(2021) 01 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20607 Of 2015

Bhoruka Extrusions Pvt Ltd APPELLANT

Vs

C.C.,C.E. And S.T-Mysore RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 142(6)
Finance Act, 1994 — Section 11AC, 66E
Cenvat Credit Rules, 2004 — Rule 2(l), 10
Service Tax Rules,1994 — Rule 2(cca)

Citation : (2021) 01 CESTAT CK 0002

Hon'ble Judges : S.S. Garg, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Gaurav Shah, Rama Holla

Final Decision : Allowed

Judgement

1. The issue involved in the case is admissibility of Cenvat credit by the appellants M/s Bhoruka Aluminium Limited (BAL) (M/s Bhoruka Extrusions

Private Limited (BEPL).

2. Learned counsel for the appellant submits that M/s BAL wanted to sell the Aluminium extrusion business since they were not able to run the same

effectively and availed the services of M/s Singhi Advisors for identifying a buyer for the specific business division, undertaking adequate negotiations

and following due diligence; From the invoice and the agreement it is very clear that M/s Singhi Advisors was appointed by BAL to find a suitable

buyer for the companies Aluminium extrusion business; M/s Singhi were also fully responsible for providing the following.

(i). Transaction Strategy

(ii). Assistance in preparing information memorandum

(iii).Identification and short listing of potential investors/partner

(iv). Negotiation on value, structure and terms of transaction and

(v). Completion of the transaction.

3. Learned counsel for the appellant further submits that on the completion of the service and based on the service providerâ??s advice, the

Aluminium extrusion business of BAL was sold to BEPL (Fully owned by YKK Holdings, Japan) on a slump sale/going concern basis; the sale was

that of the unit and not that of the shares of the company which is contrary to the findings of the Learned Adjudicating Authority; as the appellants

availed a service which is in the nature of legal and financial services and was availed in relation to the running the factory and manufacturing of final

excisable product, though indirectly, they availed credit.

3.1.He submits that since it was a transfer of ownership of the unit, under Rule 10 of the CCR, 2004, BAL sought permission from the department to

transfer the accumulated closing balance of CENVAT Credit; total credit of service tax sought to be transferred was Rs.74,40,372; department

permitted the transfer of only Rs.12,04,226 disallowing the balance Rs.62,36,146, including the disputed credit of Rs.61,80,000; credit was said to be

denied to be audit objection No. 292/2013; audit report specifically stated that the credit has not been utilized and as such question of interest and

penalty does not arise; in spite of the above, SCN has proposed demand of CENVAT along with interest and 100% penalty which is bad in law and

caused tremendous hardship to the Appellant; due to the frivolous demand, the Appellant had to undergo the hardship in paying pre-deposit of

Rs.4,63,500 which has got blocked for 5 years resulting in a loss of approximately more than Rs.2 Lacs in interest calculated at the rate of 9% pa;

considering that the CENVAT Credit Rules, 2004 are no longer in existence, this bench may please order for refund of the disputed CENVAT Credit

in cash, in view of Section 142(6) of the Transitional provision of the CGST Act.

4. Learned counsel for the appellant submits that the above service very well falls within the â??includingâ? portion of the definition of the term

â??input servicesâ? under Rule 2(l) of the CENVAT Credit Rules, 2004; it has now been a settled principle that even after the definition of â??input serviceâ? underwent a change in 2011, there is no necessity to have any direct nexus of the input service to the output service or excisable

manufactured goods. He submits that Tribunal in the case of Tamilnadu Petro products Ltd Vs CCE, LTU, Chennai - 2017 (52) STR 427 (Tri -

Chennai), Tribunal held that

5. It is not in dispute that the services availed by the appellant from M/s. MAPE are very much in the nature of Financial Advice for the purposes of

disinvestment of shares to the extent indicated above. The averment of learned advocate that the proceeds of disinvestment were used as working

capital for manufacturing operations has also not been discredited or disagreed with anywhere in the SCN or in original/appellate proceedings. In any

case, the definition of â??input serviceâ? as contained in Rule 2(l) ibid, particularly, after its amendment w.e.f. 1-4-2011 contains two parts. The first

part is an inclusive definition laying down examples of the type of input services that would fall within the ambit of eligible â??input servicesâ?. The

second part of the definition contains specific exclusions of services which cannot be considered as eligible â??input servicesâ? for the purposes of

Rule 2(l) ibid. The inclusive part of the definition therefore sets out only examples of input services which would fall in the genre of eligible â??input

servicesâ?. It also includes services â??used in relation to such activitiesâ?. â??Financingâ? finds a mention in the list of examples given in Rule 2(l).

