IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:02.02.2018

Excise Appeal No.51969/2017 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-227-228-17-18 dated 14.09.2017 passed by the Commissioner of Customs & Central Excise, Bhopal (M.P.)]

M/s.Eastern Refractories Ltd. Appellants

Vs.

CCE, Jabalpur Respondent

Appearance:

Rep. by Shri Kumar Vikram, Advocate for the appellant.
Rep. by Shri P. Juneja, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No…50781/2018……

Per S.K. Mohanty:

Heard both sides.

2. Denial of cenvat credit of service tax paid on GTA service is the subject matter of present dispute. Though, the department has accepted that the appellant had undertaken sale of goods on FOR destination basis and the transportation cost is included in the basic sale price, on which central excise duty liability has been discharged, but denied the cenvat benefit on the ground that the factory gate is the 'place of removal' and accordingly, service tax paid on the transportation should not be considered as "input service" as defined under Rule 2 (l) of the Cenvat Credit Rules, 2004.

3. The issue arising out of the present dispute is no more *res integra* in view of the judgement of the Hon'ble Chattisgarh High Court in the case of

Commissioner of Central Excise, Raipur Vs. SKS Ispat and Power Ltd. – 2017 (5) GSTL 252 (Chhattigarh). The relevant paragraph in the said judgement are extracted below:-

> ***"2. This case relates to denial of cenvat credit availed in service tax paid on GTA services for transporting final products from the factory to the respondent to three premises; the first being the respondent's depot, the second being the respondent's consignment agent and the third being the respondent's customers. The demand was confirmed by the department authorities only on the ground that the factory is considered as a "place of removal" and any outward transportation beyond the factory is not entitled for credit as per the definition of "input service" under the Cenvat Credit Rules, 2004.***
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> ***3. Appreciating the relevant facts and factors and the rival contentions, the Tribunal held that the issue is covered in favour of the assessee as per the decision of the Karnataka High Court in 2011 (23)STR 97 (Karnataka) reversing the decision of the Tribunal in ABB ltd. Vs. CCE & ST,Bangalore reported in 2009 (15) STR 23. We are told by the learned counsel for the revenue that against the said decision of Karnataka High Court, the department moved before the Apex Court by filing Special Leave Petition.***
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> ***4. The reasoning given by the Tribunal in the impugned order is based primarily on issues of facts relating to the identity of the "place of removal" for the purpose of availing benefit. The Tribunal has considered the materials and has also considered the nature of contract between the assessee and its customers. Under such circumstances, we are of the view that the findings of the Tribunal that the assessee was entitled to credit for the amounts covered, does not warrant interfere through this appeal. This all the more so because no substantial question arises for decision in***

> ***this appeal to be answered in favour of the Revenue on the found facts. Hence, this appeal fails.***
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> ***5. In the result, the appeal is dismissed."***

4. Further, the Hon'ble Punjab & Haryana High Court in the case of **Haryana Sheet Glass Ltd. – 2015 (39)STR 392 (P&H)** have held that since the ownership and property of the goods transferred at customer's door step, outward freight paid by the manufacturer for delivery upto the buyer's premises should be eligible for cenvat benefit.

5. In view of the above settled position of law, I do not find any merit in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

ckp.

This appeal is directed against the impugned order dated 10.04.2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.

2. The brief facts of the case are that the appellant is engaged in the manufacture of motor vehicle for transport of goods and body for motor vehicle falling under Chapter Heading 8704 and 8707 of the Central Excise Tariff Act, 1985.The appellant avails Cenvat credit of central excise duty paid on inputs and capital goods and on the input services as per the provisions of Cenvat Credit Rules, 2004. During the period, April, 2008 to July, 2013, the appellant had availed manpower and man power recruitment and supply services from M/s.New Pitampur Road Light, Pitam Pur. On the basis of the bill dated

30.09.2013 issued by such service provider, the appellant availed Cenvat credit of service tax indicted in such bills. Taking of Cenvat credit by the appellant was disputed by the Department on the ground that the service tax was paid by the service provider by reason of fraud, collusion or willful misstatement, etc. and accordingly, as per the provisions of Rule 9(1)(bb) of the Rules, the appellant is not permitted to take Cenvat credit. The matter was adjudicated against the appellant by order dated 12.06.2015 wherein Cenvat credit taken by the appellant amounting to Rs.116092 was disallowed and the penalty of Rs.5,53,046/- was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order has imposed the adjudged demand on the appellant.

Ld.Advocate for the appellant submits that though show cause notice was issued by the jurisdictional Service Tax Authorities on the service provider but the adjudication order passed against the service provider was set aside by the Commissioner (Appeals) vide order dated 2.6.2016.Thus, he submits that since the charges framed against the service provider was set aside by the jurisdictional Commissioner (Appeals), the service tax paid by the service provider cannot be denied as Cenvat to the appellant under the provisions of Rule 9(1) (bb) of the Rules.

On the other hand, ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

Heard both the sides.

The observation of the ld. Commissioner (Appeals) relevant for deciding the present issue are contained in paragraph-6 in the impugned order, which is extracted herein below:-

(6)

On perusal of the above observations of the ld.Commissioner (Appeals), it transpires that the charges leveled against the service provider regarding fraud, collusion, willful mis-statement, etc. are no more in existence in view of the proceedings dropped by the jurisdictional Commissioner (Appeals). Since the service tax amount in question was not paid by the reason of fraud, collusion, etc., the appellant cannot be denied the Cenvat credit benefit in terms of the Rule 9(1) 9 (bb) of the Rules. Further, Rule 3 of the Rules extends the service receiver to avail Cenvat credit of service tax paid by the service provider. In this case, since the service tax paid by the service provider was availed as credit by the appellant on the basis of the bills raised by him, the benefit of Cenvat credit cannot also be denied to the appellant.

Therefore, I do not find any merit in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.