

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

APPEAL NO. E/86474 & 86475/2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/120 & 121/17-18 dated 12.01.2018 passed by the Commissioner of GST & Central Excise (Appeals), Nashik.)

M/s Eaton Industrial System Pvt. Ltd.

Appellant

Vs.

CCE & ST, Nasik

Respondent

Appearance:

Shri Rajesh Oswal, Advocate

for Appellant

Shri Sanjay Hasija, Superintendent (AR)

for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 17.09.2018

Date of Decision: 25.01.2019

ORDER NO. A/85200-85201/2019

Inadmissibility of CENVAT credit availed against “Business Support Services” by the appellant towards warehousing and logistics support services taken in Spain for timely delivery of goods to its customer M/s Ford Expana S.L., Spain is assailed in these appeals.

2. Brief facts of the appellant’s case, as revealed from the appeal memo and synopsis submitted by it is that it is engaged in manufacture of engine valves and supply the said valves to M/s Ford Expana S.L. in Spain. As per agreement and to ensure just-in-time

policy of its customer, it has taken warehousing and allied services in Spain. It exports manufactured goods which are stored in warehouse provided to the appellant by one Espack in Spain. The appellant bears the risk of loss or damage to the goods during the transit to the warehouse and the ownership of the goods remains with the appellant till those are delivered to M/s Ford Expana S.L. The appellant paid Service Tax under “Reverse Charge Mechanism” on the aforesaid services under the category of “Business Support Services” and availed CENVAT credit of the Service Tax so paid on the aforesaid services provided by Espack and another company Integrale. The respondent-department scrutinised the appellant’s records and observed those credits are inadmissible CENVAT credit holding the services availed by it are received beyond the place of removal i.e. after the clearance have been effected. It was put to show-cause, the matter was adjudicated upon, duty demand for the period from May, 2014 to February, 2015 was confirmed along with interest and penalty. Appeal No. E/86474/2018 was preferred. For the subsequent period from March, 2015 to December, 2015 another show-cause was issued, adjudicated upon and demand was confirmed. Against both the Orders-in-Original, appeals were preferred before the Commissioner of GST & Central Excise (Appeals), Nashik who confirmed both the Orders-in-Original thought a common order. Appeal No. E/86475/2018 is preferred against the subsequent period referred above.

3. In his memo of appeal during the course of hearing of the appeal, learned Counsel for the appellant M/s Eaton Industrial

System Pvt. Ltd. submitted that in respect of appellant's own case, vide this Tribunal Final Order No. A/89796/17/SMB dated 01.09.2017, such demand was set aside against CENVAT credit held by the respondent-department as inadmissible in respect of its previous period and he urged for continuance of judicial precedence for these two subsequent periods. While asserting that place of removal in the present case is warehouse or the customer's premises situated in foreign country for which CENVAT credit was justifiably availed, since cost of inputs on service is included in the assessable value of the final product, denial of the same would amount to double taxation. However he contended that "Business Support Services" received by the appellant is an admissible credit as handling, warehousing, packing etc. received from the foreign service providers are used in or in relation to manufacture of the final product, directly or indirectly and therefore, appropriately covered under the definition of input service, which was paid under "Reverse Charge Mechanism" holding place of provisioning of service as in India for which order of Commissioner (Appeals) is required to be set aside. He mainly placed his reliance on the following decisions-

- (i) *Bajaj Allianz General Insurance Co. Ltd. Vs. Commissioner of Central Excise, Pune-III – 2015 (37) STR 316 (Tri.-Mumbai)*
- (ii) *Eaton Industrial Systems Pvt. Ltd. Vs. CCE, Aurangabad – Order No. A/89796/17/SMB dated 28.09.2017*
- (iii) *M/s Indorama Synthetics (I) Ltd. Vs. Commissioner of CE & ST, Nagpur – Order No. A/86725/2018 dated 12.06.2018*

