CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 85737 of 2019

(Arising out of Order-in-Appeal No.MKK/356/RGD-APP/2018-19 dated 07.12.2018 passed by Commissioner of Central Tax (Appeals) Raigad.)

Technova Imaging Systems Pvt. Ltd. **.....Appellant**
Plot No. E-1-2-3 MIDC Taloja, Raigad,
Maharashtra – 410 208.

VERSUS

Commissioner of Central Excise & Service Tax Raigad. **.....Respondent**
4th Floor, Kendriya Utpad Shulk Bhawan,
Plot No. 01, Sec.17, Khandeshwar,
Raigad – 410 206.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86843/2021

Date of Hearing: 20.09.2021
Date of Decision: 20.09.2021

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in manufacture of Lithographics Plates and PVC Compound, falling under Chapter Heading Nos. 84,38,29 of the Schedule to the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of service tax paid on various input services. During the period from October 2013 to March 2016, the appellant had availed cenvat credit of service tax paid on "Insurance on Business Credit Shield Policy". The said policy was aimed to secure the credit facility extended to the approved buyers, in the event of their insolvency or default in payment of the sale amount claimed by the appellant. Availment of cenvat credit by the appellant was disputed by the department on the ground that such service is not categorized as an 'input service', defined under Rule 2 (l) of the Cenvat Credit Rules, 2004. The department interpreted that the insurance policy taken by the appellant was not related to the manufacturing activity and since the same was availed for undertaking the post manufacturing activity, cenvat credit of service tax paid on such service was not available to the appellant. The show cause notice dated 07.04.2017 issued by the department was adjudicated vide order dated 27.03.2018, wherein the original authority had disallowed cenvat credit amounting to Rs. 14,03,853/- and also ordered for recovery of interest and imposition of equal amount of penalty on the appellant. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 07.12.2018 has upheld confirmation of the adjudged demands. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that the disputed service has direct nexus/relation with the manufacturing activity of the appellant and as such, should be considered as 'input service', defined under the Cenvat statute. Further, he submitted that the insurance service (disputed, herein) does not fall under the exclusion clause of the definition of input service; and that merely because such service was used in relation to post manufacturing activity, such stand cannot be defensible by itself to deny the cenvat credit to the appellant. He also submitted that since the cost of disputed service including the service tax element thereon has been included in the value of the final products manufactured by the appellant, cenvat credit on such input service should be available to the appellant. With regard to the allegation of suppression made in the show cause notice, learned advocate submitted that since the SCN was issued based on the audit objections raised by the department, it cannot be said that the appellant was indulged into the fraudulent activities, with the intent to defraud the Government revenue.

3. On the other hand, learned AR appearing for Revenue submitted that the disputed insurance service was availed by the appellants in relation with post sale activities and since the said service was not used directly or indirectly, in or in relation to manufacture of final products and clearance of final products up to the place of removal, such disputed service should not be considered as input service and availment of cenvat credit on such service is not in conformity with the statutory provisions.

4. Heard both sides and examined the case records, including the written note of submissions filed by both sides.

5. I have perused the policy document issued by M/s The New India Assurance Co. Ltd. to the appellant in respect of the "Insurance on Business Credit Shield Policy". The relevant features mentioned in the said policy are extracted herein below:

> **V. <u>Approved Buyer:</u>**
>
> An Approved Buyer is a person or legal entity who is legally liable to pay the Insured for the goods delivered/services provided, and:
>
> **VIII <u>Insured Debts:</u>**
>
> An Insured Debt is the amount owed under an invoice for the goods/services Delivered to and accepted by the Approved Buyer. An Insured debt is a debt relating to sales resulting from the Insured's usual course of business, which is made during the Policy Period, under his own name and for his own account within the geographic area as defined in the Schedule. The invoice must be raised not later than four weeks of the sale.
>
> **IX <u>Delivery of Goods/Services:</u>**
>
> When goods in question have physically passed irretrievably from the control of the Insurance into the control of Approved Buyer or their agents, or when title to the goods has passed to the Approved Buyer and the Approved Buyer/its agent has accepted them. The buyer shall also be deemed to have accepted delivery of goods if they are sold or disposed of in any way by the Approved Buyer whilst in transit.

6. Rule 2(l) ibid has defined the term 'input service' to mean any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal. The said definition clause also provides the inclusive category of services, which can be considered

as input services. The disputed service availed by the appellant is in relation to post sale activities, in the sense that if the buyer of goods manufactured by the appellant defaulted in making payment, then the insurance company as per the policy requirement, should compensate the appellant for realization of the sale proceeds. The policy note issue by the insurance company as indicated above clearly specifies that the policy offered by them to the appellant is towards realization of the insured debt in respect of the goods delivered to the buyers. Since, the disputed service availed by the appellant was not in relation to manufacture of the final products and does not fall under the inclusive part of definition of input service, in my opinion, such service cannot be considered as input service and cenvat credit of service tax paid on such service should not be available to the appellant. In this case, SCN was issued by the department within the normal period of limitation from the audit of records by the department. Since, the irregularities in availment of cenvat credit was detected by the department upon auditing the books of accounts maintained by the appellant, initiation of present proceedings are in conformity with the cenvat statute and the same cannot be held to be time barred.

7. In view of the foregoing discussions, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Therefore, appeal filed by the appellant is dismissed.

(Operative part of the order pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

Sm