CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.407

Excise Appeal No. 89416 of 2018

(Arising out of Order-in-Appeal No. PVNS/87/Appeals Thane/MC2018-19 dated 05-06-2018 passed by the Commissioner (Appeals-thane), Central GST and Excise, Mumbai)

M/s Advance Paints P Ltd. ....Appellant
2nd Fosbery Road Sewri East,
Mumbai Maharashtra-400015

VERSUS

C.C.G.S.T., Mumbai Central ....Respondent
4th Floor, C.Ex. Building, Churchgate,
Mumbai, Maharshtra-400020

APPERANCE:

Shri Vinay Kansara, Advocate for the Appellant
Smt. Anuradha Parabh, Asst. Commissioner Authorised Representative, for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86675 / 2019

Date of Hearing: 17/09/2019
Date of Decision: 20/09/2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Vinay Kansara, Advocate for the Appellant and Smt. Anuradha Parabh, Asst. Commissioner Authorised Representative, for the Respondent I find that the Appellant is engaged in the manufacture of Paints, which are being cleared by them on payment of duty of excise. The Appellant is also registered under service tax for providing services falling under the category of maintenance and repair and were discharging its service tax liability in respect of the same.

2. The appellant entered into a contract with M/s HPCL for providing services of maintenance and repair, for which paint was a requisite input. Accordingly they cleared the paints from their own manufacturing unit on payment of excise duty under the cover of the invoices issued as M/s Advance Paints Ltd. (HPCL) site and availed the credit of excise duty paid on the said inputs. They also discharged their service tax liability in respect of the said work, by utilising the credit availed by them in respect of the paints as also in respect of the other input services.

3. The dispute in the present appeal related to availment of the credit by the appellant in respect of the paints cleared by them to themselves only for the purpose of carrying out the services at the site of HPCL. Admittedly, paint is one of the requisite input on which the appellant is entitled to avail the credit . If the appellant would have purchased the paint from any other source, they were entitled to avail the credit of the duty paid on the said input. Merely because the appellant themselves are the paint manufacturers and raised invoices in their own name but for HPCL site, they cannot be denied the Cenvat credit of duty paid by them.

4. The other objection of the Revenue is that the credit so availed by them was not exclusively used for payment of service tax and a part of the same was also used for further payment of excise duty on the paints cleared by them. The appellant contention is that once

they are entitled to credit, which goes into the common pool maintained by them, no one to one co-relation is required and the credit availed by them can be used for any purpose. For the above preposition, they have relied upon the Tribunal decisions in the case of SS Engineers V/s CCe-2015 (38) STR 614 (T).; Sumita Tex Spin Pvt. Ltd.V/s CCe-2015 (39) STR 502 (T).;CCE V/s Laxmi Technology and Engineering-2011(23) STR 265 (T).;Pipava Shipiyard Ltd V/s CCe-2016 (41) STR 151 (T).; CCE V/s Thangavel and Sons Pvt. Ltd.-2015 (37) STR-144.

5. Admittedly, the appellant was acting in dual capacity i.e. as manufacturer and also service provider. As a manufacture he had cleared the goods on payment of duty and as a service provider, he has availed the credit, which is available for further utilisation for payment of service tax or for payment of duty of excise. No merits are found in the Revenue's contention raised otherwise.

6. In view of the above, I set aside the impugned order and allow the Appeal with consequential relief.

(Order pronounced in the open Court on 20/09/2019)

(Archana Wadhwa)
Member (Judicial)

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