IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/85817/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0707/2017-18 dated 23.11.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

Corning Technologies India Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Central Tax Pune — **Respondent**

Appearance:

Shri Amit Agarwal, C.A. — for appellant
Shri Dilip Shinde, Asst. Commr (AR) — for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 16.05.2018

FINAL ORDER NO...A/86924/2018

Per: S.K. Mohanty

This appeal is directed against impugned order dated 23.11.2017 passed by Commissioner of Central Tax (Appeals), Pune-I.

2. Brief facts of the case are that the appellant is engaged in manufacture of optical fibers and optical fiber wires, falling under chapter headings 85 and 90 respectively of the Central Excise Tariff Act, 1985. As per the norms/requirement of the

Maharashtra State Pollution Control Board, the appellant availed the services of handling contractors for lifting and disposal of hazardous waste from the factory. The service tax paid on such services was availed as CENVAT Credit by the appellant. Taking of CENVAT Credit was denied by the authorities below on the ground that such service is not confirming to the definition of input service, contained in Rule 2(l) of Cenvat Credit Rules, 2004.

3. Learned Consultant appearing for the appellant submits that as per the pollution control requirement, the appellant was statutorily required to lift the hazardous waste from its factory and to dispose of at the appropriate place. The services provided by the handling contractor for carrying out such disposal activities, should be considered as input service. To support such stand, he has relied on the decisions of this Tribunal in the cases of *Vardhman Special Steels Ltd. vs. CCE & ST, Chandigarh – 2017 (47) STR 245 (Tri. Chand), India Pesticides Ltd. v. CCE & ST, Lucknow – 2016 (43) STR 459 (Tri. All), CCE Surat v. Shree Khedut Sahakari Khand Udyog Mandil Ltd. – 2012 (279) ELT 402 (Tri. Ahm.) and the decision of the Hon'ble High Court of Bombay and CCE v. Ultratech Cement Ltd. – 20100 (260) ELT 369 (HC-Mum).*

4. On the other hand, learned D.R appearing for Revenue reiterates the finding in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that the hazardous waste in the form of sludge, solid waste, generated from effluent treatment plant were required to be removed from the factory, in order to keep the environment free and unpolluted. Considering the nature of waste generated by the manufacturer and its effect on the environment, the Maharashtra State Pollution Control Board, the regulatory authority for pollution control, have also prescribed the norms for disposal of hazardous waste from the factory. Since the appellant availed the services of handling contractor for lifting and disposal of hazardous waste, the same service should be considered as input service for the purpose of availment of CENVAT benefit. In this context, I find that the decisions cited by the appellant are squarely applicable to the facts of the case, in support of availment of Cenvat benefit of service tax paid thereon. It has been held in those decided cases that disposal of hazardous waste is an essential activity for manufacture of final product and the services availed for such activity should be considered as input service.

6.1 In view of the settled position of law, denial of CENVAT benefit to the appellant on the services received for removal of hazardous waste cannot be sustained. Accordingly, impugned order is set aside and the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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