing services falling under the category of 'Business Auxiliary Services'. The Appellants were taking the Credit for the input services used within their own factory premises and at the factory sites of other clients and maintaining the same in Service Tax Khata for the Cenvat Credit in respect of the input services. During the period April 2015 to September 2015, they have transferred Rs.14,00,000/- in October 2015, Rs. 16,00,000/- in November 2015 and Rs. 11,00,000/- in December 2015 to their RG-23 Part II and utilized the same for payment of Excise Duty on the finished good cleared from their factory. While transferring this amount to RG23 Part-II, they have mentioned that this amount is being transferred on account of *"Service Tax input credit from Service Tax Khata".* The Department has gone through the relevant Bills, Challans, etc. submitted by the assessee on account of 'Manpower Supply Agency', "Maintenance or Repairing Service", "Security Service Agency's", "GTA Services" etc., during the period October 2015 to December 2015 and has taken the view that they have irregularly availed input service credit totaling to Rs. 41,00,000/- as shown in the ER-I Returns for the period October 2015 to December 2015. The Show Cause Notice alleged that the relevant bills of the service providers in respect of these services reveals that these services were received by the assessee were exclusively used for 'sales, clearance of finished goods beyond the place of removal' and also on account of other post manufacturing activities like maintenance & repairing of tools at various sites of the Steel plants like TISCO Site, Bhilai Steel Plant and other units located at Jamshedpur, Vishakhapatnam, Rourkela, Orissa etc. Therefore, on the ground that the services are not falling within the definition of Rule 2(l) of Cenvat Credit Rules, 2004 and the Appellant has availed and utilized these credits which are inadmissible, Show Cause Notice was issued. Apart from that some other allegation are made on the ground that they have paid the Service Tax under 'Business Auxiliary Service' instead of some other Headings. The Show Cause Notice also alleged that even for maintenance service, they have paid the tax on Reverse Charge Basis. Similar allegations were made in respect of 'Manpower and Security Services also. It was also alleged that in case of GTA services, instead of the Bills of the service providers, they have submitted only calculation sheets of their own along with GAR-7 Challan for payment of Service Tax for both carriage inward & carriage outward and Cenvat Credit has been taken irregularly. After due process, the Adjudicating Authority confirmed the demand. Being aggrieved, the Appellant filed their Appeal before the Commissioner (Appeals) who has dismissed their Appeal. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that the Appellant is manufacturing goods and also providing services to various clients at their factory sites. They have got the centralized office and all the input services are received at that end and the separate record is maintained as Service Tax Khata from which the same is transferred to RG-23 Part-II and ER-1 Return for making payment of Excise Duty. The Learned Counsel also submits that they have only one manufacturing unit. Therefore, proportionate or otherwise distribution of Input Service Tax would not arise. He submits that the entire Show Cause Notice was issued on the ground that they have transferred the amount from Service Tax Khata to RG-23 Part-II and ER-1 Returns, whereas the appellant is in a position to show very clearly that whatever has been transferred is properly taken Cenvat Credit on the input services used by them. Therefore, he submits that the lower authorities are in error in confirming the demand.

3. He takes me through the provisions of Rule 3 of the Cenvat Credit Rules, 2004, wherein it has been clarified that the Cenvat Credit accruing on account of input services and capital goods can be utilized by the manufacturer of the goods.

4. He also relies on the case law of S. S. Engineers Vs. Commissioner of Central Excise, PUNE-I-2015 (317) E.L.T. 597 (Tri.-Mumbai), wherein it has been held that the manufacturer can also utilize the input tax credit available in the ST-3 account for clearance of their finished goods. Accordingly he submits that cross-utilization of the credit is permissible.

5. The Learned Counsel also relies on the case law of Sumita Tex Spin Pvt. Ltd. Vs. Commr. of C.Ex. & S.T., Rajkot-2015 (39) S.T.R. 502 (Tri.-Ahmd.).

6. Based on the above details, he submits that the Appeal may be allowed.

7. The Learned AR submits that the issue is not that of simple allegation about transfer of input service Cenvat Credit to RG 23 Part-II and ER-1. He submits that as has been given in a very detailed manner in the SCN, the appellant has been taking Cenvat Credit on various input services which have been used subsequent to the *"place of removal"* which is not permissible as per Rule 2(l) of the Cenvat Credit Rules, 2004. He also submits that the Appellant has provided on site services to various Steel manufacturer by undertaking job-work in various other cities. They are undertaking job works service (BAS). The Appellant in turn receives various services like Manpower Services, Security Services, Maintenance and Repairing Services etc., for providing their output service. The Learned AR says that these services are provided by the service provider in those Steel Plants and they have absolutely no nexus with the manufacturing activity being carried out in the Appellant's Factory. Therefore, he says that the Appellant would not be eligible for Cenvat Credit for such activities to be utilized for the clearance of their manufactured goods. Accordingly, he justifies the confirmed demand and prays that the present appeal may be dismissed.

