CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85276 of 2013

[Arising out of Order-in-Original No. 60/ST/2012/C dated 17th October 2012 passed by the Commissioner of Customs, Central Excise & Service Tax, Nagpur.]

Paramount Conductors Ltd … ***Appellant***
Plot No. 32, MIDC Industrial Area, Higna Road,
Nagpur – 440 016

versus

Commissioner of Customs, Central Excise & Service tax …***Respondent***
Civil Lines, Telangkhedi Road, Nagpur – 440 001

APPEARANCE:

Mr Bharat Raichandani, Advocate with Mr PV Sadavarte, Advocate for the appellant

Mr MP Damle, Assistant Commissioner (AR) and Mr Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR S K MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 87047 / 2019

DATE OF HEARING: 18/01/2019
DATE OF DECISION: 18/01/2019

PER: C J MATHEW

Consequent upon investigation into the income received by M/s Paramount Conductors Ltd for 'maintenance or repair service by way of motor rewinding charges collected', show cause notice demanding tax of ₹ 1,09,75,228/- for the period from 2006-07 to 2010-11 and seeking recovery of the differential amount of ₹ 64,13,027/- was adjudicated by Commissioner of Central Excise and Customs, Nagpur, *vide* order-in-original no. 60/ST/2012/C dated 17th October 2012, confirming the said amount, along with interest thereon under section 75 of Finance Act, 1994, and imposing penalty of like amount under section 78 of Finance Act, 1994. The findings against the appellant herein was rendered by declaring them ineligible for the benefit of notification no. 12/2003 dated 20th June 2003 for having availed credit of ₹1,06,678/- on inputs as one condition for being entitled to abatement of the value of goods supplied with the services and the differential amount ordered for recovery.

2. In the grounds of appeal, the impugned order has been assailed for not rendering a finding on the submissions on facts as well as law, for failing to render a finding on the taxability of the impugned transactions and for failing to note that the credit availed, in breach of the condition of exemption notification, had been reversed before the issue of show cause notice.

3. We have heard Learned Authorised Representative.

4. Though the Learned Counsel has sought to introduce the argument of non-taxability of this service, we are not inclined to

examine that aspect as the appellant had been paying service tax since 17th July, 2006 and the present ground appears to have been raised only consequent upon the proposal to tax the gross value of consideration received from their customers. We also find that there is no dispute on the reversal of CENVAT credit and that the impugned order has confirmed the liability, primarily, on the ground that

> *'8.12 In the instant case I find that the Noticee has failed to strictly abide by the provisions of the Notification No. 12/2003, in as much as, they reversed the Cenvat credit availed by them on such goods and materials on being pointed out by the department in April 2010 i.e. after the sale of such goods and materials. Further as discussed earlier, Noticee did not file the ST-3 returns with the Department declaring the exemption notification availed by them and the declaring the value of goods and material sold during the course of providing of the service along with the documentary evidence. In view of this, I hold that the Noticee is required to pay Service Tax on the gross amount charged by them for providing taxable services i.e. the value of service in relation to 'maintenance and repair' would be the gross amount charged including cost of goods and material used and consumed in the course of rendering such service.'*

5. We also do not find any reason to delve into the evolution of the service, as defined in section 65(64) of Finance Act, 1994, sought to be taxed by section 65(105)(zza) of Finance Act, 1994 in the light of settled law. Our attention has been drawn to the decision of the Tribunal in *Beekay Engineering Corporation v. Commissioner of Central Excise, Raipur*

[2017 (52) STR 500 (Tri.-Del.)] holding that

> *3. We have considered the contentions of both sides. We find that in the case of Hello Minerals Water (supra) it was held in the context of Notification No. 15/94-C.E. that the reversal of Modvat credit amounted to non taking of credit inputs. The said judgment has been followed in the case of Amola Holdings (supra). As regards the judgment of Bombay High Court in the case of Dilip Chhabaria Designs (supra) it is to state that in that case the credit was taken on duty paid on chassis and other inputs which was not utilised since the same lapsed due to the assessee no longer remaining under the Excise net. Thus, that judgment was dealing with rather different set of facts. We find that this issue has been analysed in detail by CESTAT in the case of Punj Lloyd vide Order No. 52285/2015, dated 28-4-2015 [2015 (40) STR 1028 (Tri.-Del.)] where also it has been held that the ratio of the judgment of Allahabad High Court in the case of Hello Minerals (supra) continues to be applicable on the subject and the said ratio stands confirmed by Supreme Court in the case of Sonalac Paints and Coatings Ltd. v. CCE - 2015-TIOL-77-SC-CX = 2015 (319) ELT 229 (SC).*

As there is more than a passing reference to the settled law that reversal is tantamount to non-taking of credit, considered in detail in *Punj Lloyd Ltd v. Commissioner of Central Excise & Service Tax, Rohtak [2015 (40) STR 1028 (Tri.-Del.)]* in the facts and circumstances of