The type and nature of service provided by M/s. MAPE would definitely be services used in relation to financing and financial management of the

appellant. This being the case, and considering that financial consultancy/advice is not disbarred otherwise in any of the exclusions in Rule 2(l) ibid, the

eligibility of said input services should not be in question. In the circumstances, I am of the considered opinion that the disputed services availed by

appellant from M/s. MAPE involving credit amount of Rs.19,46,527/- for the period October, 2011 to September, 2012 are very much eligible

â??input servicesâ?? for the purpose of Rule 2(l) ibid. Appeal is therefore required to be allowed, which I hereby do.

5.He also relies upon the following cases.

(i).M/s Bright Brothers Ltd Vs CCE, Puducherry â?" CESTAT SZB final Order Number 41679/2018 dated 01.06.2018.

(ii). BA Continuum India Pvt Ltd Vs CST, Mumbai -2018 (6) TMI 1011 - CESTAT

Mumbai.

(iii). M/s StanzenToyotetsu India (P) Ltd reported in 2011 (23) STR 444 (Kar)

(iv). CCE, Delhi-III Vs Hollister Medical India Pvt Ltd 2017 (49) STR 426 (Tri - Del.)

(iv). Heidelberg Cement India Limited Vs CE, Bangalore-I 2017 (47) STR 98 (Tri - Bang.)

(v). Mangalore Refinery & Petrochemicals Ltd Vs C.E. & ST, Mangalore- 2015 (319) ELT 121 (Tri - Bang.)

(vi). Steel City Securities Ltd Vs CCE & C&ST, Visakhapatnam-I â?" 2017 (3) G.S.T.L. 161 (Tri. - Hyd.)

(vii). Integra Software Services Pvt Ltd Vs CCE, Puducherry In 2017 (48) STR 137 (Tri - Chennai)

6. Learned Authorised Representative for the department, reiterates the findings of the Commissioner and submits that the credit is correctly denied

as the service availed does not fall under the permissible input services. Vide written submissions dated 28-12-2020, learned AR submitted that Â

Â· the reason for confirming demands are clearly brought out in paras 15 to 38 of the OIO; Â

Â· Cenvat credit of Rs.61, 80,000, availed on Advisory services, cannot be termed as directly or indirectly used in relation to manufacture of final

products as the said service is related to sale of business of M/s Bhoruka Aluminium Ltd to M/s YKK Holding, Japan and hence not directly or

indirectly connected to the manufacture of final products. Â

Â· Activities relating to businessâ? has been deleted from the list of eligible input service during Budget 2011 effective 01/04/2011; the inclusions and

exclusions in the input service definition were made more specific. Â

Â· the advisory service rendered by the service provider neither gets covered under the definition of â??Legal serviceâ? as defined in the sub rule

(cca) of Rule 2 of the Service Tax Rules,1994 nor the said service can be related to â??financingâ??. Â

Â· The ineligible credit wrongly availed was not reversed by the appellant and therefore, department is legally bound to recover the ineligible Cenvat

credit availed by the appellant.

Â· On perusal of the case laws submitted by appellants, on 22/12/2020., it is seen that, the facts/issues covered in those cases are not similar to the ones involved in the present case; most of the cases pertain to the period prior to 01/04/2011, when â??activities relating to businessâ? were

included; it was deleted from 1.4.2011; hence, ratio cannot be made applicable for the present case. Â

Â· Imposition of penalty under Section 11AC is justified in para 38 of the OIO. Â

Â· Honâ??ble High Court has upheld the denial of irregularly availed Cenvat credit and imposition of penalty on account of such irregularly availed

credit in the case of Bajaj Hindustan Ltd Vs Union of India, reported in 2013(3) TMI 365 â?" ALL)

7. Heard both sides and perused the records of the case. The brief issue which requires the Benchâ??s attention in this case is to see whether the

services availed by the appellants from M/s. Singhi Advisors Pvt. Ltd. Mumbai would amount to input services to be eligible for credit. We find that it

would be beneficial to look at the statutory provisions defining the input service. Rule 2(l) of Cenvat Credit Rules, 2004 defines input service as

follows: -

2(l) â??input serviceâ?? means any service, -

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a 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 modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training,

computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital

goods and outward transportation upto the place of removal; but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of

the Finance Act (hereinafter referred as specified services) in so far as they are used for â?

(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 one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a

capital goods, except when used by â?

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a

club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or

Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

8. On-going through the above provisions, it is seen that the above definition has two parts, one the substantive part and the other the inclusive part.

Commissioner finds that the services covered under the inclusive part of the definition of input service or services are which are rendered prior to the

commencement of the manufacturing activity (such as, services for modernization, renovation or repairs of the factory) as well as services rendered

after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services received such as

accounting, auditing, financing etc. In other words, the definition of input services covers not only services, which are directly or indirectly used in or in

relation to the manufacture of final products but also includes various services used in relation to the manufacture of final products, be it prior to the

manufacture of final products or after manufacture of final products. Having found so, the Commissioner follows his finding by making averment that

if the service is not integrally connected with the manufacture of final products, the service would not qualify to be an input service under Rule 2(l) of

CCR, 2004.

