IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

STA-11-2021(O&M)
Date of Decision:16.11.2022

Commissioner of Central GST, Gurgaon Commissionerate ...... Appellant

versus

M/s DLF Ltd. ...... Respondent

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE SANJIV BERRY

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Present: Mr. Tajender K. Joshi, Advocate for the appellant.

Mr.Amrinder Singh, Advocate for the respondent.

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TEJINDER SINGH DHINDSA, J. (ORAL)

CM-10300-CII-2021

In view of the averments made in the application, the same is allowed.

Delay of 184 days in re-filing the accompanying appeal is condoned.

Application disposed of.

Main case

This appeal under Section 35G of the Central Excise Act, 1944 is directed against the order of the Customs, Excise and Service Tax Appellate Tribunal setting aside the order of the Commissioner whereby Cenvat Credit availed on inputs, input services and capital goods used for the period 01.06.2007 to 30.09.2010 for providing renting of immovable property services (output services) was denied.

Appeal has been filed purportedly raising the following substantial questions of law:-

(i) Whether Cenvat Credit could be availed on inputs, input services and capital goods used for construction of immovable properties?

(ii) Whether commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the CENVAT Credit Rules, 2004?

(iii) Whether as per the facts of the case the assessee is entitled to avail Cenvat Credit on inputs, capital goods or input services used for providing output services namely renting of immovable property service?

Respondent is engaged in providing taxable services under the categories of “Consulting Engineering Services”, “Renting of Immovable Property Services”,/”Management Consultant Services”, Management, maintenance or Repair--Services”, “Sponsorship Services”, “Security Agency Services, “Goods Transport Operators Services', “Architect Services”, “Membership of Clubs Services”, “Interior Decorator's Services”, “Business Support Services”, Computer Networking services', “Real Estate Agent services”, and “Manpower Recruitment Agency Services” and were registered with Service Tax Department vide Registration No. D-III/ST/R-I/CER/101/2004 and PAN based registration No. AAACD3494NST001 for providing the said services under Chapter V of the Finance Act 1994 (as amended) (hereinafter referred to as the “Act”).

Apparently intelligence inputs were gathered that the respondent had discharged its Service Tax, Education Cess and Secondary and Higher education Cess liability for rendering services of “renting of immovable property services" for the period in question through input credit. After following procedure as regards issuance of show cause notices the Commissioner of Service Tax (ADJ) Delhi passed an order dated 28.06.2012 wherein Cenvat credit facility of inputs, input services and capital goods for providing "renting of immovable property services" was declined.

Appeal filed by the respondent against the order of the Commissioner stands allowed vide impugned order dated 22.03.2018 (Annexure A-5) passed by the CESTAT.

Learned Senior Standing Counsel for the appellant has argued that the services on which the noticee/respondent had claimed input service credit had been used in respect of erecting the same immovable property or for maintenance of the same which is subjected to "renting of immovable property service". Since the immovable property is neither a finished good nor an output service, input service credit on the services utilised in erection or maintenance of the same cannot be claimed. Further argued that the said services do not qualify to be inputs as defined under Rule 2(1) of the Cenvat Credit Rules, 2004.

The issue that arises for consideration is whether the services in question fall within the meaning of the term "input service" under Section 2(1)(ii) of the Cenvat Credit Rules, 2004.

We find that identical issue stands dealt with by a Division Bench of this Court in **Commissioner of C. Ex., Delhi-III vs. Bellsonica Auto Components India P. Ltd., 2015(40) S.T.R. 41 (P&H)**. In the aforesaid case the assessee had availed Cenvat credit for service tax paid on civil work of constructing a plant/factory in the premises, namely, the manufacturing plant and for rental of the immovable property leased by it on which the plant was erected. While dealing with the scope and ambit of Rule 2(1)(ii) and Rule 3(1)(ix) of the Cenvat Credit Rules, 2004 it had been held as follows:-

> *"Rule 2(1)(ii) and rule 3(1)(ix) of the Cenvat Credit Rules, 2004, in so far as they are relevant, read as under:-*
>
> ***2."Definitions****. In these rules, unless the context otherwise requires,-*
>
> *(a) to (k) …… ……… …….. …..*
>
> *(1) "input service" means any service,-*
>
> *(i) … … …. …..*
>
> *(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."*
>
> ***3. "Cenvat credit.*** *(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereafter referred to as the Cenvat credit) of-*
>
> > *(i) to (viii) … … …. …..*
> >
> > *(ix) the service tax leviable under section 66 of the Finance Act;"*
>
> ***6.*** *The department contended that the said services were not*

eligible for Cenvat Credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of "input service" is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of "input service" and that a line has to be drawn somewhere to avoid undue extension of the phrases 'directly or indirectly' and 'in or in relation to' by adopting a common sense approach. Immovable property is neither service nor goods and, therefore, input credit cannot be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to service tax. In this regard, the Commissioner referred to a CBEC Circular dated 04.01.2008. The Commissioner also held that the service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. Metal-sheet.

7. *We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(1)* *by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.*

8. *The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(1) aptly referred to by Mr. Amrinder Singh as the "means part".*

9. *The respondents' case also falls within the second part of Rule 2(1) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(1)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(1)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land* *in relation to the manufacture of the final product.*

***10**. This becomes clearer from the fact that by an amendment of the year 2011 to rule 2(1), construction services were excluded from the definition of "input service". The amended section in so far as it is relevant reads as under:-*

"(1) "input service" means any service,

.. …. …..

(ii) (A) specified in sub-clauses (p), (zn), (zzl),(zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for –

(a) construction of a building or a civil structure or a part thereof; or" Clause 105 (zzq) of Section 65 of the Finance Act reads as under:-

"(105) "taxable service" means any service provided or to be provided, -

(zzq) to any person, by any other person, in relation to commercial or industrial construction.

Explanation.- For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force shall be deemed to be service provided by the builder to the buyer."

***11**. If in fact the said services were not covered by Rule 2(1), it would not have been necessary to introduce the amendment. It is clear, therefore, that prior to the amendment the setting up of a factory premises of a provider for output*

> *service relating to such a factory fell within the definition of 'input service'. The amendment of 2011 is not retrospective and is not applicable to the respondents' case."*

The dictum laid down in **Bellsonica Auto Components India P. Ltd.** (supra) would squarely apply in the facts of the present case as well.

At this stage Mr.Amrinder Singh, Advocate for the respondent brings to our notice that an information had been sought from the appellant-department under the Right to Information Act and by way of response it had been informed that the decision in **Bellsonica Auto Components India P.Ltd.** (supra) had been accepted by the department. Such factual premise is not disputed by Mr. Tajender K. Joshi, Advocate for the appellant.

In view of the above, we do not find any patent infirmity in the findings returned by the Tribunal. The questions of law are answered against the appellant and in favour of the assessee/respondent.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

16.11.2022
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No