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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ SERTA 4/2019, C.M. APPL.3580-3581/2019

PRINCIPAL COMMISSIONER, CENTRAL TAX, DELHI SOUTH
..... Appellant

Through : Ms. K. Enatoli Sema, Advocate.

versus

M/S J C DECAUX ADVERTISING INDIA PRIVATE LIMITED
..... Respondent

Through : Sh. Balkrishan Sharma, Sh. Gaurav Gupta and Sh. Viyushti Rawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **01.04.2019**

1. The Revenue claims to be aggrieved by the order of Customs, Excise and Service Tax Appellate Tribunal(CESTAT) with respect to the issue of input credit claimed by the respondent/assessee. The respondent is assessed to service tax on its advertising business. This involves several activities including outdoor advertising, promotion of different classes of services and goods of its clients through display in different places such as bus shelters, airports, roads, shops etc. The assessee was registered as a service tax assessee and was discharging its liabilities. It availed of CENVAT credits on various inputs/capital goods and input services under the CENVAT Credit Rules, 2004. The subject matter of dispute in the present appeal relates to a Show Cause

Notice (SCN) pertaining to the credits claimed for the periods 2006-07 to 2010-11. According to the Revenue, the assessee was claiming ineligible credit in various items. The SCN culminated in a demand to the tune of ₹6,85,79,559/-. The assessee, aggrieved by the order of the adjudicating officer, appealed to the CESTAT. The CESTAT's findings are as follows:

> *"5. We have heard both the sides and perused the appeal record. First of all, we note that the appellants used various types of duty paid inputs in their activity of advertising. All cannot be put in the same group. Admittedly, the display panels stainless steel box, power meter, electrical equipment, steel framework, mobile toilets, police booth are all clearly items which are specifically will fall under input used by the provider of output service. These cannot be considered as immovable capital goods. As such, we note that there could be no legal or factual basis for denial of credits on such electrical equipments, display panels, stainless steel box, power meter, steel framework, mobile toilets, police booth which are essential materials for display of advertisement by the appellant. The appellant being an advertising agency used such media and structure for display of their advertisement. They did discharge service tax on their advertising agency service and these are essentially input for such provision of advertising service. We have no reason to support the finding of impugned order for denial of credit on these items.*
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> *6. The main thrust of the argument by the Revenue is with reference to BQS being immovable capital asset. We have seen the illustrative photographs submitted by the appellant. These BQS are not cement concrete civil structures but are made up of mainly stainless steel tubes materials, angles etc. These are erected in the designated*

place by the appellant in terms of the agreement with local municipal authorities. We have perused a sample agreement also. It is clearly stipulated that the location is subject to change and in fact there were instances where BQS have been relocated after certain time, from the earlier premises. In other words, these BQS cannot be considered an immovable property of fixed position though they are embedded to earth for beneficial use by the public as BQS. The appellant used the said BQS for commercially exploiting the structure for their output service namely advertising services. This is not disputed. The dispute is with reference to nature of BQS being not duty paid and also embedded civil structure of immovable nature. We note that the structures by BQS under consideration are not the ones on which they are availing credit. The inputs of various nature like steel angles, tubes, panels etc. were used to create BQS. These inputs have suffered duty. The said BQS is used for display of advertisement. The same is easily relocated to any other place and the fact of such relocation is not contested. As such, we note denial of credit as per the reasons recorded in the impugned order is not legally justifiable.

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8. The above legal provisions covers various activities of an advertising agency. The facts as narrated above will bring out that the advertising agency are very much depended on the display of advertisement in public place. All the items which are now disputed for credit are essentially used to create such structures for display of advertisement. In fact many of these items are themselves used for display without any further elaborate fabrication. In such situation, there could be no reason for denial of credit holding that these items cannot be considered as inputs for such output service.

9. We also note that the appellants have a strong case on limitation. As recorded in the impugned order, the whole data was collected and proceedings against the appellant have been initiated only based on the details available in the ST -3 returns periodically filed by the appellant. That being the case there could be no allegation of willful suppression or mis-statement with intention to evade payment of tax. As such, the demand for extended period as well penalty on the appellant cannot be sustained on that ground also."

2. It is contended on behalf of the Revenue that the appeal was erroneously allowed by the CESTAT with insufficient reasoning. Learned counsel emphasised that the CESTAT ignored the assessee's claim as ineligible credit given that it consumed capital goods. In this regard, she referred to the definition of "capital goods" in Rule 2(a) of the CENVAT Credit Rules, 2004. Reference was also made to Rule 2(k)(B) to say that several items for which credit was claimed was inadmissible. Lastly, it was urged that the assessee claimed credit on account of utilization of capital goods for three years period previously and it is only subsequently in the concerned year 2006-07 onwards that it started claiming credits towards input services. Rule 2(a) of the CENVAT Credit Rules (at the relevant time) reads as follows:

"a) capital goods" means :-
(A) the following goods, namely :-
(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment,·
(iii) components, spares and accessories of the goods specified at (i) and (ii),·
(iv) moulds and dies, jigs and fixtures;
(v) refractories and refractory materials;
(vi) tubes and pipes and fittings thereof; [* *]*
(vii) storage tank, [and]
[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],]
used-
(I) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office,· or
[(I A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory,· or]
(2) for providing output service,·
[(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-
(i) providing an output service of renting of such motor vehicle,· or
(ii) transportation of inputs and capital goods used for providing an output service,· or
(iii) providing an output service of courier agency,)
[(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-
(i) transportation of passengers,· or
fii) renting of such motor vehicle: or
(iii) imparting motor driving skills,]
[(D) components, spares and accessories of motor vehicles which are capital goods for the assessee:]

[(k) "input" means ·
(i) all goods used in the factory by the manufacturer of the final product,· or
(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
(iii) all goods used for generation of electricity or steam for captive use, or
(i,) all goods used for providing any output service,·
but excludes -
(A)light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
[(B)any goods used for-
(a) construction or execution of works contract of a building or a civil structure or a part thereof; or
(b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act,]
(c) capital goods except when used as parts or components in the manufacture of a final product,·
(D) motor vehicles,·
(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee;
and
(F) any goods which have no relationship whatsoever with the manufacture of a final product.
***Explanation.** - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer,}*

3. This Court is of the opinion that the mere circumstance that the assessee had claimed certain items as "input credit" under the head "capital goods" under Rule 2(k) *per se* did not exclude it from claiming this subsequently as credit for input services. Furthermore, the CENVAT Credit Rules were amended in 2008. Apparently, on items such as foundation etc. which became an item not entitled to credit after 2008, no credit was claimed. The reference in this context of this case to "*construction or execution of works contract of a building*" in Rule 2(k)(B)(a); "*capital goods except when used as parts or components in the manufacture of a final product* in Rule 2k(C)(i); *motor vehicles* in Rule 2k(D): and goods generically described under Rule 2k(E) and the residual rule 2k(F) clarifies in the most exhaustive manner that goods used for final product services having a bearing on it are entitled to credit. In this regard, the Court is of the opinion that CESTAT's interpretation of Rule 2(k) cannot be said to be erroneous as to call for interference. No question of law arises in this regard. The appeal is accordingly dismissed along with the pending application.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 01, 2019/AJK