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FCA, ACS, LLB, B.Com (Hons)

No need for one to one co-relation of CENVAT credit availed on input services towards payment of output services.

Dear Professional Colleague,

We are sharing with you an important judgment of Hon'ble CESTAT-Mumbai in the case of **Jyoti Structures Ltd. Versus Commissioner of Central Excise, Nasik [2012 (10) TMI 335-CESTAT, Mumbai]** on the following issue:-

Issue: Whether there is need for one to one co-relation of CENVAT credit availed on input services towards payment of output services?

Facts: The appellants are manufacturer of transmission towers and also providing services of erection, commissioning & installation, management, maintenance or repair, testing, inspection of these towers etc. for their activity of manufacturing and providing the above services, the appellants availed CENVAT credit on inputs, capital goods and input services.

The department was of the view that the appellants are not maintaining a separate account in respect of input/input services utilized in the manufacture of final product and used in providing the output services. Therefore, they are not entitled for input service credit availed by them. A show-cause notice was issued to the appellants demanding service tax on credit earned on input/input services and CENVAT credit taken on inputs/input services utilized by them for providing output services. Demands were confirmed along with interest and penalties.

Held: The Hon'ble CESTAT keeping in view the similar issue decided in case of **Forbes Marshall (P.)Ltd. Vs CCE 2010 (258) ELT 571** wherein the tribunal had observed that there is no provision in CENVAT Credit Rules, 2004, for segregation of input services utilized in manufacture or to provide output service.

Rule 3 of the CENVAT Credit Rules, 2004, deals with availment of CENVAT credit and sub-Rule (4) provides that the credit may be utilized for payment of service tax on any output services provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be.

So by following the said decision, Tribunal in this case also confirmed that there is no requirement for one to one co-relation of CENVAT credit availed on input services towards payment of output services.

Important to Note:

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1. The provisions of availment of Cenvat credit under Rule 3 of Cenvat Credit Rules, 2004 is relevant in this case and as per Rule 3(1) of Cenvat Credit Rules, 2004 “a manufacturer and provider of taxable services shall be allowed to take credit of Service Tax leviable under Section 66 of the Finance Act. [“(ixb) *the service tax leviable under section 66B of the Finance Act*” inserted effective from 1-7-2012 vide Notification No. 28/2012-CE (NT) Dated 20/06/2012]

2. Sub-Rule (4) of Rule 3 of Cenvat Credit Rules, 2004 provides that the credit may be utilized for payment of service tax on any output services provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be.

3. Further, there is ***no rule providing for segregation of the CENVAT credit availed on the input services*** used by the appellant in their manufacturing activity or output services but it is important to note:
 - Rule 9(5) of the Cenvat Credit Rules, which stipulates that the manufacturer of final products or the provider of output service ***shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods*** in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

 - Rule 9(6) of the Cenvat Credit Rules, which provides that the manufacturer of final products or the provider of output service ***shall maintain proper records for the receipt and consumption of the input services*** in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

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Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards.

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