(2016) 02 RAJ CK 0026

In the Rajasthan High Court

Case No : DB Central Excise Appeal Nos. 4, 6, 3, 5 and 7/2016

Commissioner Central Excise Commissionerate APPELLANT

Vs

National Engineering Industries Ltd. RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35-G

Citation : (2016) 02 RAJ CK 0026

Hon'ble Judges : Ajay Rastogi and J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Ajay Shukla, Counsel, for the Appellant;

Final Decision : Dismissed

Judgement

1. Instant Central Excise Appeals u/Sec. 35-G of the Central Excise Act, 1944 have been preferred against order of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi impugned Dt. 15/07/2015 & 6/07/2015. It related to the period from April, 2009 to September, 2009; February, 2006 to January, 2008; February, 2008 to March, 2008; July 2008 to March, 2009 and April, 2008 to June, 2008 respectively.

2. Brief facts noticed are that the respondent-assessee is engaged in the manufacturing of Ball Bearing & Axle Box falling under Chapter 84 & 86 of the First Schedule to the Central Excise Tariff Act, 1985 and registered with the Central Excise Department. The assessee is having three units at Jaipur, Manesar and Niwai and its Central Head Office is at Jaipur. The assessee availed Cenvat Credit on certain services like Selling Commission, Royalty, Consultancy & Professional, Banking Charges, Audit Fee, AMC Charges etc. on which service tax was paid and invoices were raised in the name of the Head Office. The Jaipur unit of the assessee has taken Cenvat Credit on all these services.

3. A show cause notice was issued by the Commissioner, inter-alia, pointing out as to why the Cenvat Credit wrongly availed by the assessee should not be

recovered with interest and penalty. It was observed in the show cause notice that the assessee wrongfully availed credit of Service Tax paid on services rendered by the service providers for whole group of M/s. National Engineering Industries Ltd. instead of solely in respect of unit situated at Khatipura Road, Jaipur. The assessee objected to the said show cause notice and contended that the units may be situated at different places but are under the common management and the Cenvat Credit has rightly been claimed. The assessee also submitted the details of credit of service tax availed on input tax services availed of by it from time to time. The assessee reiterated that it is having three units (i) at Jaipur, (ii) Niwai and (iii) Manesar and that all the three units are owned by the company working in the name of style of M/s. National Engineering Ltd. which is a company duly registered under the Companies Act and all the three units of the Company are engaged in the production of Homogenous product namely Bearings falling under Chapter 84 of First Schedule to the Central Excise Tariff Act, 1985. The unit situated at Khatipura Road, Jaipur is a composite unit of two entities i.e. (i) manufacturer of excisable goods and provider of output services and (ii) Head Office of the Company namely; M/s. National Engineering Industries Ltd. and further in the capacity of unit located at head Office the assessee placed order for purchase of inputs services that may be utilized commonly by all the three units for business of manufacture of the homogeneous final product i.e. Bearing falling under Chapter 84 of First Schedule to the Central Excise Tariff Act, 1985 and Service Tax paid on those input services availed as Cenvat Credit was certainly to be utilized for payment of duty leviable on goods manufactured at unit located at head Office and payment of service tax on the output services provided by the Company. Since all the orders for purchase of input services are placed by the Head office i.e. the unit of the Company situated at Khatipura Road, Jaipur, where credit in respect of Service Tax paid on the services for which the Bills/Invoices are received is taken/availed. It was also contended that the unit situated at Khatipura Jaipur, which also works in the capacity of the Head Office of the Company, may be a big unit while the other units of the company situated at Niwai and Manesar are very small units. It was also contended that the break up of the turnover of the three units in respect of the production/sale of final products in the relevant period was also provided namely; Jaipur unit 85.86%, Newai unit 13.83% and Manesar unit 00.31%. It was also submitted that admittedly the consolidated balance sheet, profit & loss account, trading account etc is being prepared from year to year.

4. However, the Commissioner was not satisfied with the explanation so offered and taking into consideration the definition of "input service" and judgments, came to the conclusion that the "input service" in the instant case means only those services which are used in or in relation to manufacture of goods qualify for input service and input services including those mentioned in the inclusive part of the definition and held that there should have been direct nexus with manufacture of final product and that specified input service would become eligible for grant only when used in respect of manufacture of final product and

accordingly held that Cenvat Credit is inadmissible for all these years and also charged interest and levied penalty as well.

5. The assessee preferred appeal before the Tribunal and the Tribunal vide order impugned came to the conclusion that the assessee has been able to prove that all the three units being one, there being common management, the assessee cannot be denied Cenvat Credit availed by it and finding that the Cenvat Credit is admissible, allowed the appeals of the assessee, particularly relying upon the judgment in the case of Doshion Ltd. v. CCE Ahmedabad , (2013) 288 ELT 291 (Tri).

6. Ld. counsel for the appellant contended that the judgment in the case of Doshion Ltd. v. CCE Ahmedabad (supra) is distinguishable on facts and the Tribunal was unjustified in wholly placing reliance on the said judgment. He also contended that there may be a common management but the Commissioner, while analyzing the facts and material on record had rightly come to the conclusion that there are three different units and all were independent and there was no nexus at all in between three units and merely for the name sake, the other units were functioning. He contended that even as per the assessee 85.86% was the total turnover of the unit at Jaipur which clearly speaks that the other units were only for the name sake. He thus contended that substantial question of law arise out of the order of the Tribunal.

7. We have heard counsel for the appellant and taken into consideration the material available on record. In our view, no substantial question of law arise out of the order of the Tribunal and the Tribunal has rightly found that all the three units had a common management and no contrary material was placed on record by the Commissioner while holding that there was no nexus in between the three units. We may also observe that while the Tribunal relied upon the judgment of CESTAT in the case of Doshion Ltd. v. CCE Ahmedabad (supra), the High Court of Gujarat at Ahmedabad dismissed the appeal of the Revenue in the case of Commissioner of Central Excise v. Dashion Ltd. (Tax Appeal No. 415 of 2013 & 662 of 20014) vide judgment Dt. 08/01/2016 and the question in the present set of appeals and in the case of Dashion Ltd. (supra) is exactly the same.

8. It may be noticed that the term "input service distributor" has been defined u/R. 2(m) of the Rules, 2004 to mean office of the manufacturer or producer of final products or provider of output service which receives invoices issued u/R. 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoices, bill or as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

9. Rule 7 pertains to manner of distribution of credit by input service distributor. At the relevant time, this Rule 7 permitted input service distributor to distribute Cenvat Credit in respect of service tax paid on the input service to its manufacturing units or units providing output service, subject to the two

conditions, viz:--

"(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b)credit of service tax attributable to service [used by one or more units] exclusively engaged in manufacture of exempted goods or providing of exempted service shall not be distributed."

10. It was only later on that additional condition by way of Clause-(d) of Rule 7 was added, which reads as under:--

"credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period."

11. The objection of the department therefore that the credit from one unit was utilized for the purpose of duty liability of other unit without pro rata distribution by the input service distributor therefore would not survive in view of no previous restriction of this nature flowing from Rule 7 of the Rules of 2004. The respondent has been able to prove that all the three units are one and the same, have common management and the Revenue has not been able to disprove this fact.

12. In our view, the said judgment is squarely applicable and the counsel for the Revenue is unable to distinguish the said judgment except mentioning that the said judgment is inapplicable on facts.

13. In our view, even otherwise, the Tribunal decided the matter on facts based on the material available on record and no substantial question of law arise out of the order of the Tribunal and taking into consideration the judgment in the case of Doshion Ltd. (supra), the instant appeals of the revenue, being devoid of merit, are hereby dismissed.

