CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 88055 & 88064 of 2018

(Arising out of Order-in-Appeal No. MKK/554-555/RGD APP/2017-18 dated 21.02.2018 passed by the Commissioner of Central Tax (Appeals), Raigad.)

M/s Apcotex Industries Ltd. ....Appellant
Plot No. 3/1 Taloja MIDC Industrial Area,
Raigad – 410 208

VERSUS

Commissioner of Central Excise & Service Tax, Raigad ....Respondent
4th Floor, Kendriya Utpad Shulk Bhawan,
Plot -01, Sec. 17, Khandeshwar,
Raigad – 410 206

APPERANCE:

Shri Piyush Chhajed, C.A. for the Appellant
Shri Anil Choudhary, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86235-86236/2019

Date of Hearing: 15.03.2019
Date of Decision: 12.07.2019

Denial of CENVAT credits on General Insurance Services, Works Contracts Services and Motor Car Services/General Services by the Commissioner of Central Tax (Appeals), Raigad is assailed in these two appeals that pertains to two periods from March, 2015 to December, 2015 amounting to Rs. 6,49,901/- and January, 2016 to September, 2016 amounting to Rs. 8,23,317/-.

2. Factual backdrop of the case, in brief, is that for the above referred two periods availment of CENVAT credits were denied to the appellant claiming payment of duties along-with interest and penalty through show-cause notices which were adjudicated upon. Certain credits were allowed by the adjudicating authority and certain other credits were allowed by the Commissioner (Appeals) but ultimately CENVAT credits on tax paid on those above three referred input services were denied by both the authorities which is challenged before this Tribunal.

3. In the memo of appeals and during course of hearing of the appeals, learned Counsel for the appellant Shri Piyush Chhajed submitted that Marine Insurance charges, which were paid to cover any loss or damage of goods in transit during import or export of goods, was held to be inadmissible by the Commissioner (Appeals) despite the fact that Tribunal's consistence decision including those held in Hindustan Zinc Ltd. reported in *[2015 (37) STR 608 (Tri.-Del.]* and *Gobind Sugar Mills Ltd. [2015] 59 taxman.com* specifically held that credit availed on tax paid on insurance of export of goods is admissible input credit. He further submitted that Board vide Circular No. 943/4/2011-CX dated 29.04.2011 clarified that construction service is an input service when used in modernization,

renovation or repair work and the exclusion is only applicable to construction in relation to civil structure of building and laying of foundation which is inapplicable in the case of appellant who undertook repair and renovation. Referring to Rule 2(l) of CENVAT Credit Rules, 2004, he pointed out that motor vehicle service and its repair & maintenance are inadmissible when motor vehicle is not a capital asset as per amended sub-rule (BA) of CENVAT Credit Rules, 2004 but as appellant's motor vehicle is its own capital goods, availment of credit should not have been refused for which he prayed to set aside the order passed by the Commissioner (Appeals).

4. In response to such submissions of the appellant, Learned Authorised Representative for the respondent-department Shri Anil Choudhary, Assistant Commissioner argued in favour of the Commissioner (Appeals)'s order supporting its reasoning and rationality and submitted that procurement of inputs of raw material is included within the definition of 'input service' up to the storage point but supply beyond the place of removal cannot be considered as admissible inputs for which CENVAT credits on insurance and other heads which provided coverage after the place of removal and other inputs shown in the negative list were rightly denied to the appellants by the Commissioner (Appeals) that needs no interference by the Tribunal.

5. Heard from both the sides and perused the case records. CENVAT credit on transit insurance has been consistently held to be

admissible by the CESTAT in the above referred decisions and also by this Mumbai Zonal Bench in the final order passed in appellant's own case on dated 08.03.2018 covering period from November 2013 to November 2014. Going by the Order-in-Appeal, Learned Commissioner (Appeals) observation, not only tax paid on transit insurance on export of goods was denied as admissible CENVAT credit but in respect of another insurance i.e. coverage taken for the factory's guest house, was all so denied by the Commissioner (Appeals) on the ground that those were services taken beyond the place of removal, but insurance on job workers and wind mill premises were held to be admissible credits. A close reading of the definition of 'input service' would clearly reveal that only General Insurance on goods concerning motor vehicles are excluded from the purview of availment of CENVAT credit that to if the said vehicle is not capital goods and the inclusive definition contained in CENVAT Credit Rules, 2004 has not confined the services mentioned therein up to the place of removal except services availed for storage. Therefore, in conformity to the precedent set by this Tribunal and carrying forward the judicial discipline, I came to this finding that tax paid on transit insurance for export of goods is an admissible credit. Now going to the rejection of CENVAT credit on tax paid on repairs, renovation and modernisation of factory or its premises which was denied to the appellant by the Commissioner (Appeals) on the ground that the works were in the nature of civil job or part thereof on works contract basis, it can be inferred from the invoices on which Commissioner (Appeals) had placed his reliance and referred in point

7 of the table contained in Order-in-Appeal that the work was not solely for construction or execution of works contract of a building or a civil structure or its part or even laying of foundation or making of structure for support of capital goods which were excluded in the definition of 'input service'. The invoices are mostly issued by the interior designers and the sample invoice of M/s Jindani Associates, referred by the Commissioner (Appeals), indicates the nature of work was hacking of floor or walls, cement slurry-cod as well as polymer basis water-proofing of floor and wall. It can very well be said that those are of the nature of repair and renovation and cannot be equated with just construction of civil structure. In the case laws reported in *Ion Exchange I Ltd. (2018) 89 taxman.com, M/s Mahindra & Mahindra Ltd. (2016) 71 taxman.com, Knoah Solutions (P) Ltd. (2016) 71 taxman.com 112, ISMT Ltd. (2015) 61 taxman.com, MMS Maritime (India) Pvt. Ltd. 2016 (42) STR 741 (Tri. - Chennai), Easun Mr. Tap Changers P. Ltd. 2017 (47) STR 185 (Tri - Chennai),* it was consistently held by the Tribunal that such modernization, renovation and repair of factory premises are admissible input services. Therefore, the appellant is entitled to take and utilise those credits and the findings of the Commissioner (Appeals) is also erroneous in this respect.

6. Going by the Commissioner (Appeals)'s order rejecting CENVAT credit on tax paid on motor car service, it is found that he refused such availment of credits on the ground that exclusion clause (BA) in the definition of input service as provided in Rule 2(l) of CENVAT

Credit Rules, 2004 does not permit availment of CENVAT credit on such services. A cursory reading of sub-clause (BA) clearly indicates that such credit is admissible if the same motor vehicle is a capital goods. Appellant not only asserts the same to be capital goods of the appellant's company during hearing of the case but also Order-in-Original at page 19 indicates that appellant had taken the same view before the adjudicating authority that the vehicle was owned by the company and was used for the business activities of the company and this fact remained undisputed all throughout the proceedings. This being the facts on record denial of CENVAT credit to the appellant on such general services (motor vehicle) on the ground that the same is covered in the exclusion clause is erroneous. Hence the order.

ORDER

7. The appeals are allowed and the order passed by the Commissioner of Central Tax (Appeals), Raigad vide Order-in-Appeal No. MKK/554-555/RGD APP/2017-18 dated 21.02.2018 is hereby set aside.

(Order pronounced in the open court on 12.07.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad