CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

Excise Appeal No. 1185 of 2012

(Arising out of Order-in-Appeal No. V2(38) 41/Th-II/2010 dated 31.05.2012 passed by the Commissioner (Appeals)-IV Central Excise, Mumbai Zone-I).

S.C. Enviro (Agro) India Pvt. Ltd.
Plot No. T-137,Tarapur, MIDC, P.O. Boisar, Thane-401506. ....Appellant

VERSUS

Commissioner of CGST, Thane ....Respondent
3rd & 5th Floor, ACCFL House, Road No. 22, Wagle Industrial Estate, Thane-400604.

APPEARANCE:

Shri Mehul Jivani, Advocate for the Appellant
Shri P K Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85183/2023

Date of Hearing: 19.12.2022
Date of Decision: 16.02.2023

PER: AJAY SHARMA

This appeal has been filed assailing the order dated 31/05/2012 passed by the Commissioner (Appeals)- IV, Central Excise, Mumbai Zone-I by which the learned Commissioner while upholding the order of the Adjudicating Authority rejected the claim of Cenvat Credit on few input services and also imposed penalty of ₹2000/- under Rule 15(3) of Cenvat Credit Rules, 2004.

2. The issue involved herein is whether the appellant, manufacturer of excisable goods viz. 'Miscellaneous Chemicals' is entitled for Cenvat Credit in respect of few services viz. construction work, maintenance of garden, consulting service, transport charges, clearing and forwarding charges, godown

charges, professional charges, audit and training fee, legal charges, analytical charges and staff welfare in the light of Rule 2 (l) of Cenvat Credit Rules, 2004?

3. The facts leading to the filing of instant appeal are state in brief as follows. The appellants are engaged in manufacture of excisable goods viz. Miscellaneous Chemicals and are availing the cenvat credit facility under the Cenvat Credit Rules, 2004. During the period August, 2007 to July, 2008 they utilised cenvat credit amounting to Rs 13,35,582/- on service tax paid on various services including the services in issue herein. Thereafter, they received four show cause notices dated 08/09/2008 (period covered August to September, 2007), 04/11/2008 (period covered October, 2007 to January, 2008), 05/03/2009 (period covered February, 2008 to March, 2008) and 05/05/2009 (period covered April, 2008 to July, 2008) on the ground that they had availed inadmissible credit of service tax paid on input services (as claimed therein) in as much as the services received by them were not used in or in relation to the manufacture of final products. Those show cause notices were adjudicated and the adjudicating authority vide Order-in-Original dated 26/11/2009 disallowed the cenvat credit amounting to Rs 7,34,238/- in respect of the services mentioned in paragraph 2 above and dropped the demand to the extent of Rs 6,01,344/-. On appeal filed by the appellant the learned Commissioner vide impugned order dated 31.05.2012 rejected the same with penalty of Rs 2000/- under Rule 15(3) ibid.

4. Learned Chartered Accountant appearing on behalf of Revenue submits that the credit of service in issue have been denied to the appellant on the ground that they are neither connected directly or indirectly, in or in relation to manufacture of final products nor related to the business activities, whereas all the services in issue have been held to be 'input service' under Rule 2(l) ibid by this Tribunal from time to time. In support of his submission learned Chartered Accountant placed reliance on various decisions of this

Tribunal. Per contra learned Authorised Representative appearing on behalf of Revenue submits that none of the services in issue are covered in the inclusive part of the definition of input service under Rule 2(l) ibid as they have not been used in or in relation to manufacture of final products and so far as clearing and forwarding charges and godown charges are concerned the appellants have failed to provide complete evidence in this regard and hence they are not eligible to avail credit in respect of these services. In support of his submission learned Authorised Representative also placed on record certain decisions.

5. I have learned Counsel for the appellant and learned Authorised Representative appearing on behalf of Revenue and perused the case records including the synopsis and the case laws placed on record by the respective sides. Input services has been defined under Rule 2(l) of the Cenvat Credit Rules, 2004. The definition of 'input service' is broadly in two parts i.e. main part and inclusive part. First part of the definition is restrictive in scope as it covers input services directly or indirectly used in relation to manufacture or clearance of final product. Whereas the latter part which is inclusive part of the definition expands the scope to such an extent that input services which are only remotely connected with the manufacture of goods will also get covered so long as these are related to the activities of business. Meaning thereby that inputs either directly or indirectly used in any activity concerned with or pertaining to the manufacture of finished goods, is eligible to be claimed as an 'input service.' In the light of the above, since various services are in issue herein, I am taking them one by one as under:-

(i) <u>Professional Charges, Legal Charges and Audit Training Charges</u>:- Since these services are interconnected therefore I am taking them together. This service pertains to the professional, legal and other charges paid for insurance of import and export material, DGFT license work, certificate of transfer pricing under Income Tax Act, handling of appellants legal matters, drafting, liasoning work, etc. Cenvat credit on these services have been denied on the ground of "no-nexus". There is no dispute that professional service and legal service are one of the important services without which the operation of any establishment cannot be undertaken. These services are also availed for some statutory compliances for which the appellant is under obligation to comply and therefore they are integrally connected with the business activity of the appellant and are covered within the definition of 'input service'. Similarly, the Audit and training also are essential services as it has been brought to my notice that it pertains to fees paid for replying show cause notice and if that is so then its also eligible 'input service.'

(ii) <u>Civil Construction Work, Analytical Charges for ETP Samples and Transport charges for transport of biomass used for treatment of water</u>:- As these services are also interconnected therefore I am taking them together. The Water (Prevention and control of Pollution) Act, 1974 casted an obligation on the appellant to maintain certain standards of effluent from their factory and when for certain activity the appellant is under statutory obligation, it cannot be said that the same is not in relation to manufacture. The Hon'ble Supreme Court in the matter of *Indian Farmers Fertilizers Co-op Ltd. v/s CC Ahmedabad;* 1996 (86) ELT 177 (SC) has laid down that the effluent treatment is essential and integral part of the process of manufacture in the plant and is part and parcel of the manufacturing process of that end product. Similarly the Analytical charges have been paid towards analysis of the effluent treatment plant sample and biomass is used for treatment of water before disposing it as waste which is also a statutory requirement as per Section 12 of the Factories Act, 1948. Therefore the services herein cannot denied to be 'input services' and can very well said to be service used in or in relation to the manufacture and clearance of the final product.

(iii) Maintenance of Garden:- Pollution Control laws require atleast one-third of the open space under green coverage which is also essential in order to control the pollution and the appellants are under statutory obligation to maintain the garden in compliance with pollution control laws. Therefore, this service also falls under the category of 'input services' under Rule 2(l).

(iv) Consulting Services:- This service has been denied on the ground that it is a type of welfare measure and could not be treated as an 'input services' used in relation to the manufacture and clearance of final product. Learned Counsel submitted that through the consultancy service a study was conducted by the service provider in order to restructure the salaries/pay to meet the present standard pay in the industry. No doubt this service has been carried out in order to achieve the best utilisation of the employees, which in turn is going to enhance the production and therefore this service can be said to be used in relation to the business process and qualifying as 'input service.'

(v) Cleaning and Forwarding Charges and Godown Charges:- This services have been utilised for outward transport of the goods from the factory premises to the place of removal which is the godown and situated at Zirakpur and Guwahati respectively. This service has been denied on the ground that the information provided by way of only two invoices is not enough proof to determine that all the clearance are undertaken from Guwahati and Zirakpur and that the godowns are outside the perview of the factory premises which is a place of removal and hence not admissible as 'input service.' In order to substantiate the claim the appellant has placed on record the copies of tax invoices / commercial invoices which establishes that the goods are transferred to the godown situated at Zirakpur and Guwahati and are sold from their and therefore, these are also admissible 'input service.'

(vi) Staff Welfare:- Under this head the expenses have been incurred for giving training to the staff / workers of the factory.

There is no doubt that such periodical trainings are essential for any establishment and therefore eligible 'input service'

5. In view of the discussions held in the preceding paragraphs, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 16.02.2023)

(Ajay Sharma)
Member (Judicial)

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