4. Learned Authorised Representative for the department, in response to such submissions, has supported the reasoning and rationality of the order passed by the Commissioner (Appeals) and

citing decision of the Tribunal-Bangalore reported in 2018 (9) GSTL 203 (Tri.-Bang.) in the case of *Maini Precision Products Pvt. Ltd.* argued that port of dispatch of loading port is to be considered as place of removal and not the warehouse situated abroad. Also placing reliance on the decision reported in 2014 (310) ELT 526 (Tri.-LB) in the case of *Honest Bio-Vet Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad-I*, he further argued that place of removal under Section 4(3)(c)(iii) of the Central Excise Act, 1944 is the port of export for which interference in the order of Commissioner (Appeals) by the Tribunal is uncalled for.

5. Heard from both sides at length and perused the case records, written note of submission made by the appellant and judicial decision of 29 cases submitted by the appellant as well as 5 cases submitted by the respondent-department. The sole ground of refusal of CENVAT credit to the appellant is that it had availed CENVAT credit accumulated against payment for services availed in foreign land through "Reverse Charge Mechanism" in respect of warehousing of goods before sale, at the door step to the customer, which service were considered to have been post manufacturing inputs service and not eligible for CENVAT credit. Further, the Adjudicating Authority held it as service beyond the place of removal while the Commissioner (Appeals) held that as per CBEC Circular No. 1996/3/2015-CX dated 28.02.2015, such place of removal can in no case be beyond the port/ICD/CFS where shipping bill is filed by the merchant of exporter since beyond that point the manufacturer or exporter has no control over the goods being exported and in view of the fact that Central

Excise Act is applicable to the territory of India, services availed beyond the place of removal cannot be term as input service as defined under Rule 2(L) of CENVAT Credit Rules, 2004 for which the credit availed was not eligible credit. He also discussed the decision of the Hon'ble Apex Court in the case of *Andhra Sugar Ltd. reported in 1988 (38) ELT 564 (SC)* to support his finding that authority issuing notification is a good guide of cotemporaneous exposition of the law. However, going by the definition place of removal, confirmed as in Section 4 of the Central Excise Act under sub-Clouse C(2) is a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty or is a place from where the goods are also removed. In the instant case, appellant contents that it had taken up the risk of shipment of goods to its warehouse located outside India against any lass or damage and the sale is made from the said warehouse to M/s Ford in Spain for which place of removal is to be considered as warehouse located in Spain and since appellant company registered in India, the Central Excise Act is applicable to it irrespective to the fact that its goods are sold from within the territory of India or outside it. Further obligation to discharge the duty is on the appellant company as a legal entity and not on the goods manufactured by it as the goods cannot be treated as legal entity for which the observation of the Commissioner (Appeals) is erroneous furthermore, clarifactory circular cannot have overwriting effect against statutory provision made by the legislature which by itself defines a warehouse as a place of removal.

6. Contradictory decisions are placed by both the parties but on close scrutiny the judgment of Tribunal at Bangalore in *Maini Precision Products Pvt. Ltd.* (supra) case as referred above, which has on placed its reliance on the full Bench decisions in the case of *Honest Bio-Vet Pvt. Ltd.* (supra), it can very well be said that the dispute was concerning goods cleared from the factory or goods shipment from the port, if to be considered as place of removal which were destroyed in fire was decided holding that ownership of goods and duty liability of the exporter remain confined to the port of shipment from where sale would be completed, where goods cleared under R-1 bond. Those decisions have got no factual similarity with the appellant's case as materially based on a separate footing than that of the case of appellant. On the other hand, in the appellant's own case concerning warehousing at USA, this Tribunal of Mumbai had earlier given its finding, as referred above. In the said decision, such duty demand, holding availment of CENVAT credit on warehouse charge at foreign land was held as inadmissible and was set aside and in carrying forward the judicial precedence for same set of facts the following order is passed.

7. The appeals are allowed and the order passed by the Commissioner of GST & Central Excise (Appeals), Nashik vide order dated 12.01.2018 is hereby set aside.

(Pronounced in Court on 25.01.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad