

Commissioner of Central Excise, V Alidhara Textool Engineers Pvt. Ltd.

ISSUE

Assessee had availed Cenvat credit of service tax paid by them on erection and commissioning services received from a service provider on account of erection, commissioning of the machines at the premises of the buyers of said machines.

CONTENTIONS - - SERVICE TAX DEPARTMENT

Cenvat credit was denied by the service tax department on the following grounds:

- The manufacture was completed in the premises of the manufacturer and excise duty has been discharged at the time of removal of the goods. Therefore subsequent activities are only posts manufacture and post removal activities and therefore no credit shall be available.
- No manufacturing activity takes place in the premises of the buyer and, for whatever activities that take place in the buyer's premises assessee cannot avail the credit thereof.

CONTENTIONS - - ASSESSEE

Assessee contended that the credit shall be available on following grounds:

- Rule 2(l) of Cenvat Credit Rules, 2004 does not require that the service has to be received in the manufacturer's premises to be eligible for Cenvat credit of the service tax paid.
- Activities of erection and commissioning undertaken at the buyer's premises is not post manufacturing or post removal operations in view of the fact that the assessable value includes the cost of erection and commissioning. Goods are cleared in unassembled condition and only at the buyer's premises they are assembled into machine. As per Cenvat credit rules, credit of service tax is available up to the place of removal and in this case delivery takes place only after the erection and commissioning is over.

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CONCLUSION

CESTAT observed that:

- Assessee has selected the agency to supply the machine including the erection and commissioning charges, and the responsibility for erection and commissioning is of the manufacturer. Therefore the supplier of the machine is not only selling the machine but is also providing the service of erection and commissioning. Erection and commissioning cost is included, in the transaction value, and therefore the processes undertaken in the buyer's premises are actually incidental to manufacturing activity undertaken in the manufacturer's premises.

However, in this case as unassembled machine gets transferred to the buyer from the factory, the question to be examined is whether such a service is related directly or indirectly to the manufacture of their goods in question.

- The process of erection and commissioning at the buyer's premises is incidental to the manufacture of the machine and therefore the erection and commissioning services provided also can be said to be in relation to the manufacture, since the process in this case is completed only after the erection and commissioning takes place. Also Rule 2(1) of Cenvat Credit Rules, 2004 does not require that service has to be rendered at the factory of the manufacturer for the purpose of eligibility for service tax credit.
- In the case of service tax what is required to be examined is whether the service has been used in or in relation to manufacture directly or indirectly. Once the whole transaction of manufacture of the machine, erection and commissioning and supply is treated as one transaction and excise duty is charged on the whole transaction value, services rendered for the purpose of completion of this whole transaction has to be treated to have been rendered in or in relation to the manufacture.

In view of the above discussions CESTAT held that assessee is eligible for the Cenvat credit.

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