(2015) 01 BOM CK 0324

In the Bombay High Court

Case No : Excise Appeal No. 2 of 2008

Commissioner of Central Excise APPELLANT

Vs

Essel Propack Ltd. RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 51 GST 753

Hon'ble Judges : F.M. Reis, J;K.L. Wadane, J

Bench : Division Bench

Advocate : Susan Linhares, Central Govt. Standing Counsel, for the Appellant; Priyanka Kamat, Advocates for the Respondent

Judgement

F.M. Reis, J—Heard Ms. S. Linhares, learned Central Govt. Standing Counsel appearing for the appellant and Ms. P. Kamat, learned Counsel appearing for the respondent. The above appeal was admitted by this Court by Order dated 16th April, 2008, on the following substantial questions of law:

"(1) Whether the transport services availed by the Respondent and provided by a goods transport agent would be within the meaning and scope of the term ''output service'' as defined in Rule 2(p) and used in the Rule 4(e) of the Cenvat Credit Rules, 2004?

(2) Whether the CESTAT was justified in dismissing the appeal of the appellant and upholding the order of the Commissioner (Appeals), holding that the Cenvat Credit can be utilized for payment of Service Tax on services provided by goods transport agent?"

2. We have extensively heard learned Central Govt. Standing Counsel appearing for the appellant and learned Counsel appearing for the respondent. The only contention sought to be raised by the learned Counsel appearing for the appellant is that despite of the Explanation to Rule 2(p) of the Cenvat Credit Rules, 2004, the respondents are not entitled for such a credit, as they do not provide any output service. The learned Counsel further points out that the

activities carried out by the respondents do not come within the meaning of ''output service'' as provided in Rule 2(p) of the Cenvat Credit Rules, 2004. The learned Counsel has, thereafter, taken us through the order of CESTAT to point out that the provisions have been misconstrued to come to the conclusion that the respondents were entitled for such credit.

3. On the other hand, Ms. P. Kamat, learned Counsel appearing for the respondent has pointed out that it is not in dispute that the respondents are paying service tax for the services rendered by them and, as such, the Explanation to Rule 2(p) of the Cenvat Credit Rules, 2004 would clearly support the stand taken by the respondent. Learned Counsel further points out that the Tribunal has relied upon a judgment of the Principal Bench, New Delhi to come to the conclusion that the respondents were entitled for such credit. The learned Counsel, as such, points out that the appeal be rejected.

4. We have considered the submissions of the learned Counsel and with their assistance, we have also gone through the record. In order to examine the contention of the learned Counsel appearing for the appellant, it would be appropriate to note Rule 2(p) of the Cenvat Credit Rules, 2004, which reads thus:

"Rule 2(p) -- "output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions ''provider'' and ''provided'' shall be construed accordingly"

The Explanation reads thus:

"Explanation.--For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service."

It is not disputed by the learned Counsel appearing for the appellant that the Explanation was omitted in 2006; whereas the dispute under consideration is in respect of the year 2005 and, as such, the Explanation to Rule 2(p) of the said Rules would be applicable to the facts of the present case. On plain reading of the said Explanation, as it is not disputed that the respondents are paying service tax, the services rendered by the respondents on that count are deemed to be "output service" as the other conditions therein are satisfied. On perusal of the impugned order passed by the Tribunal, we find that the Tribunal has rightly taken a view that there is no restriction for utilization of the Cenvat Credit by the manufacturing unit towards the payment of service tax. On perusal of the order passed by the Commissioner (Appeals), Central Excise & Customs, Goa, dated 16th March, 2007, it is seen that the Commissioner has taken a view that as per Explanation to Rule 2(p) of the Cenvat Credit Rules if a person liable for payment of service tax does not provide any taxable service, the service for which he is liable to pay service tax shall be deemed to be the output service. The Commissioner has further found that on harmonious reading of various rules of

Cenvat Credit Rules and Service Tax Rules, it is clear that Cenvat Credit can be utilized for payment of Service Tax liability in respect of goods transport agent. We find no infirmity in the said findings of the Authorities below, based on the relevant Rules and the Explanation referred to herein above. The substantial questions of law answered accordingly.

In view of the above, the appeal stands rejected.