CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Excise Appeal No. 86777 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/147-148/17-18 dated 23/01/2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik.)

Dhoot Compack Ltd. ....Appellant
PLOT No. D-88, MIDC Industrial Area,
Ahmednagar (414 1111)

VERSUS

C.C.E. & S.T., NASIK ....Respondent
Plot No. 155, Sector, P-34, NH,
Jaistha & Vaishak, CIDCO,
Nashik- 422008

WITH

Excise Appeal No. 86785 of 2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/147-148/17-18 dated 23/01/2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik.)

Dhoot Compack Ltd. ....Appellant
PLOT No. D-88, MIDC Industrial Area,
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VERSUS

C.C.E. & S.T., NASIK ....Respondent
Plot No. 155, Sector, P-34, NH,
Jaistha & Vaishak, CIDCO,
Nashik- 422008

APPERANCE:

Shri S.B. Awate, Consultant for the Appellant
Shri Anil Choudhary, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86421-86422/2019

Date of Hearing: 02.05.2019
Date of Decision: 20.08.2019

AJAY SHARMA:

These Appeals have been filed assailing the order dated 23/01/2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik in Order-in-Appeal No. NSK/EXCUS/000/APPL/147-148/17-18. Since a common impugned order has been passed by learned Commissioner while disposing of two Appeals therefore I am also disposing of both the Appeals by this common order.

2. The Appellants are engaged in manufacturing of excisable goods viz. PP Tapes, PP Non-laminated Fabric, PP Woven Sacks. They entered into an agreement with M/s. Supreme Packaging and appointed them as '*Del Credere Agent*' for the effective and proper guarantee of the solvency of its various customers of contractual relations and effective debt recovery, in order to safeguard the interest of the Appellants. As per the terms of the agreement, the *Del Credere Agent* will be solely responsible for guaranteeing the solvency of the buyers and will effectively guarantee for the value of *bad doubtful debts* arising out of such sales made by them and as such will guarantee to compensate the whole amount of doubtful recovery within the normal credit period assigned by them except where the recoveries are held up due to poor quality or quantity of the product supplied by them. For the said activity the *Del Credere Agent* will be getting the agency commission @1.3% on the net sale proceeds amount of the parties dealt with by the *Del Credere Agent.* In the bills raised on them, the *Del Credere Agent* charges service tax paid by them on the amount of commission charged and the Appellants avail credit of the same as '*input service*'. During the

course of audit of the Appellant, it was noticed by the department that they had availed Cenvat Credit of service tax paid on commission paid to the *Del Credere Agent*. According to the department the services provided by the *Del Credere Agent* are utilized by the Appellants for post removal activities and as such they are not covered within the definition of '*input service',* therefore the Cenvat credit of Rs.2,42,318/- and Rs. 1,23,022/- for the period from April, 2013 to February, 2015 and March, 2015 to November, 2015 respectively is not admissible. Accordingly two show cause notices were issued to the Appellants on 16.6.2015 for disallowing the Cenvat Credit of Rs.2,42,318/- and on 22.2.2016 for disallowing the Cenvat Credit of Rs.1,23,022/- and for recovery of the same with interest and penalty. The said show cause notices were adjudicated through Orders-in-Original dated 27.11.2015 and 9.2.2017 respectively by which the disallowance of Cenvat credit was confirmed and its recovery was ordered alongwith interest and penalty. Appellant preferred two Appeals before Commissioner (Appeals) against the aforesaid Orders-in-Original and the learned Commissioner vide common impugned order dated 5.2.2018 rejected both the Appeals filed by the Appellant.

3. The learned counsel for the Appellant submitted that the only ground on which the Cenvat credit is denied to the Appellant is that the service provided by the *Del Credere Agent* were utilized by the Appellants for post removal activities and therefore they are not covered within the definition of *input service*. He refers to the agreement dated 28.2.2014 entered into between the Appellant and

Supreme Packaging i.e. the Del Credere Agent. According to him in the definition of 'input service' the restriction upto the place of removal has been used only in respect of few input services viz. in respect of transportation and storage of goods and therefore the aforesaid restriction cannot be applied in the facts of the instant matter. In support of this submission the learned counsel relied upon the decision of a co-ordinate bench of the Tribunal in the matter of *Jodhani Papers Ltd. vs. CCE, Bangalore; 2015(39) STR 126 (Tri.Bang.)*. According to learned counsel, a *Del Credere Agent* is commission agent only and is covered under the definition of *Business Auxiliary Service* and therefore the Cenvat credit availed against the services provided by the said *Del Credere Agent* is admissible. In support of this submission the learned counsel relied upon the following decisions:-

(i) *Millenium Marketing Co. vs. CC & CE, Aurangabad 2015 (39) STR (Tri.Mum.)*

(ii) *CCE vs. Kesar Petro Products Ltd. 2014(33)STR 646 (Tri.Mum)*

(iii) *CST, Bangalore vs. N.K. Agencies Pvt. Ltd. 2010(20) STR 176 (Kar.)*

According to learned counsel, the services provided by *Del Credere Agent* fall under *Business Auxiliary Service* and the same is *Input Service* for the Appellant and therefore the Appellants are entitled to claim Cenvat Credit on the same. He further submitted that as per the terms of the agreement between the Appellants and the Del Credere Agents, the *Del Credere Agents* engaged by the appellants were receiving commission from the appellants @ 1.3% on net sale proceeds. The said agents issued bills including applicable service tax in appellants name for recovering the commission. Thereafter the appellants availed Cenvat credit of the service tax amount shown in the bills issued by the said agents. Per contra learned Authorised Representative appearing on behalf of Revenue reiterated the findings recorded in the impugned order and submitted that the activities of the Del Credere Agents does not amount to sales promotion. He further submitted that since the services provided by the *Del Credere Agents were* utilized by the appellants for post removal activities, therefore it does not amount to sales promotion and accordingly are not covered by the definition of *Input Service* as per Rule 2(l) ibid.