8. I have gone through the Appeal Papers and the documentary evidence placed before me along with the Synopsis and case law cited by the Learned Counsel. The findings of the Adjudicating Authority is as under:-

> *"4.2 At the outset I find that the noticee has availed of input service credit of Service Tax Tax to the tune of Rs. 41,00,000.00 (Rupees Forty One Lakh) only in respect of Man Power Recruitment Agency, Security Services agency, services for maintenance or repairing service etc<u>. which were not exclusively used for activities directly or indirectly in or in relation to manufacture of final products and clearance of final products up to the place of removal </u>and also utilized such credit for payment of Central Excise duty during the period of October, 2015 to December, 2015.Now it is to decide whether the noticee have availed*

and utilized the input service credit on the services as mentioned above correctly towards payment of Central excise duty.

4.3 On going through the Cenvat credit documents, ER-1s for October 2015 to December, 2015 and documents maintained for making entry in taking such credit which was subsequently utilized for payment of Central Excise duty, it reveals that the said noticee have availed Input Service Tax credit of Rs. 14,00,000/- during the month of October, 2015 by making entry in the Cenvat credit register "April, 2015 to September, 2015" Service Tax "Input credit transfer from Service Tax khata", Rs. 16,00,000/- during November, 2015 with the remarks "Service Tax input credit from Service Tax khata from October, 2015 to November, 2015 & Rs.11,00,000/- during December 2015 with the remarks "Service Tax input credit from service tax khata from December, 2015" vide entry sl no 510 dated 21.10.2015, 641 dated 30.11.2015 and 75 dated 31.12.2015 respectively in the Form R.G. 23A Part II of Entry Book of Duty Credit register. <u>I hold that noticee have availed credit on strength of entry 'service tax input credit transfer from Service Tax khata' which is not valid entry or documents for availing credit. They actually availed such input service credit without any valid duty paying documents. In terms of Rule 9(1) of Cenvat credit Rules 2004, it is stipulated that the cenvat credit taken by the manufacturer or the provider of output service or input service distributor, as the case may be on the basis of</u> i) invoices issued by the manufacturer ii) an invoice, a bill or challan issued by a provider of output service or iii) an invoice, bill or challan issued by an input service distributors under rule 4A of the Service Rule 1994. <u>I find that in the instant case, the noticee availed the cenvat credit neither on the basis of an invoice issued by any manufacturer or service</u> provider or on the basis of any invoice issued by himself under an input service distributer under rule 4A of the service Tax Rules, 1994. They simply transferred the service tax credit by making an entry

'Service Tax input credit from "Service Tax khata" during the month of October 2015 , November 2015 and December 2015. There is no provision in the Ccnvat credit rules to transfer the credit from one indendent entity to another without any valid duty paying documents. In the instant case the noticee has failed to do so. <u>They simply transferred the acculated credit from their service Tax account to manufacturing account with intent to evade payment of Central Excise duty. I find that to avail input service credit by any manufacturer, the nexus between service and manufacture of goods should be established in terms of rule 2(I)(ii) of Cenvat credit Rules 2004. In the instant case no such nexus between service and manufacture of finished goods has been established</u>. I find that they have irregularly taken andutilised such input service Tax credit and it is liable to be reversed.

4.4 I find that the definition of input service in terms of Rule 2(1) of CENVAT Credit Rules, 2004, provides that; "

Input service" means any service, -

(i) used by a provider of taxable 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 up to 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 up to 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 up to the place of removal;………..," *So from the definition of input service as stated above, I find that nexus between service and manufacturing activity is an essential requirement for availing input service credit. In the instant case, no such relationship is established.*

4.5. I also find that the noticee have taken credit on services of Goods Transport Agency, Man Power Recruitment Agency, Security Services agency and Services for maintenance or repairing service and on scrutiny of relevant bills, challans, I find that the said services were exclusively used at other premises beyond the of removal of their finished goods from their factory premises and also used for other post manufacturing activities like maintenance & repairing of tools used at TISCO site, Bhilai Steel Plant, B. K. Steel, Gamaria, Lashing Truck and Trailer at Jamshedpur, strapping products at MMSM, VSP, Andhra Pradesh, SSM site RSP, Rourkella, Wire Rod Coil packaging at AngulOdisha mentioning service receiver as Walzen strips Pvt. Ltd. Cast House, A Site, Nalco, Angul. Such activities were carried out by them at a place beyond the place of removal and contrary to the inclusive part of the definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004. The activities carried out by them at a place beyond the place of removal which can in no way be considered as used by the said noticee, In terms of definition of 'Input service' under rule 2(l) of Cenvat credit 2004, the Cenvat credit cannot be availed on the service received beyond the place of removal of the final products cleared from the factory. In the instant case the services were not used or received in or in relation to manufacturer of goods, hence credit is not available.

