

HIGH COURT OF KARNATAKA

Commissioner of Central Excise, Bangalore-I Commissionerate

v.

Ecof Industries (P.) Ltd.*

N. KUMAR AND RAVI MALIMATH, JJ.

CEA NO. 51 OF 2010

APRIL 8, 2011

Rule 7 of the Cenvat Credit Rules, 2004 - Cenvat credit - Distribution of credit on inputs by office or any other premises of output service provider - Assessee paid service tax pertaining to advertisement of its product manufactured in a unit - It availed Cenvat credit of service tax so paid in another unit - Revenue denied said credit on ground that assessee was entitled to take credit only in unit where product was manufactured - Tribunal held that there is no restrictions under rule 7 in limiting distribution of service tax credit made in respect of one unit solely on ground that services are used in respect of another unit and restrictions are that credit should not exceed amount of service tax paid and credit should not be attributable to service used in manufacture of exempted goods or providing of exempted services - Whether order of Tribunal was to be confirmed - Held, yes [Para 6] [In favour of assessee]

CASE REVIEW

Ecof Industries (P.) Ltd. v. CCE [2009] 23 STT 381 (Bang. - CESTAT) (para 6) *affirmed*.

T.M. Venkata Reddy for the Appellant.

JUDGMENT

Ravi Malimath, J. - This appeal is by the revenue, being aggrieved by the order of the Tribunal, holding that there are no restrictions in the Cenvat Credit Rules, as applied by the Department, in limiting the distribution of service tax credit made in one unit and availed of in another unit.

2. The assessee are holders of Central Excise Registration being manufacturers of excisable goods. During the course of audit, it was found that the assessee had availed service tax credit based on the invoices issued by their Chennai, Head Office indicating that the amount of service tax credit is to be taken by their unit at Malur. Accordingly, a show cause notice dated 06.12.2007 was issued to show cause as to why the irregular service tax credit availed on input services for the period November 2006 should not be demanded along with interest and

penalty. The assessee replied to the same. The Assessing Authority thereafter dropped the proceedings. Aggrieved by the same, the revenue preferred an appeal before the Commissioner of Central Excise, (Appeals I), Bangalore, wherein the appeal was allowed by setting aside the order in original by confirming the demand, interest and penalty. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal on a combined reading of Rule 7 and the clarificatory circular dated 23.08.2007 held that there are only two restrictions regarding the distribution of the credit. That the first restriction is that the ('credit should not exceed the amount of service tax paid and the second restriction is that the credit should not be attributable to service used in the manufacture of exempted goods or providing of exempted services. Consequently, it was of the view that there are/no restrictions under the said rules as sought to be made out by the revenue in limiting the distribution of the service tax credit made in respect of the Malur Unit solely on the ground that the services were used in respect of the Cuttack Unit.

3. Heard the learned Counsel appearing for the appellant.

4. The assessee had availed the service tax credit based on the invoices issued by the Chennai office indicating that the service tax are taken by their unit at Malur. That the service tax paid by the Chennai unit pertains to advertisement of their product 'Sabena Dish Wash Bar' which was manufactured by their Cuttack Unit and not by the unit at Malur. Therefore, the assessee was dealing with the very same product. Rule 7 of the Cenvat Credit Rules governs procedure/manner of distribution of credit by input service distributor by imposing two conditions therein, which are as follows:

"a. Credit distributed under the invoice of ISD does not exceed the amount of Service Tax paid,

b. Credit of Service exclusively used for exempted goods or exempt service is not distributed."

5. Therefore, the assessee is entitled to distribute the cenvat credit on the input services on its manufacturing unit or other units providing the output services. The view taken in the order in appeal that the distribution of credit is for the advertisement of the product, which is not at all manufactured at Malur unit, therefore, cannot be accepted. The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is manufactured is therefore not the mandate of Rule 7 of the Cenvat Credit Rules.

6. Under these circumstances, we confirm the view taken by the Tribunal. We do not see any substantial question of law that arises for consideration in this appeal. Accordingly, the appeal being devoid of merits is dismissed.

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*In favour of assessee.