9. Learned Commissioner finds that the said service, availed by the appellants from M/s. Singhi Advisors, Mumbai, is in relation to their business

(therefore cannot be considered to be provided in or in relation to the manufacture of final products) and therefore, is excluded from substantive

definition. The appellants claimed that the service availed was â??legal serviceâ?? and therefore, covered by the inclusive part of the definition of

input service and hence, credit is admissible. We find that the learned commissioner rejected the appellantsâ?? claim that the service availed by them

from M/s. Singhi Advisors is in the nature of legal services. We find that the learned Commissioner though correctly analysed the provisions of the

CCR 2004, comes to a conclusion that the service availed by the appellants is in relation to business activities rather than manufacture of final

products. He relied on the definition of â??legal servicesâ? as found in sub-rule (cca) of Rule 2 of Service Tax Credits Rules, 1994 which define(cca)

â??legal serviceâ? means any service provides in relation to advice, consultancy or assistance in any branch of law, in any manner and includes

representational services before any court, tribunal or authority. Based on the above decision and the correspondence between the appellants and M/s.

Singhi Advisors which indicate that the legal counsel of the appellants takes active role in the completion of the transaction, learned Commissioner

comes to a conclusion that the same is not legal service. Learned Commissioner also concludes that the services do not also fall under the

â??financial servicesâ??.

10. We find that the crucial point to be noted here in this case is whether or not the services availed by the appellant are input services to be eligible

for credit in terms of Cenvat Credit Rules. The nomenclature and the classification of services is secondary. Just because the appellants could not

classify the service availed under a particular head, it does not take away the substantial right of the appellants to avail the credit if it is otherwise

permissible under the rules. As we have seen above that the definition of input service, even after the amendment carried out in 2011, is an

allencompassing definition. Input service is defined to be any service 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. The intent of the appellant as seen from the correspondence

available on record is not to wind up the company. The intent was very clear to sell or transfer the business, obviously the manufacturing activity, to

any person or company who would manage the manufacturing activity i.e., to produce and sell the goods. Therefore, in a wider perspective the efforts

of the appellants were in the direction of continuation of manufacture of final products and their removal from the factory. Therefore, we find that the

services availed by the appellants are covered by the substantive definition of input service as enshrined in Rule 2(l) of CCR, 2004. The inclusive

definition gives certain illustrations and explains and expands the scope of the definition given in the substantive portion of the definition. It is incorrect

and legally not tenable to say that if the service is not covered in the inclusive definition, credit of the same is not admissible. The scheme of Central

Excise or Service Tax is indirect in nature. The admissibility of credit, the dutiability of final products is not altered depending on the owner of the

activity of manufacture or service as the case may be. In the instant case, the services availed by the appellants were in relation to continuation of the

manufacturing activity and thus, cannot be held to be for an independent business of the appellants which has no connection with the impugned

manufacturing activity. In view of the same, in our considered opinion, the services availed by the appellants, from M/s. Singhi Advisors, Mumbai are

squarely covered by the definition of input service. We find that coordinate Bench at Chennai in the case of Tamilnadu Petroproducts Ltd. [2017(52)

STR 427 (Tri. Chennai)], have held that

5. It is not in dispute that the services availed by the appellant from M/s. MAPE are very much in the nature of Financial Advice for the purposes of

disinvestment of shares to the extent indicated above. The averment of learned advocate that the proceeds of disinvestment were used as working

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The type and nature of service provided by M/s. MAPE would definitely be services used in relation to financing and financial management of the

appellant. This being the case, and considering that financial consultancy/advice is not disbarred otherwise in any of the exclusions in Rule 2(l) ibid, the

eligibility of said input services should not be in question. In the circumstances, I am of the considered opinion that the disputed services availed by

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â??input servicesâ?? for the purpose of Rule 2(l) ibid. Appeal is therefore required to be allowed, which I hereby do.

11. In view of the above discussion and case laws submitted by the appellant, we find that the definition of input service is wide and that the appellants

are in their right to avail the impugned credit. We also find that the appellants have submitted that the said credit was not allowed to be transferred to

the new unit in terms of Rule 10 of CCR 2004; they have not utilised the credit and even then, the department has issued demand notice for payment

back of credit which is not legally sustainable. They have also pleaded that imposition of penalty was also not tenable. As we hold that the credit is

admissible to the appellants, we find that other issues raised by the appellants do not require any consideration.

12. In view of the above, the appeal is allowed with consequential relief, if any, as per law.

(Order was pronounced in Open Court on 04/01/2021)

