CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87296 of 2015

(Arising out of Order-in-Original No. GOA-EXCUS-000-COM-11-15-16 dated 26.08.2015 passed by the Commissioner of Central Excise, Goa)

Vedanta Ltd. **.... Appellant**
(formerly Sesa Sterlite Ltd Sesa Goa Ltd.)
Amona/Navelim Bicholim Marceela,
North Goa- 403 107.

Versus

Commissioner of Customs, Goa **.... Respondent**
ICE House, EDC Complex, Plot No.6,
Patto Panji Goa- 403 001.

Appearance:

Shri Parth Parekh a/w Ms Priyadarshani Shekhawat, Advocates for the Appellant

Shri Rajiv Ranjan, 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/85590/2024

Date of Hearing: 11.06.2024

Date of Decision: 11.06.2024

Per: S.K. MOHANTY

Denial of Cenvat Credit of service tax paid on various services is the subject matter of the present dispute. These disputed services are Consulting Engineer Service, Plant Fabrication & Erection & Commissioning and Supply of Tangible Goods. The learned adjudicating authority in the impugned order dated 26.08.2015 has denied the Cenvat Credit, by holding that those disputed services cannot be considered as 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004 for the period after 01.04.2011 inasmuch as the phrase "setting up" of the factory was specifically excluded in such amended definition.

2. Heard both sides and perused the case records.

3. The definition of input service, prior to its amendment w.e.f. 01.04.2011 provided the phrase "*used in relation to setting up, modernization, renovation or repairs of a factory*" in the inclusive part contained therein. The said definition was amended vide Notification No.3/2011 dated 01.03.2011 (w.e.f. 01.04.2011). The effect of such amendment was that the phrase "setting up of the factory" was replaced with the phrase "used in relation to modernization, renovation or repairs of a factory". The other amendment brought into the definition clause of input service was that certain excluded category of services were incorporated therein, which should not be considered as 'input service', for the purpose of availment of Cenvat credit of service tax paid thereon. The excluded category of services provided under Rule 2(l) *ibid interalia*, includes "service portion in the execution of the works contract and construction services insofar as they are used for (a) construction or execution of works contract of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods".

4. On consideration of the disputed services used/utilised by the appellants as listed out in paragraph 1 above, we find that such services were not falling under the exclusion clause provided under Rule 2(l)(A) *ibid*. Since, the disputed services were not specifically falling under the excluded category and were used in relation to manufacture of the final products, in our considered view, denial of Cenvat Credit of service tax paid on those services cannot be sustained. We find that the issue arising out of the present dispute has been adequately dealt with by the Co-ordinate Bench of This Tribunal in the case of *Pepsico India Holdings (Pvt.) Ltd. Vs. Commissioner of Central Tax, Tirupati*, reported in 2021 (7) TMI 109-CESTAT HYDERABAD. The relevant paragraphs appearing in the said order are extracted herein below:

> *"21. For a service to qualify as 'input service' under CENVAT Credit Rules, 2004 post 2011, the service in question need not be covered even by the very wide definition of manufacture under section 2(f) of the Central Excise Act. Any service which is used not only in manufacture but also 'in relation to' manufacture will also qualify as input service. The scope of input service is further enlarged with the expression whether directly or indirectly used in the definition of input service. Thus, there are: a) Actual manufacture; b) Processes*

incidental or ancillary to manufacture which are also manufacture; c) Activities directly in relation to manufacture (i.e., in relation to 'a' and 'b' above); d) Activities indirectly in relation to manufacture (i.e., in relation to 'a' and 'b' above);

22. All four of the above qualify as input service as per Rule 2(l) (ii) as applicable post 1.4.2011. Although setting up the factory is not manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture. Services used in setting up the factory are, therefore, unambiguously covered as 'input services' under Rule 2 (l) (ii) of the CENVAT Credit Rules, 2004 as they stood during the relevant period (post 1.4.2011). The mere fact that it is again not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main part of the definition of input service, unless it is specifically excluded under the exclusion part of the definition, the appellant is entitled to CENVAT credit on the input services used. This Bench has already taken this view in Kellogs. Similar views have been taken by the other Benches in the other cases mentioned above."

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has denied the Cenvat Credit and confirmed the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM