

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

West Block No. 2, R.K. Puram, New Delhi - 110 066.

Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING/DECISION : 07/08/2014.

Excise Appeal No. 2900 of 2011 (SM)

[Arising out of the Order-in-Appeal No. 194 (CB) CE/JPR-II/2011 dated 29/08/2011 passed by The Commissioner, Central Excise Commissionerate, Jaipur.]

For Approval and signature :

Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s RSWM Ltd. (Fabric Division)

Appellant

Versus

CCE, Jaipur - II

Respondent

Appearance

Ms. Rinky Arora, Advocate for the appellant.

Shri Ranjan Kumar, Authorized Representative (DR) for the Respondent.

CORAM : Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 53190/2014 Dated : 07/08/2014

Per. Rakesh Kumar :-

The appellant in their factory at Village Mordi, District Banswara are engaged in manufacture of manmade fabrics. They also have a captive power plant, the coal for which is brought by rail. For the purpose of transportation of coal to their factory they got a railway siding constructed at Village Namli on Ratlam - Chittor Section. For construction of the railway siding at Namli, they received Engineering consultancy service from M/s Vogue Construction & Consultancy Services (P) Ltd. and during the period from June 2008 to March 2008 they took Cenvat credit of Rs. 76,695/- of the service tax paid by the service providers on this service. The Department was of the view that this service received by the appellant has no nexus with manufacture of their final product and accordingly the Jurisdictional Assistant Commissioner vide order-in-original dated 19/1/11 confirmed the Cenvat credit demand of the above amount alongwith interest and imposed penalty of equal amount on them under Rule 15 (2) of Cenvat Credit Rules, 2004 readwith Section 11AC of Central Excise Act, 1944. On appeal being filed to Commissioner (Appeals) against this order of the Assistant Commissioner, the Commissioner (Appeals) vide order-in-appeal dated 29/08/11 upheld the Assistant Commissioner's order. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Ms. Rinky Arora, Advocate, the learned Counsel for the appellant, pleaded that during the period of dispute, the definition of input service specifically covered the services used in relation to procurement of inputs and activities relating to business, that coal is one of the inputs for the appellant as the same is used in the captive power plant for generation of electricity, which is used for the manufacture of final product, that for transportation of coal to the appellant's factory by rail, they have got railway siding constructed at railway station Namli on Ratlam - Chittor section, that construction of railway siding at railway station Namli is to facilitate the procurement of coal which is one of the inputs and, hence, the engineering consultancy service received for construction of the railway siding has to be treated as the service used in or in relation to procurement of inputs, that in any case, this

service is covered by the term activities relating to business, that the Commissioner (Appeals) and the Assistant Commissioner have disallowed the Cenvat credit relying upon the Apex court's judgment in the case of Maruti Suzuki Ltd. vs. Commissioner reported in 2009 (240) E.L.T. 641 (S.C.), that as held by Hon'ble Bombay High Court in the case of CCE, Nagpur vs. Ultratech Cement Ltd. reported in 2010 (260) E.L.T. 369 (Bom.) (para 31 and 34), the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. vs. Commissioner (supra) in context of definition of input in Rule 2(k) of Cenvat Credit Rules, 2004 would equally apply while interpreting expression activities to business in Rule 2 (l) and that in the light of the Apex court's judgment in the case of Maruti Suzuki Ltd. vs. Commissioner (supra), the services having nexus or integral connection with manufacture of final product as well as the business of manufacture of final product would qualify to be input service under Rule 2 (l), that in this judgment, Hon'ble Bombay High Court has also held that the definition of input service read as a whole makes it clear that the said definition not only covers the service which are used directly or indirectly in or in relation to manufacture of final products but also includes the other services which are integrally connected with the business of manufacturing of final product, that the ratio of this judgment of Ho'ble Bombay High Court is squarely applicable to the facts of this case, as construction of railway siding to facilitate the transportation of coal to the appellant's plant is an activity which is integrally connected with manufacturing business of the appellant, that the Tribunal in the case of CCE, Nagpur vs. Ultratech Cement Ltd. reported in 2010 (20) S.T.R. 683 (Tri. - Mumbai) has held that services availed outside the factory premises - construction, erection, installation, maintenance and repair of thermal power plant situated outside factory premises would be eligible for Cenvat credit, that the Tribunal in the case of CCE, Nagpur vs. Ultratech Cement Ltd. reported in 2011 (21) S.T.R. 297 (Tri. - Mumbai), has held that service of repair and maintenance of river pump outside factory premises used for generation of electricity which is used in manufacture of final product would be eligible for Cenvat credit, that these judgments are squarely applicable to the facts of this case and that in view of the above, the impugned order is not correct.

4. Shri Ranjan Khanna, the learned DR, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the construction of railway siding at railway station Namli far away from the factory has no nexus with the manufacture of final product. He accordingly pleaded that there is no infirmity in the impugned order.

5. I have considered the submissions from both the sides and perused the records.

6. During the period of dispute, that is, during period from June 2008 to March 2010, the definition of input service covered the services used in relation to - procurement of

inputs and also the activities relating to business. It is not disputed that the appellant have a captive power plant in their factory which uses coal and coal is transported to the factory by railways and for this purpose only, a railway siding was constructed at railway station Namli on Ratlam - Chittor Section. The construction of railway siding at railway station Namli is only to facilitate the transportation of coal to the appellant's factory and, therefore, this service has to be treated as service used in or in relation to procurement of input. Moreover as held by the Hon'ble Bombay High Court in the case of CCE, Nagpur vs. Ultratech Cement Ltd. (supra), the definition of input service during the period of dispute read as a whole makes it clear that the said definition not only covers the services which are used directly or indirectly, in or in relation to manufacture of final product, but also covers other services which have direct nexus or which are integrally connected with the business of manufacture of final product. The transportation of coal, which is necessary for generation of electricity in the captive power plant, is in my view, integrally connected with the business of manufacturing of the final product and therefore the services received for construction of railway siding have to be treated as services used in or in relation to procurement of inputs and also the activities relating to Business of manufacture of the final product. In view of the above discussion, I hold that the service in question is covered by the definition of input services and would be eligible for Cenvat credit. The impugned order is, therefore, not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(Rakesh Kumar)

Member (Technical)