

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CENTRAL EXCISE APPEAL NO. 279 OF 2016
WITH
NOTICE OF MOTION NO. 2765 OF 2016**

The Commissioner of Service }		
Tax-IV }		Appellant
versus		
M/s. Rosy Blue (I) Ltd. }		Respondent

Mr. Pradeep S. Jetly with Mr. J. B. Mishra
for the appellant.

Mr. B. J. Raichandani with Mr. Anshal
Jain for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE :- FEBRUARY 14, 2018

P.C. :-

1. The Revenue, in this appeal, proposes the following
substantial questions of law:-

“(a) Whether in the facts and circumstances of the case and law applicable thereon, the CESTAT was right in holding that the assessee is entitled for refund of Cenvat Credit i.e. Service Tax paid on taxable input services utilised, under the provisions of Notification No. 17/2009-ST dated 07.07.2009 (as superseded by Notification No.52/2011-ST dated 30.12.2011)?

(b) Whether the CESTAT was right in not considering all the grounds of appeal raised before the appeal filed before it and passing order without considering them?”

2. It is urged that they arise out of the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 28th

August, 2015. That order was delivered in the case of the respondent-assessee, who is engaged in the business of import of rough diamonds and manufacture and export of polished diamonds. The assessee claimed refund by filing application seeking refund of Cenvat Credit availed of on the output services, namely, utilised for export business. In that, the assessee relied upon certain notifications. The copies of these notifications are annexed as Exhibit-'A' to the memo of this appeal. The details of the refund claims are set out in para 3.2 of the appeal memo. The refund claims were considered and orders-in-original were passed rejecting the same and the rejection is on the ground that there was no co-relation or nexus established between the input services and the export.

3. Being aggrieved by such orders, appeals were brought before the tribunal and the tribunal, in allowing them, has held that considering the object and purpose of the rules and their language, the respondent-assessee, who is engaged in the business of export of goods, is entitled to avail of Cenvat Credit for various services which are used for rendering the goods exportable. The banking services are utilised for raising finance for import as well as export of the goods manufactured by it. That is how the interpretation placed on the notifications by the

Revenue was termed as narrow. In not excepting that interpretation, the tribunal placed reliance on a judgment of this court in the case of *Oil and Natural Gas Corporation Ltd. vs. Commissioner of Central Excise, Service Tax and Customs, Raigad*¹. The other services as well were held to be input services and which have direct co-relation with the export of goods. Thus, the disputed services, namely, banking and financial services and technical inspection and certification services were found, on perusal of the record, to be co-related with the export. Thus, utilisation of the imported rough diamonds for the purpose of exporting the same after cutting, polishing and manufacturing jewellery out of it would enable the assessee to avail of Cenvat Credit on the services as well as technical inspection and certification services.

4. This Bench has dealt with identical issues and passed an order in relation to 21 services and which were termed as input services and availed of Cenvat Credit (*Commissioner of Service Tax-IV, Mumbai vs. M/s. J. P. Morgan Services (I) Pvt. Ltd.*²). That order was delivered on 12th February, 2018.

5. Having perused the order of the tribunal with the assistance of both sides and the judgments in the field, which bind the

¹ 2013 (32) STR 31(Bom.)

² CEXA/169/2015 and connected matters.

tribunal as also us, we do not think that any substantial question of law arises for our consideration and adjudication.

6. The reliance placed by Mr. Jetly on an order passed by the Tribunal's South Zone Bench at Bangalore (*Kbace Tech Pvt. Ltd. vs. Commissioner of Central Excise and Service Tax, Bangalore*³) is misplaced. There, the assessee himself came out with negative list of services stating credit as not admissible. The department was asked to verify admissibility of credit before granting refund and to ensure whether eligible services have actually gone into consumption for providing exported output service and not utilised for other purpose. That is how the matter was remanded.

7. We do not think how a factual conspectus, based on which the remand was directed, can be taken as a precedent for the purpose of the present case. Even otherwise, all the judgments and particularly rendered by the Hon'ble Supreme Court have been duly noted and considered by this court. That includes the judgment in the case of *Maruti Suzuki Ltd. vs. Commissioner*⁴. Hence, this order is of no assistance to the Revenue.

8. As a result of the above discussion and finding that the tribunal's order is not vitiated by any error of law apparent on the

³ 2010(18) STR 281 (Tri. Bang.)

⁴ 2009(240) ELT 641

face of the record and perversity, we dismiss this appeal. No substantial question of law arises for our consideration from the orders of the tribunal. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)