

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

SINGLE MEMBER BENCH

Court No.2

Appeal No.E/1912/2012-SM

(Arising out of OIA No.IND/CEX/000/APP/111/12 dt.11.4.12 Passed by CCE (Appeals), Indore)

Montage Enterprises Pvt.Ltd.

Appellant

Vs.

CCE & ST, Indore

Respondent

Present for the Appellant: Shri Arvind Arora, Advocate

Present for the Respondent: Shri R.k.Mishra, AR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member

Date of hearing/Decision: 17.10.2014

FINAL ORDER No.5417/2014

PER: D.N.PANDA

There was disallowance of credit of service tax paid on telephone services, courier services, cargo handling services, travelling and hiring of car service availed by the appellant to the extent of Rs.8,84,672/-.

2. Ld.Counsel invited attention to the relevant evidence at page 54 in respect of telephone service, page 66 to 69 in respect of courier services, page 57 to 62 in respect of cargo handling service and page 63 & 64 in respect of travelling and hiring of car services availed by the appellant.

He further submits that since none of the authorities below examined such evidence to ascertain relevancy thereof to the business or manufacture they mechanically disallowed the credit claimed by the appellant.

3. Revenue, on the other hand says that appellant did not produce any evidence.

4. Heard both sides and perused the records.

5.1 Perusal of the appellate order disclosed that appellant had pleading in his case with the reasoning given in the ground of appeal and corroborated by the evidence as stated above. When the pleading was supported by the evidence, it was necessary that Id. appellate authority should have considered the same. There was failure to consider the evidence at page 54.

5.2 Services availed should have relevancy thereof to the business of the appellant and the claim falls under Rule 2(l) of Cenvat Credit Rules, 2004. Service tax paid on courier service availed was as per evidence at page 66 to 69. So also the evidence at page 57 to 62 supported the "cargo handling" services availed by the appellant. Revenue at no point of time has brought out irrelevancy of the claim of the appellant. There was integral relationship of the claim with business. Therefore, credit on account of telephone expenses, courier charges and cargo handling charges should be allowed.

6. So far as credit on account expenses incurred on travelling and hiring of car at page 64 is concerned, that does not disclose whether that was incurred for manufacture or in relation to manufacture or business. In absence of any such integral connection, credit on that count is inadmissible to the appellant.

7. Appellant is directed to deposit the credit availed on travelling and hiring of car service with interest within thirty days of receipt of this order.

8. Ld.Counsel says that pre-deposit was made at the interim stage. learned authority is directed to appropriate that amount towards credit inadmissible with interest in respect of travelling and hiring of car service. Upon appropriation, balance, if any, available shall be refunded to the appellant.

9. In view of order above, there shall be no penalty in respect of inadmissible credit of the nature described as above since there appears no deliberate intention to cause evasion.

9. Appeal is allowed partly.

(dictated pronounced in the open court)

(D.N.PANDA)

JUDICIAL MEMBER