

IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD  
[COURT NO. II]

**Shri B.S.V. Murthy, Member(T)**

**Commissioner of Central Excise, VAPI**

Versus

**Alidhara Textool Engineers Pvt. Ltd.**

Final Order Nos. A/216-222/2009-WZB/AHD, dated 16-1-2009 in Appeal Nos. E/966-968, 889-891 and 1548/2008

Dr. Manoj Kumar Rajak, SDR, for the Appellant.  
Shri P. M. Dave, Advocate, for the Respondent.

**O R D E R**

1. During the period from 30-12-02 to 7-6-05 the appellants had availed Cenvat credit of service tax paid by them on erection and commissioning services received by them from a service provider on account of erection, commissioning of the machines at the premises of the buyers of said machines. The issue involved is common in respect of the three appellants and hence the appeals are taken together. Revenue is also in appeal against the orders of the Commissioner (Appeals) since it was held by Commissioner (Appeals) that no penalty is imposable since the issue involved is primarily the interpretation of statutory provisions and the charge of suppression or mis-declaration with intention to avoid duty cannot sustain in view several judgments on the said issue. The revenue's contention is that the Commissioner should have imposed penalty under Section 11AC to the extent of 100% of the Cenvat credit demanded and confirmed by the Commissioner (Appeals).

2. Shri Paresh Dave, the Learned Advocate on behalf of the appellants submitted that the credit has been disallowed mainly on three grounds by the Lower Authorities. The first ground is that the service was received at the customer's premises. The second ground was that the appellants' contention the duty was paid on the value including expenses involved on the erection and commissioning charges in terms of purchase order does not seem to be correct and even if it is correct, credit will be available to the buyer of the machine. The third ground is that the activity of erection and commissioning is a post manufacturing and post removal activity and therefore it does not fall under the category of input service. He submits that their contention that part of service was provided by the service providers in the premises of the appellants wherein the workers of the service provider assembled subcomponents into parts and thereafter at the buyer's premises these parts were erected has been simply rejected. It is his submission that they have documentary evidence to show that the service providers had provided service both in the manufacturer's premises as well as the buyer's premises. He also submits that a detailed statement showing the details of machines sold and actual price etc. has been submitted in support on their contention that the value of the machines includes cost of erection and commissioning. He also took me through one sample contract regarding sales to show that erection and commissioning cost were included. In sales contract No. 22 dated 28-6-04, the price has been shown as ex-works, packing cost has been shown as included in the cost, installation and commissioning have been shown to be managed by the supplier and the cost is included in the basic price. He submits that in respect of all the machines sold on these terms, the cost of the machines included the cost of erection and commissioning also. He also drew my attention to the

invoices submitted by them to show that the value includes all the costs and service has been provided to them. He also submits that Rule 2(l) of Cenvat Credit Rules 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. He stated that it is not correct to say that the activities of erection and commissioning undertaken at the buyer's premises is post manufacturing or post removal operations in view of the fact that the assessable value includes the cost of erection and commissioning and the department had never questioned them or rejected their contention that such value is includable. Goods are cleared in SKD 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.

3. On the other hand the Learned D.R. Dr. Rajak submits that in this case the service is provided to the buyer and not to the appellants as rightly held by Commissioner (Appeals). He also submits that the manufacture was completed in the premises of the manufacturer and duty has been discharged at the time of removal of the goods. Therefore subsequent activities are only posts manufacture and post removal activities and tperfore credit has been rightly denied by the Commissioner (Appeals). No manufacturing activity takes place in the premises of the buyer and whatever activities that take place in the buyer's premises, appellants cannot take credit. Just because duty has been paid including the value, it does not mean that Cenvat credit of service tax is admissible.

4. I have considered the submissions heard by both the sides and gone through the records.

4.1 In this case erection and commissioning charges have been included in the cost of the machines sold. The appellants have selected the agency to do this work and once the purchaser enters into an agreement for supply of the machine including the erection and commissioning charges, the responsibility for erection and commissioning is of the manufacturer. Therefore what is happening in this case is that the supplier of the machine is not only selling the machine but is also providing the service of erection and commissioning. Once erection and commissioning cost is included, in the transaction value, the natural conclusion that would emerge is that the processes undertaken in the buyer's premises are actually incidental to manufacturing activity undertaken in the manufacturer's premises. What has been sold in this case is the complete machine duly erected and commissioned and operational. The incidental process of erection and commissioning being incidental to manufacture, has to be treated as continuation of the earlier process which started in the manufacturer's premises. In this case even though the position of the machine in CKD condition gets transferred to the buyer when it is removed from the factory as per the contract, the question to be examined is whether such a service is related directly or indirectly to the manufacture of their goods in question. As already mentioned by me earlier, 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 complete only after the erection and commissioning takes place. As rightly pointed out by the Learned Advocate, Rule-2(l) of Cenvat Credit Rules does not require that service has to be rendered at the factory of the manufacturer for the purpose of eligibility for service tax credit. Therefore the stand of the revenue that since the service was provided at the buyer's premises credit is not admissible cannot be accepted. What has to be examined is whether the service provided is in or in relation to manufacture.

4.2 Another point that has been relied upon by the revenue is that service tax credit is not admissible since the erection and commissioning activity is a post removal/post manufacturing activity. I have already mentioned earlier that 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. While the eligibility for service tax credit on outward transport services is to be examined in connection with place of removal, there is no such requirement as regards other services. In respect of other services what is to be examined is whether they can be held to be rendered 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.

**4.3** I am also not able to accept the argument that erection and commissioning service is provided to the buyer in this case and therefore if at all any credit is available, it has to be claimed by the buyer. Since the responsibility for erection and commissioning is with the appellant and the agency which has done the work has been nominated by them it can be said that they are working as a sub contractor. Therefore it cannot be said that service was provided to the buyer of the machinery and therefore this contention has to be rejected.

**4.4** Similarly it is also not correct to say that the appellant is not the service provider. As per the contract the responsibility for providing erection and commissioning is with the appellant and has already mentioned earlier even if we treat erection and commissioning activity as a separate service activity, the service provider would be the appellant and the receiver would be the buyer.

The sub contractor is actually working under the manufacturer and therefore he is a provider of service to the appellants.

**5.** In view of the above discussions I find that appellants are eligible for the Cenvat credit availed by them and accordingly they succeed on merit. Since the appellants succeed on merit, the department's appeal regarding enhancement of penalty also has to be rejected. Another appeal filed by the revenue seeking enhancement of penalty in E/1548/08 has also been listed today but the corresponding appeal by the party has not been listed. Since the issue involved in this appeal is also enhancement of penalty on the same issue this appeal also has to be rejected.

**6.** In the result all the appeals filed by the revenue are rejected and appeals filed by the appellants against the demand for Cenvat credit of service tax paid on erection and commissioning service are allowed.

(Pronounced in Court)