4. I have heard rival submissions and gone through the Appeal paper book including the synopsis filed by the learned counsel on behalf of the Appellants. I have also gone through the agreement which has been filed alongwith the Appeal Memo. Clauses 2 & 5 of the said agreement is as under:-

> “2. *That the party of the SECOND PART shall be solely responsible for guaranteeing the solvency of the buyers and will effectively guarantee for the value of “ bad doubtful debts” arising out of such sales volumes of the former and as such will guarantee to compensate the whole amount of doubtful recovery within the normal credit period assigned by the former except the recoveries held up by any of customer for the occasioned quantity & value of failure with a reason of quality performance of the product supplied by the part of of FIRST PART.*
>
> Xxx xxx xxx
> *5. The Party of SECOND PART shall be at liberty to appoint sub agents, servant, or employees at his own expenses and cost for the business of the above agency and for canvassing the upto date information of the existing and anticipated buyers with whom the manufacturer has dealt or intend to deal. The manufacturer shall not have any discretion to call for the express services of such sub-agents or the employees as the case may be. However, upon valid requisition from the agent, the manufacture shall, issue the*

> *necessary letter of authorization as such wherever the agent feels such exceptional necessity in case of any of particular buyer Companies."*

After reading the aforesaid clauses of the agreement it is clear that the Del Credere Agents are evaluating the prospective customers and also guarantee the collection for the dues. As per the agreement, the *Del Credere Agent* at its own cost and expenses appoint sub-agents/employees, wherever required, for the business of the Appellant and for canvassing upto date information of the existing and anticipated buyers with whom the Appellant has dealt or intend to deal. The agreements further provides that the *Del Credere Agent* will be solely responsible for guaranteeing the solvency of the buyers and will effectively guarantee for the value of *bad doubtful debts* arising out of such sales made by them and as such will guarantee to compensate the whole amount of doubtful recovery within the normal credit period assigned by them. In the matter of *Jodhani Papers (supra)* a coordinate bench of the Tribunal has held that if the service tax has been paid treating the commission agent service as *Business Auxiliary Service*, the assessee cannot be denied the benefit of service tax credit which has been paid by the service provider. In the aforesaid matter, the same contention was raised by the revenue that the activity of the commission agent does not amount to sale promotion and therefore not eligible for Cenvat credit, the Tribunal has held that *according to the definition of 'input service', the words 'upto the place of removal' has been used only in respect of few input services in the definition i.e. in respect of transportation and storage of goods and this restrictive clause cannot be applied to all the cases*.

In the matter of *Millenium Marketing Co. (supra)*, the assessee who was the Del Credere Agent of the Appellant herein (*i.e. Dhoot Compack Ltd.)* has raised the issue that they have not provided any service which is liable for Service Tax and are only guaranteeing solvency of the customer and are not responsible for recovery of payment. But this Tribunal while rejecting the argument of the *Del Credere Agent* therein has held that as per the agreement, they are evaluating the prospective customers and also guarantee the collection for the dues therefore the aforesaid activity falls under *Business Auxiliary Service*. A reading of the agreement between Appellant and Del Credere Agent would establish that it is related to the sales promotion. Only because some clause of the agreement mentioned that they won't provide any guarantee where the recoveries are held up due to poor quality or quantity of the product supplied by them, does not take it outside the purview of Business Auxiliary Service and in view of that it cannot be said that the services of the *Del Credere Agents* were exclusively utilized by the appellants for post removal activities only. If that is the situation then it can very well said to be the *input service* as per Rule 2(l) ibid. As per clause 2 of the Agreement the *Del Credere Agent* stood as guarantor on behalf of the customers and in case customers fail to pay, they are liable to pay to the Appellants on behalf of the customers. The learned Commissioner did not discuss the decision of this Tribunal in the matter of *Millenium Marketing Co. (supra)* which was cited by the Appellants before him and he merely mentions that it is not applicable. In my considered view the present issue is squarely covered by the decision of this Tribunal in the matter of *Millenium Maketing Co. (supra)*. Had the learned Commissioner read the same carefully, he would have come to know that it pertain to one of the *Del Credere Agents* appointed by the Appellants herein that too under similar agreement. Only difference is that in that matter the *Del Credere Agent* therein has raised the issue that they are not liable to pay Service Tax and this Tribunal while rejecting the Appeal filed by the said agent has concluded that the services provided by the Del Credere Agent classified under the *Business Auxiliary Service.* I agree with the view taken by the Tribunal in Jodhani Papers (supra) also that *the words 'upto the place of removal'* has been used only in respect of *'few input services' in the definition under Rule 2(l) and this restrictive clause cannot be applied to all the cases.*

5. Therefore in view of the discussions made hereinabove, I am of the view that the services provided by *Del Credere Agents* is Business Auxiliary Service and the same is for the promotion of the business of the Appellant and therefore it is an 'input service'. The Appellant is therefore entitled for Cenvat Credit and the impugned order is liable to be set aside. The Appeals filed by the Appellant are hereby allowed with consequential relief as per law.

(Order pronounced in the open Court on 20.08.2019)

(Ajay Sharma)
Member (Judicial)

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