[2013] 32 taxmann.com 135 (Bombay)

HIGH COURT OF BOMBAY

Deepak Fertilizers and Petrochemicals Corpn. Ltd.

v.

Commissioner of Central Excise, Belapur*

DR. D.Y. CHANDRACHUD AND A.A. SAYED, JJ.
CENTRAL EXCISE APPEAL NO. 11 OF 2013†
MARCH 6, 2013

Rule 2(l), read with rule Rule 3(1), of the Cenvat Credit Rules, 2004 - CENVAT Credit - Input service- Assessee took credit of services used in relation to erection, commissioning and installation of storage tank for storage of inputs viz. imported ammonia outside factory - HELD : As per rule 3(1) of CENVAT Credit Rules, 2004, input services may be received anywhere and credit is available if they are received by manufacturer - Hence, credit could not be denied on ground that services were received outside factory - Further, since storage and use of imported ammonia was an intrinsic part of process of manufacture of final products, services in question were used directly or indirectly in relation to manufacture of final product - Accordingly, assessee was eligible for credit [Para 5] [In favour of assessee]

FACTS

- The assessee was engaged in the manufacture of excisable goods and provision of output services.
- The assessee installed ammonia Storage tank facility at their premises at Raigad for storage of imported ammonia, which was raw material meant for manufacturing of final product at their Taloja factory.
- The assessee availed Cenvat Credit of service tax paid on input services (Consulting Engineers, Technical Inspection and certification service, Construction service, erection, commissioning and installation service, etc.) used for installation of said ammonia storage tank.
- The department denied credit arguing that services received in connection with the activity of installation of storage tank which was immovable property and outside factory premises were not input services.

Issue Involved

- Whether the assessee was eligible for CENVAT Credit on input services ?

HELD

***There is no condition as to place of receipt of input services - Input services may be received anywhere* :**

- Rule 3(1) allows a manufacturer of final products to take credit *inter alia* of duty/service tax which is paid on :

(*i*) any input or capital goods received in the factory of manufacturer of the final product; and

(*ii*) any input service received by the manufacturer of the final product.

- Rule 3(1) makes a distinction between inputs or capital goods on the one hand and input services on the other hand.
- Clause (*i*) of rule 3(1) provides that duty should be paid on any input or capital goods received in the factory of manufacture of the final product.
- Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (*ii*) is that the input services should be received by the manufacturer of the final product.
- Hence, even as a matter of first principle on a plain and literal construction of rule 3(1), Tribunal was not justified in holding that assessee would not be entitled to avail of CENVAT credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. [Para 5]

***Storage of input is a part of process of manufacture - Hence, impugned services were input services under rule 2(l)* :**

- The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'.
- Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (*i*) and (*ii*). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs.
- The Tribunal's interpretation that legislature restricted the benefit of CENVAT credit for input services used in respect of inputs only to these two categories *viz*. for the procurement of inputs and for the inward transportation of inputs was *ex facie* contrary to the provisions contained in Rule 2(l).
- The first part of Rule 2(l) *inter alia* covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services.

However, it would be far-fetched to interpret rule 2(l) to mean that only two categories of services in relation to inputs *viz.* for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety.

- The input services in the present case were used by the Appellant whether directly or indirectly, in or in relation to the manufacture of final products. The assessee was manufacturing dutiable final products and the storage and use of ammonia is an intrinsic part of that process.
- Hence, assessee was eligible for input service credit. [Para 5]

EDITOR'S NOTE

The readers may also refer to Editor's Note of *Deepak Fertilizers & Petrochemicals Corpn. Ltd.* v. *CCE* [2013] 29 taxmann.com 58 (Mum. - CESTAT), which had clearly brought out that the judgment of Tribunal was clearly contrary to the law.

CASE REVIEW

Deepak Fertilizers & Petrochemicals Corpn. Ltd. v. *CCE* [2013] 29 taxmann.com 58 (Mum. - CESTAT)*reversed* .

V. Sridharan, **Prakash Shah** and **Jas Sanghavi** *for the Appellant.* **Ms. S.I. Shah** and **Ms. Suchitra Kamble** *for the Respondent.*

JUDGMENT

Dr. D.Y. Chandrachud, J. - This Appeal arises from the order of the CESTAT dated 12 November 2012. The Appeal raises on the following substantial questions of law :

"(*i*) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that the Appellants would not be entitled to credit of service tax paid on input services received for setting up of storage tanks;

(*ii*) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that services used in relation to storage of inputs outside the factory will not be eligible for credit as services are received outside the factory."

2. The appeal is admitted on the above substantial questions of law. By consent, the Appeal is taken up for hearing and final disposal.

3. The Appellant is engaged in the manufacture of excisable goods which fall under Chapters 28, 29 and 31 of the Central Excise Tariff Act 1985. The Appellant has installed storage tanks for storing ammonia at its premises situated at JNPT. The Appellant claims that it is eligible for CENVAT credit of service tax paid on input services used for the ammonia storage tanks installed at JNPT since the input/raw material stored there is intended for manufacture of the final product at the factory of the Appellant at Taloja. The Appellant availed of CENVAT credit in respect of the services of consulting engineers, technical inspection and certification, construction, erection, commissioning and installation services for the installation of the ammonia storage tanks. A show cause notice dated 31 July 2009 was issued to the Appellant demanding CENVAT credit of Rs. 2.78 Crores under Rule 14 of the rules read with Section

11A(1) of the Central Excise Act together with interest under Section 11AB and a penalty was proposed to be imposed under Rule 15(A). After adjudication the demand was confirmed together with interest and a penalty of Rs.5,000/-. The Appellant filed an Appeal before the Tribunal which was dismissed by the impugned order dated 12 November 2012.

4. Rule 3(1) of the CENVAT Credit Rules 2004 provides that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit inter alia of the service tax leviable under Section 66 of the Finance Act, paid on the following :

"(*i*) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(*ii*) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004."

The expression 'input service' is defined in Rule 2(l) as follows :

"(I) "input service" means any service, -

(*i*) used by a provider of taxable service for providing an output service; or

(*ii*) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal, and includes services used in relation to setting up modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of service tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) Any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other other. Clause (i) above provides that the service tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the Appellant would not be entitled to avail of CENVAT credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and

comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub clause (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the legislature restricted the benefit of CENVAT credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(l). The first part of Rule 2(l) inter alia covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and service tax among others paid on any input or capital goods received in the factory of manufacture of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l). The input services in the present case were used by the Appellant whether directly or indirectly, in or in relation to the manufacture of final products. The Appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process.

6. For these reasons, we have come to the conclusion that the judgment of the Tribunal is ex facie unsustainable. The questions of law as framed are accordingly answered in the negative. The Appeal is accordingly allowed.

There shall be no order as to costs.