CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86277 of 2018

(Arising out of Order-in-Original No. NSK/CGST-CX/002/COM/11/2017-18 dated 29.12.2017 passed by Commissioner of CGST & Central Excise, Nashik)

M/s. Superwealth Financial Enterprises Pvt. Ltd. **.....Appellant**
Ground Floor, 68/1, MIDC, Satpur,
Nashik 422 007.

VERSUS

Commissioner of Central Excise and Service Tax, Nashik **.....Respondent**
Kendra Rajaswa Bhawan, Old Agra Road,
Gadkari Chowk,
Nashik 422 002.

WITH

Service Tax Appeal No. 86615 of 2021

(Arising out of Order-in-Original No. NSK/CGST-CX/COM/01/2021-22 dated 06.04.2021 passed by Commissioner of CGST & Central Excise, Nashik)

M/s. eSmart Energy Solutions Ltd. **.....Appellant**
Plot No. 68/1,MIDC,Satpur,
Nashik 422 007.

VERSUS

Commissioner of CGST & Cen. Excise, Nashik **.....Respondent**
Kendra Rajaswa Bhawan, Old Agra Road,
Gadkari Chowk,
Nashik 422 002.

Appearance:

Shri Prakash Shah and Shri Sachin Mishra, Advocates for the Appellants.

Shri Piyush Badhe, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87187-87188/2023

Date of Hearing: 28.11.2023
Date of Decision: 28.11.2023

PER : S.K. MOHANTY

Issue involved in these two appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. The appellants in these cases have entered into agreements with various Municipalities/Municipal Corporations for implementation of energy conservation measures, installation of feeder panels for automation along with metering operation, maintenance and repair service of the Street Lighting fixtures etc. The contracts entered into between the parties have stipulated that the contractor should be entitled for the consideration on the basis of energy saving earned by them i.e., "Pay from Savings" (ESCO) basis. The appellants herein have classified the said provision of service under the taxable category of "Scientific and Technical Consultancy Services" and "Maintenance and Repair Service", defined under the Finance Act, 1994. The appellants availed Cenvat Credit of Central Excise duty paid on the inputs. During the course of verification of the records maintained by the appellants, the audit wing of the service tax department observed that the appellants have manufactured the LED Lights and fittings thereof in their factory and duly discharged the Central Excise duty liability on the clearance of the said goods from outside the factory. The department objected to the fact of availment of cenvat benefit on the ground that the appellant cannot avail of such credit of duty paid on their own finished goods, as the same cannot be treated as raw material/inputs for provision of taxable output services. Thus, the service tax department concluded that the goods manufactured by the appellants cannot be considered as raw material/inputs for provision of service by appellant and accordingly, those manufactured goods cannot be termed as "inputs" as defined under Rule 2(k) of the

CENVAT Credit Rules, 2004. Further, it was also contended by the Revenue that the ownership of the LED lamps and fittings thereof remain with the Municipality/Corporation upon expiry of the contract period and since, the appellants are not the owner of the goods supplied by them, they cannot be considered as the beneficiary of service tax or Central Excise duty paid on those goods, considering the same as inputs. The show cause notices issued in this regard were adjudicated upon by the department in confirming the proposals made in the show cause notices. The learned adjudicating authority has held that since the assessee-appellants were in possession of the equipment and systems installed by them; and on expiry of the contract period, the right of ownership of the said goods were vested with the Municipalities/ Municipal Corporation, then in such case, the finished goods manufactured by the Appellants cannot be considered as raw material/inputs for provision of taxable service by them. On the basis of such observations, the learned adjudicating authority has held that the LED lightings, fixtures and control panels manufactured and cleared by the assessee-appellants from their manufacturing division, cannot be treated as inputs at their own Service Division and the Cenvat Credit of Central Excise duty paid at the time of clearance of these goods shall not be admissible to them as cenvat credit. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

3. Learned Advocate appearing for the appellants pleaded that in respect of the same premises, the appellants were registered with the jurisdictional Central Excise and Service Tax authorities for manufacture of excisable goods and for provision of taxable services. As a manufacturer, the appellant had duly discharged the Central Excise duty liability and that since those manufactured goods were used in the other unit of the appellant for providing the taxable services, availment of cenvat credit, considering those goods as inputs cannot be faulted with. Thus, it was contended by learned Advocate that denial of Cenvat benefit on the LED lights, fixtures and control panel by the department cannot be sustained.

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the appellants are the manufacturer of excisable goods, namely LED lights, fixtures and control panels etc. and on clearance of the same from the factory premises, they had discharged appropriate Central Excise duty liability. It is also an admitted position that those goods manufactured by the appellants were in fact used for provision of the output service namely Scientific and Technical Consultancy Service and Maintenance and Repair Service to the contractee, viz., the various Municipalities/Municipality Corporations located within the state of Gujarat and Orissa.

7. The issue involved in these appeals for consideration by the Tribunal is whether, the disputed goods should be considered as inputs for the purpose of availment of Cenvat Credit in respect of the Central Excise duty paid by the appellants. The definition of input is contained in Rule 2(k) of the CENVAT Credit Rules, 2004. The relevant definition is extracted herein below for is on reference.

> *"Rule 2(k) "input" means –*
> *(i) all goods used in the factory by the manufacturer of the final product; or*
> *(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or*
> *(iii) all goods used for generation of electricity or steam or pumping of water for captive use; or*
> *(iv) all goods used for providing any output service, or;*
> *(v) all capital goods which have a value upto ten thousand rupees per piece,........."*

On perusal of the above definition, it would reveal that all goods used by any service provider, for providing any output service, should be eligible for consideration as 'input'. In this case, the disputed goods namely LED lightings, fixtures and control panels were used by the appellants for provision of the taxable services to the service recipient i.e., the Municipality/Municipal Corporation. Since, those disputed goods in the form of inputs were used and utilized for provision of the output service and service tax liability on provision of such services were duly discharged by the appellants, it cannot be said that the disputed goods shall not be considered as inputs for the provision of the output services. Further, consideration of the ownership is not a criteria for determining whether the disputed goods should be eligible for the cenvat benefit or otherwise. The criteria laid down in the CENVAT statute is only to ensure that the goods and services were used for provision of the output service and those goods and services should have been levied with the taxes or duties. Since, there is no restriction or embargo created in the statute, for establishment of ownership of the goods, which are used for the provision of the output service, in our considered view, the impugned orders passed by the learned adjudicating authority cannot be sustained on such grounds. In other words, usage of inputs is only confined to the factory in case of a manufacturer and premises in case of service provider.

8. Therefore, we do not find any merits in the impugned order, insofar as the adjudged demands were confirmed on the appellants, holding that the disputed goods shall not be considered as inputs for the purpose of the provision of the taxable output service. Accordingly, by setting aside the impugned orders, the appeals are allowed in favour of the appellants, with consequential benefits, if any, as per law.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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