> *'2. The appellant has contended that (i) when Notification No. 15/2004-S.T. was replaced by Notification No. 1/2006-S.T., dated 1-3-2006 an additional condition of non-availment of Cenvat credit on input services was also introduced and due to oversight they took Cenvat of input services amounting to*

Rs. 32,59,779/-. The said amount was reversed along with interest even before the impugned order and therefore in the light of the judgment of Allahabad High Court in the case of Hello Minerals Water (P) Ltd. v. Union of India [2004 (174) ELT 422 (All.)], it was entitled to the benefit under Notification No. 1/2006-S.T. It stated that the said judgment of the High Court has been followed in the case of Precot Mills v. CCE [2006 (201) ELT 356 (Tri.-Mad.)]. (ii) As regards demand under 'Commercial or Industrial Construction Services' (CICS), the appellant has contended that (i) it provided service to the joint venture between the appellant and M/s. Whessoe Oil and Gas Ltd. (WOGL) and that joint ventures not being a separate legal entity it was in effect service to self and therefore not liable to Service Tax (ii) the service was provided in relation to construction of "port or other port" inasmuch as was the construction work for completion of the remaining work of the jetty for M/s. Ratnagiri Gas and Power Pvt. Ltd. (RGPPL) at Dabhol and therefore was not liable to Service Tax under Notification No. 16/2005-S.T. (iii) There was no wilful misstatement or suppression of facts and therefore the excluded period was not invocable.'

to decide that

'5. As regards the eligibility for the benefit of Notification No. 1/2006-S.T. after reversal of the Cenvat credit taken on input services along with interest, it needs to be appreciated that in the Notification No. 15/2004-S.T. there was no bar against taking Cenvat credit of input services. When the said notification was superseded by Notification No. 1/2006-S.T. an additional condition of non-availment of Cenvat credit on input services was also introduced. It is thus possible that initially this may have escaped the attention of the appellant. No prudent person would take the risk of being saddled with a

demand of almost Rs. 14 crores merely for input service credit of just above Rs. 32 lakhs. As regards the possible argument that there is no equity in taxation and exemption notifications have to be construed strictly, suffice to say that in the case of Hello Minerals (supra) the Allahabad High Court has clearly held as under :-

> *"18. In view of the above decision we are of the opinion that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage."*

We find that the judgment of Allahabad High Court had taken into account the Supreme Court judgment in the case of Chandrapur Magnet Wires Pvt. Ltd. (supra). Indeed in the above case, the Hon'ble Supreme Court concluded that "we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product". This observation in no way necessarily implies that the Supreme Court would have necessarily found it unacceptable if a debit entry in the credit account was made after removal of the exempted goods, particularly when such debit entry reversed the Cenvat credit along with interest before the primary adjudication. Seen in this light the distinguishing effort by CESTAT in the case of Hind Lamps (supra) fails to be convincing. The Bombay High Court judgment in the case of Nicholas Piramal (supra) cited by the ld. Departmental Representative was with regard to the interpretation of Rule 57C and Rule 57CC of Central Excise Rules, 1944 and Rule 6 of Cenvat Credit Rules, 2004 and hence has no direct applicability to the issue at hand. The CESTAT judgment in the case of Sunil Hi-Tech Engineers (supra) cited by ld. Departmental Representative was in relation to Service Tax liability of main contractor vis-a-vis sub-contractor and *hence is not germane to the issue at hand. As regards the other judgment Dilip Chhabria Designs [2015-TIOL-851-HC-Mum-CX = 2015 (323) ELT 565 (Bom.)], cited by Revenue to distinguish the judgment in the case of Hello Minerals (supra), we find that the facts in that case were very different inasmuch as in that case the assessee did not reverse the credit at the time of removal of goods or after removal. Without dwelling further on the subject, we may only add that as on today the judgment of Allahabad High Court in the case of Hello Minerals (supra) continues to be good law with regard to the subject at hand and has been repeatedly followed by CESTAT, e.g., in the case of Hindustan Construction Co. Ltd. v. CST, Mumbai (Order No. S/924/14/CSTB/C-I, dated 3-9-2014), B.G. Shirke Construction Tech. v. CCE, Pune [2009 (13) STR 686 (Tri. - Mum.)] and Khyati Tours & Travels v. CCE, Ahmedabad [2012 (27) STR 366 (Tri. - Ahmd.)]. As such we hold that the component of impugned demand arising as a result of denial of the benefit of Notification No. 1/2006-S.T. is not sustainable.'*

we need not look any further for guidance to resolve the dispute.

6. In the light of the above decision, the impugned order is flawed in having sought tax liability of ₹ 1,09,75,228/- when the CENVAT credit stood duly reversed. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(S K Mohanty)
Member (Judicial)

(C J Mathew)
Member (Technical)

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