IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No: E/85661/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-719/2017-18 dated 27/11/2017 passed by Commissioner of Central Tax (Appeals-I), Pune)

Bridgestone India P. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Pune-I **Respondent**

<u>Appearance:</u>

Shri R.S. Sharma (Advocate) for appellant
Shri Sanju Hasija Superintendent for respondent

<u>CORAM:</u>

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

Date of Hearing: 25/06/2018
Date of Decision: 25/06/2018

ORDER NO: **A/86801 / 2018**

This appeal is directed against the impugned order dated 27/11/2017 passed by the Commissioner of Central Excise (Appeals -I), Pune.

2. Brief facts of the case are that the appellant herein, is engaged in the manufacture of excisable goods namely, tyres and tubes for passenger cars/ trucks. The appellant avails CENVAT

the appellant had availed CENVAT credit in respect of various taxable services. While scrutinizing the records maintained by the appellant, audit wing of the department had observed that certain irregular credit had been availed by the appellant which is not permissible under the statute. Subsequently, out of their irregularly availed CENVAT credit of Rs. 14,63,898/-, the appellant had reversed an amount of Rs. 8,68,069/- and also paid the penalty amount @ 1% on such reversed credit, under Section 11A (6) of the Central Excise Act, 1944. With regard to the balance CENVAT amount of Rs. 5,95,829/-, the appellant contended before the departmental authorities that the services namely, environment and pollution control, tour operator and architect, design engineering services should be considered as input services for the purpose of availment CENVAT credit. On the basis of the audit observations, the department proceeded against the appellant for confirmation of the CENVAT demand and for imposition of penalty.

4. The show cause notice issued by the department was adjudicated by order dated 28/03/2016, wherein CENVAT credit demand of Rs. 14,63,898/- was confirmed and equal amount of penalty was imposed on the appellant. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 27/11/2017 has upheld the adjudged demands confirmed on the appellant.

5. The Learned advocate appearing for the appellant submits that since the appellant had already reversed the CENVAT credit of Rs. 8,68,069/- and deposited the penalty amount in terms of Section 11(A)(6) of the Act, imposition penalty of equal amount by the authorities below cannot be sustained. With regard to CENVAT credit taken on environment and pollution control service, the Learned Advocate has relied on the decision of this Tribunal in the case of *ESAB India Ltd.* v. *Commissioner of Central Excise, Chennai II* [final order no. 40005-40006/2016] to state that such services should be considered as input service for a manufacturing unit. With regard to tour operators and architect design engineering services, he submits that those services are falling within the scope and ambit of 'input service', as defined under Rule 2(l) of the CENVAT credit Rules and accordingly, service tax paid on those services should be available as CENVAT credit to the appellant.

6. On the other hand, the Learned DR. appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that tour operator service is not in context with sales promotion activity of the appellant and accordingly, the same should not be considered as 'input service' for CENVAT credit. With regard to architect service, he submits that since such service was provided by the service provider in context with construction

ibid, such services should not be considered as 'input service' for the appellant.

7. Heard both sides and perused records.

8. It is an admitted fact on record that out of the CENVAT demand of Rs. 14,62,89/-, the appellant had reversed Rs. 8,68,069/- and the said amount had also been appropriated in the adjudication order. Further, as per the requirement of Section 11A (6) of the Act, the appellant also paid penalty @ 1% of the amount of CENVAT credit reversed by it. Since the appellant had already paid the penalty as per the mandate of sub-section (6) of Section 11 (A), there was no requirement of issuance of any show cause notice with regard to the amount of CENVAT credit reversed by the appellant. In other words, as per the dictate of such statutory provision, there was no requirement of issuance of any show cause notice with regard to imposition of equal amount of penalty. Thus, the impugned order, so far as it imposed equal amount of penalty on the CENVAT amount of Rs. 8,68,069/- reversed by the appellant, is not sustainable and will not stand judicial scrutiny.

9. With regard to environment and pollution control service utilised by the appellant for its manufacturing unit, I find that the Tribunal in the case of *ESAB India Ltd.* has extended the CENVAT

tax paid on such service should be available to the manufacturer. Hence, I am of the considered view that service tax paid on environment and pollution control service should be available to the appellant as CENVAT credit.

10. With regard to Tour Operator Service, I find from the impugned order that such service was availed by the appellant for sending its dealers to outside country on pleasure trip. Since such service is not specifically finding place in the definition of 'input service' under Rule 2 (l) *ibid*, denial of CENVAT credit benefit on Tour Operator Service by the authorities below, is proper and justified.

11. As regards service tax paid on the architect service utilized by the appellant for its construction of factory building, etc., I find that architect service has been specifically defined under the Finance Act and works contract/ construction service have also been separately defined therein. Since architect service is distinct service and such service is not specifically included in the exclusion part of the definition of 'input service', denial of CENVAT credit on such service is not legal and proper.

12. In view of the foregoing discussions and analysis, the appeal is disposed of in following terms:

i. Equal amount of penalty imposed in the impugned order is set aside.

ii. Impugned order is set aside to the extent, it confirmed CENVAT demand and imposed penalty on the service i.e. environment and pollution control and architect/design engineering service.

iii. Impugned order sustains, so far as it confirms CENVAT demand on Tour Operator Service. Penalty on such service should be computed by the department as per statutory provisions.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

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