4.6 The noticee admitted in their reply that they are registered with the Service Tax authority under the heading 'Business Auxiliary Service' and providing output services and also receiving of services of goods transport agency service, Manpower Recruitment Agency, *Security Service Agency and Services for Maintenance or Repair Services. They have centralized Service Tax Registration AAACW2444BST001. They were also undertaking job works in different steel plants and also availing services of different other service provider namely services received from Goods Transport Services, Manpower Recruitment Agency, Security Service Agency and Services for Maintenance or Repair Services etc. The noticee availed the service tax credit on the service tax paid on the above stated services provided by the various service provider under the heading 'business auxiliary service' and utilized the said credit partially for payment of providing output service and partially for payment of Central Excise duty. But I find that the input service was received by the noticee for providing the output service, so the credit of the input service taken by the notice has no nexus in relation to the manufacture of final products in terms of rule 2(l) of Cenvat Credit rules, so the credit of input service is not available to the noticee." [Emphasis supplied]*

9. A careful reading of the above findings based on which the Adjudicating Authority has confirmed the demand would show that it is not a simple matter of only amount being transferred from Service Tax Khata to RG 23 Part-II or ER-I as is being canvassed by the Learned Advocate. The department has questioned the very eligibility of the Cenvat Credit on various grounds like:

(a) The service being utilized "beyond the place of removal".

(b) Service having 'no nexus with the manufacturing activity'

(c) Input services being received at various sites wherein the output service is being provided by the Appellant etc.

(d) Documentary evidence not being shown in respect of the input tax credit taken on various services.

10. After going through the detailed replies filed by the Appellant, the Adjudicating Authority has confirmed the demand. On Appeal, the Commissioner (Appeals) has held as under:-

6. I find that the appellant have mainly contended on the ground that :- credit was '' availed on the strength of valid duty paying documents. The credit was transferred from the Service Tax khata to Cenvat account and utilization of the same for payment of central excise duty; supplying of the goods to the buyer and subsequent maintenance of the same and/or undertaking some other works/services in connection with the manufactured goods with the appellant were undoubtedly having nexus with the manufacture of their finished goods. Credit of Service Tax for such services is available.

7. On perusal of the appellant's submissions, <u>I find that they have not produced before me any documentary evidence to show that the impugned input service credit was availed by them on valid duty paying documents. For availing credit, valid duty paid documents are required in terms of rule 9(1) of the Credit Rules. But the appellant have not produced any such document to establish their case. Further, no logical explanation or any tangible evidence has been adduced by them such input of services are having nexus with their manufacturing activity so as to make them eligible for the credit. The burden of proof regarding availment of cenvat credit lies on the assessee in terms of rule 9(5) of the Credit Rules. Here, the appellant have miserably failed to discharge such burden of proof. In that view of the matter, I find that they are not eligible for the credit of Rs.41,00,000/-. [Emphasis supplied]</u>

11. From the detailed findings given by both the authorities, it is observed that the Appellant has not been able to provide proper documentary evidence and explanation to these authorities in support of their case. In the interest of justice, I take a view that the Appellant should be given an opportunity to present all the factual details and documentary evidence before the Adjudicating Authority very clearly specifying as to how they are eligible for taking the Cenvat Credit. The Adjudicating Authority should take into consideration the fact that the Appellant is registered as manufacturer in the Central Excise Department where they are eligible for all the input services used by them which are used in or in relation to manufacturing and clearing activities *"up to the*

place of removal". The Appellant as provider of service would be eligible to take the Cenvat Credit for the input services utilized by them for provision of their output service. Thus the Appellant should clearly bring out the details of "input services" used inside the factory for which they would be eligible to take the credit in the ER 1 Returns. The Appellant should also show the details of input services used of providing output services at the factory sites of various receives for providing "output service" at the factory gate of various service receivers, for providing the output service. While they are eligible to take the Cenvat Credit and use the same for payment of Service Tax, since such services would not have any nexus with the manufacturing activity, the same cannot be allowed to the used towards payment of Excise Duty on finished goods.

12. In respect of the job work service, the Appellant would be required to maintain the ST-3 Returns which would show the Cenvat Credit taken for various input services. The case laws cited by the Appellant take the view that the assessee can use the Cenvat Credit interchangeably for the Cenvat Credit accruing as output service provider. But this cannot be generalized for all the credits. The nexus is required to be established for allowing cross-utilization of Cenvat Credit. The Adjudicating Authority should keep in mind that while the input tax credit is eligible on account of outward GTA services by the Job Worker as a service provider, the same is not available to him as a manufacturer, when the finished goods are cleared on payment of freight, where they are required to pay the Service Tax on RCM basis. Therefore, if any services such kind have been utilized for job work, the same would not be eligible for transfer to the normal manufacturing Cenvat Credit Account, in view non existence of nexus. These have to be verified from the documentary evidence to be placed by the Appellant.

13. Keeping all these statutory provisions in mind, the Adjudicating Authority should follow the principles of natural justice and give an

opportunity to Appellant to present all their arguments, submissions, documentary evidence, case law etc. while deciding the issue.

14. Since the matter pertains to the year 2015, the Adjudicating Authority is directed to complete the proceedings within three months from the date of communication of this Order.

(Dictated and pronounced in the open court.)

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

Pooja