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

Excise Appeal No. 87357 of 2019

(Arising out of Order-in-Appeal No. MKK/96/RGD APP/2019-20 dated 31.05.2019 passed by the Commissioner of Central Excise (Appeals), Raigad)

M/s. Roha Dyechem Pvt. Ltd. **Appellant**
Plot No. 42, MIDC Industrial Estate,
At Dhatav, Post Roha,
Tal. Roha, Dist. Raigad 402 116.

Vs.

Commissioner of Central Excise & ST, Raigad **Respondent**
4th floor, GST Bhavan, Plot No.01, Sector 17,
Khandeshwar, New Panvel, Raigad 410 206.

Appearance:

Shri Vinay Sejpal, Advocate, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 16.09.2022
Date of Decision: 16.09.2022

FINAL ORDER NO. A/85877/2022

This appeal is directed against Order-in-Appeal No. MKK/96/RGD APP/2019-20 dated 31.05.2019 passed by the Commissioner of Central Excise (Appeals), Raigad. By the impugned order, the Commissioner (Appeals) has held as follows:-

Name of the input service	*Amount of input service credit before 01.04.2012 (Rs.)*	*Amount of input service credit after 01.04.2012 (Rs.)*
1. Foreign Travelling	*45,461/-*	*Nil*
Findings: The appellant contended that Foreign travel services were used for air travel agencies services for their staff or employee to travel abroad for business purpose. On perusal of sample copy of invoice no. MS/411 dated 07.09.2012 issued by		

M/s Dayal Tours & Travels (I) Pvt Ltd and sample copy of invoice no ID/4001177 dated 02.10.2012 issued by Mint Forex & Travels Pvt Ltd I find that this service is provided for air ticket booking of their employee individual. I find that after 01.04.2011 the phrase "activities relating to business" was deleted from the inclusive clause of the input service definition and Rule 2(1)(ii)(C) specifically excluded travel benefit extended to employee for personal use from the definition of input service. Further, I find that No evidence has been produced regarding its official use and thus it is not forthcoming whether it is used for the personal purpose or business purpose. ***Therefore, cenvat credit is not allowed being for personal use or consumption.***

2.1 This order has been passed by the Commissioner (Appeals) in pursuance of the remand order of CESTAT (order No. A/91787/2017 dated 01.09.2017).

2.2 The Tribunal while remanding the case has observed as follows:-

"4. It is contended by appellant that the appeal memorandum had been dispatched on 1 May 2014 but delay was attributable to transit impediment. It is further contended that no defect memo was ever issued to them, that they were not aware that a condonation plea was to be entered separately and that no opportunity had been accorded to them for explaining the delay.

5. From the submissions it is seen that the explanation for delay of two days appears acceptable. Moreover, their justification for non-filing of plea of condonation is also taxable. There is no reasonable ground for concluding that they would not have sought condonation had they been made aware of the delay of receipt of the appeal in the office of the appellate authority.

6. For the above reason, the impugned order is set aside and the appeal restored for first appellate authority. The appellant shall file an application for condonation of delay within 30 days of receipt of the order and the first appellate authority shall *consider the application bearing in mind the observations above and dispose off the appeal on merits."*

3.1 I have heard Shri Vinay Sejpal, Advocate for the appellant and Shri P.K. Acharya, Superintendent, Authorised Representative for the Revenue.

3.2 Learned counsel submits that:-

- The issue involved in the present case has been decided by this Tribunal for subsequent period in their own case by order No. A/92367/2017 dated 01.09.2017 and order No. A/91748/2017 dated 10.11.2017.
- He further submits that the remand order was listed on the same day before the same Bench on 01.09.2017. As in this case the Commissioner (Appeals) had not decided on the merits but dismissed for the reason of delay in filing the appeal, the matter was remanded back, but for the subsequent period on the same issue, the matter was taken up by the Bench and decided in favour of the appellant.
- Accordingly the appeal may be allowed.

3.3 Learned AR reiterates the findings recorded in the impugned order.

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

4.2 I find that the issue involved has been determined by the Tribunal in its order No. A/92367/2017 dated 01.09.2017 stating as follows:-

"3. Heard Learned Consultant for appellant and Learned Authorized Representative. Admittedly, the foreign travel expenses were incurred for staff to travel abroad for business purposes. Appellant is a manufacturer and the business of manufacturing does not preclude activities relating to manufacture outside the country. Likewise, the courier was entrusted with dispatch of documents and correspondence from the office of the appellant which can be presumed to have been

in connection with its principal activity. Furthermore, it is inconceivable that research & development could have been in connection with anything other than manufacture."

Again in order No. A/91748/2017 dated 10.11.2017 has held as follows:-

"3.1 With regard to 'Air Travel Services', the appellant says that they have availed the credit against the services rendered by Air Travel Agencies to their employees to travel abroad for business purposes. As air travelling is an activity relating to their business, they are eligible for CENVAT Credit.

4. After hearing both sides, I am of the view that the credit availed for the services, as has been explained above, are in connection with the manufacturing activity. In the result, I hold that the credit in question is rightfully availed by the appellant therefore, the impugned order is set aside and the appeal is allowed with consequential relief if any."

5.1 As in the appellant's own case, the issue has been decided by the Tribunal in their favour, I do not find any merits in the impugned order.

5.2 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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