

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Excise Appeal No. 86335 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/701/2018-19 dated 21.01.2019 passed by the Commissioner of CGST & Central Excise (Appeals), Nashik)

M/s. Dhoot Compack Pvt. Ltd.

Appellant

Plot No. D-88, MIDC Industrial Area,
Ahmednagar 414 111.

Vs.

Commissioner of Central Excise & ST, Nashik Respondent

Kendra Rajaswa Bhawan, Old Agra Road,
Gadkari Chowk, Nashik 422 002.

Appearance:

None for the Appellant

Shri N.N. Prabhudesai, Superintendent, Authorised Representative for
the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 13.05.2022

Date of Decision: 13.05.2022

FINAL ORDER NO. A/85453/2022

This appeal is directed against Order-in-Appeal No. NSK/EXCUS/000/APPL/701/2018-19 dated 21.01.2019 of the Commissioner of CGST & Central Excise (Appeals), Nashik. By the impugned order, the Commissioner (Appeals) has upheld the Order-in-Original No. 06/CGST & CX/SUP/2017 dated 31.03.2018 passed by the Superintendent, CGST & Central Excise, Range-I, Ahmednagar. The Superintendent in his order held as follows:-

"ORDER

i) The demand for an amount of Rs.1,46,148/-, for the period of Dec 2015 to Nov 2016, is hereby confirmed. I order the amount to be recovered from M/s. Dhoot Compack Ltd., D-

88, MIDC, Ahmednagar, under Rule 14 of CCR, 2004 read with Section 11A(1) of the Central Excise Act, 1944.

ii) Interest at appropriate rate is also confirmed under Rule 14 of Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944 on the amount mention in Sr.No. (1) above. The same is ordered to be recovered.

This order is passed without prejudice to any other action that may be taken against them under the CEA, 1944 and the Rules made there under or under any other Law for the time being in force in India.”

2.1 Appellants are manufacturer of excisable goods and are availing cenvat credit of the duty paid by them on inputs, capital goods and input service as per Cenvat Credit Rules, 2004.

2.2 During the course of scrutiny of the records, it was noticed that the appellants had availed credit of service tax paid on sales commission paid to one M/s. Supreme Packaging with whom they had entered into an agreement to appoint them as 'Del Credere Agent' for effective proper guarantee of solvency of customers and effective recovery of money.

2.3 Since these services are post clearance services, Revenue was of the view that credit availed against these services would not be admissible. Accordingly a show cause notice dated 13.02.2017 was issued to the appellant for denying the said credit and recovery of the same along with interest and also for imposition of penalty in terms of Rule 15 of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The show cause notice has been adjudicated by the Superintendent as per the order referred to in para 1 supra. This order was upheld by the Commissioner (Appeals) as per the impugned order. Hence this appeal.

3.1 The matter has been listed on 28.01.2022, 12.04.2022 and today. On each of the occasions, the appellants have chosen not to appear for the hearing. Section 35 C (1A) of the Central Excise Act, 1944 provides as follows:

"(1A)The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided *that no such adjournment shall be granted more than three times to a party during hearing of the appeal."*

Since appellant has not turned up for hearing on all the three occasions this appeal has been taken up for hearing ex-parte.

3.2 Heard Shri N.N. Prabhudesai, Superintendent, Authorised Representative for the Revenue.

3.3 Arguing for the Revenue, learned AR submits that the amount involved in the matter being less than Rs.2 lakhs, the appeal itself should not be admitted in terms of proviso to Section 35B(1). Even on merits the issue is squarely covered by the decision of this Tribunal in the case of Technova Imaging Systems Pvt. Ltd. [Final Order No. A/86843/2021 dated 20.09.2021] disallowing the credit in similar circumstances. This appeal should be dismissed as non-maintainable and also on merits.

4.1 I have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 In fact the amount of duty involved in the present appeal is Rs.1,46,148/- which is less than the prescribed limit of Rs.2 lakhs and the appeal can be dismissed as non-maintainable, in view of the low amount involved and as per proviso to Section 35 B (1) of the Central Excise Act, 1944 the Tribunal could refuse to admit appeal involving such low amount. The relevant provisions are reproduced below:

"Section 35B. Appeals to the Appellate Tribunal. -

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a);

(b) an order passed by the ²[Commissioner (Appeals)] under section 35A;

(c);

(d):

Provided

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order,

does not exceed two lakh rupees;”

4.3 On merits I find that the issue is in respect of admissibility of CENVAT Credit in respect of “Del Credere Agent Services”, received by Appellants. They had appointed M/s. Supreme Packaging as “Del Credere Agent”, to guarantee the solvency of their customer and ensure speedy recovery of the amounts due from them. These service are in relation to the activities which are post sale and clearance of goods and hence these cannot be treated as input services for the manufacture of goods cleared by the appellants from their factory. The issue is squarely covered by the decision referred to by learned AR in the favour of revenue. Relevant excerpts of the said decision are reproduced below:-

“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.

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."

4.4 Following the ratio of this decision, I do not find any merits in this appeal.

4.5 Therefore, the appeal is dismissed as not admitted as well as on merits.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

tvu