(2011) 04 KAR CK 0054

In the Karnataka High Court

Case No : C.E.A. No. 84 of 2009

Commissioner of C. Ex., Bangalore-II	APPELLANT
Vs	
Millipore India Pvt. Ltd.	RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:
CENVAT Credit Rules, 2004 — Rule 2 (1)

Citation : (2012) 26 STR 514

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Jeevan J. Neeralgi, for the Appellant; B.N. Gururaj, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal [2009 (236) E.L.T. 145 (Tri. - Bang.)], holding that all the disputed services are included in the input service and the assessee is entitled to the benefit of cenvat credit. The assessee, M/s. Millipore India Pvt. Ltd., is engaged in the manufacture of excisable goods viz., filtration apparatus falling under the Chapter No. 84 of the Central Excise Tariff Act, 1985. The assessee is a holder of the Central Excise Registration. The assessee had availed the credit on service tax paid on the outward freight charges relating to the services availed for transportation of their finished goods and documents connected with the sale at the factory gate, Medical and Personal Accident Policy, Group Personal Accident Policy, Insurance, Catering bills, Personal Accident Insurance, Category bills. Personal Accident Insurance, Personal Vehicle Services, Landscaping of Factory Garden, Internet Services used at the residences and other miscellaneous services. According to the revenue, the said availment of cenvat credit was irregular and outside the purview of the definition of input services as defined under Rule 2(1) of the Cenvat Credit Rules, 2004. Therefore, they called upon the assessee to reverse those entries and in default to pay the excise duty. When the assessee objected to the same, the same was overruled and a demand for a sum of Rs. 4,85,562/- was raised which was payable with interest and penalty. Aggrieved by the same, the assessee preferred an appeal to the Commissioner of Cenvat Excise, who upheld the order of the Assessing Authority except in respect of transportation charges. In respect of the said transportation charges, he remanded the matter back to the Assessing Authority. It is also on record that the credit towards Internet services was not availed by the assessee and therefore, those claims were deleted. Aggrieved by the said order of the Commissioner of Appeals, the assessee preferred an appeal to the Appellate Tribunal contending that the cenvat credit obtained on Medical and Person, Accident Policy, Group Personal Accident Policy, Insurance, Personal Accident Policy, Personal Vehicle Services, Landscaping of factory garden, Catering bills were valid and legal and the authorities were justified in disallowing the same.

2. The Tribunal by a considered order held that the aforesaid services utilized by the assessee falls within the phrase "activities relating to business" as mentioned in definition of input services and therefore/ the assessee is entitled to the benefit of cenvat credit on service tax paid on those services and therefore, he set aside the order of the Appellate Tribunal and restored the benefit to the assessee. Aggrieved by the same, the revenue is in appeal.

3. The appeal was admitted to consider the following substantial questions of law:

(i) Whether the facts and circumstances of the case, the Tribunal was correct in interpreting the term "Input Services" as enumerated in Rule 2(1) of Cenvat Credit Rules, 2004, and allowing the various ineligible input service tax credit, which are not covered or not remotely connected with the manufacture of the final products?

(ii) As to whether the Tribunal was justified in allowing the appeal filed by the assessee by holding that the service tax liability incurred by the very assessee in respect of the other services availed by the assessee in respect of which the assessee as claimed, met the tax liability?

4. CAS-4 Standards reproduced in the decision of the Tribunal in the case of (2008) 15 STJ 485 wherein all the elements of costs which are required to be included in the costing of final product have been enumerated. The relevant portions reads as under:

4.1. Cost of Production: Cost of production shall consist of material consumed, direct wages and salaries, direct expenses, works overheads, quality control cost, research and development cost, packing cost, administrative overheads relating to production. To arrive at cost of production of goods dispatched for captive consumption, adjustment for stock of word-in-progress, finished goods, recoveries for sales of scrap, wastage, etc., shall be made.

5.2. Direct wages and salaries shall include house rent allowance, overtime and incentive payments made to employees directly engaged in the manufacturing activities.

&Bull; Contribution of Provident Fund and ESIS

&Bull; Bonus/ex-gratia payment to employees

&Bull; Provisions for retirement benefits such as gratuity and superannuation

&Bull; Medical benefits

&Bull; Subsidized food

&Bull; Leave with pay and holiday payment

&Bull; Leave encashment

&Bull; Other allowance such as children''s education allowance, conveyance allowance which are payable to employees in the normal course of business etc."

5. Therefore, it is clear that those factors have to be taken into consideration while fixing the costs of the final products. If services tax is paid in respect of any of those services which forms part of the costs of the final products centainly the assessee would be entitled to the cenvat credit of the tax so paid. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection therewith, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall, within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed.

