(2013) 09 UK CK 0003

In the Uttarakhand High Court

Case No : Central Excise Appeal No. 11 of 2009

Commissioner of Customs and Central Excise — APPELLANT

Vs

Ace Glass Container Ltd. — RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 43 GST 38 : (2014) 26 GSTR 303 : (2014) 34 STR 805

Hon'ble Judges : Barin Ghosh, C.J;Servesh Kumar Gupta, J

Bench : Division Bench

Advocate : Shobhit Saharia, for the Appellant; Rajeev Gaur, for the Respondent

Judgement

Barin Ghosh, C.J.—On 23rd March, 2006, a show-cause notice was issued by the Joint Commissioner, Central Excise, Meerut-I, to the respondent herein. In the said notice, it was indicated that the respondent was not entitled to Cenvat credit in relation to, amongst others, Colomony Powder, Welding Electrodes, Plastic Crates & Pallets and input services pertaining to mobile phones, taxi service and telephones installed. The said show-cause was duly replied by the respondent. The Joint Commissioner (ADJ), Central Excise, Meerut-I, considered the show-cause and the reply thereto and passed an order dated 31st August, 2006. Respondent, accordingly, went before the Commissioner of Appeals and failed to succeed in relation to the matters referred to above, but succeeded in relation to the remaining matters for which the respondent was show-caused. Appellant did not approach the Tribunal in respect of the success that the respondent obtained from the Commissioner of Appeals. However, respondent approached the Tribunal in respect of its unsuccess pertaining to Colomony Powder, Welding Electrodes, Plastic Crates & Pallets and credit on input services viz. taxi service, mobile phones and telephones and succeeded in all. Hence, the appellant is before us. Appellant is not pressing the appeal pertaining to Colomony Powder. It is, however, pressing the appeal in relation to Welding Electrodes, Plastic Crates & Pallets as well as credit on input services viz. taxi service, mobile phones and telephones.

2. The Tribunal has allowed the claim of the respondent on account of Welding Electrodes based on a judgment of the Hon''ble Rajasthan High Court in the case of Hindustan Zinc Ltd. v. Union of India 2008 (238) ELT 517. The learned counsel for the appellant has not been able to inform us, whether the appellant, who was also a party to the said judgment, has challenged the same before the Hon''ble Supreme Court or not. Similarly, the claim on account of Plastic Crates & Pallets was allowed by the Tribunal on the basis of a decision of the larger Bench of the Tribunal rendered in the case of Banco Products (India) Ltd v. CCE 2009 (235) ELT 636 (Tri. - Ahd.). The learned counsel for the appellant is not in a position to inform us, whether the said judgment has been appealed against or not. The credit on input services was allowed principally on the ground that, in the show-cause notice, it was not mentioned that such services are not being used for the purpose of manufacture.

3. Be that as it may, the learned counsel for the parties have argued the case on the basis of their rights flowing from the statute. We were, accordingly, called upon to consider the provisions of Rule 2(b) and Rule 2(g) of the Cenvat Credit Rules, 2002 (hereinafter referred to as the "2002 Rules"), which are as follows:

(b) "capital goods" means,-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act;

(ii) pollution control equipment

(iii) components, spares and accessories of the goods specified at (i) and (ii) above;

(iv) moulds and dies;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office;

(g) "input" means all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

4. We were also called upon to consider Rule 2(a), Rule 2(k) and Rule 2(l) of the

Cenvat Credit Rules, 2004 (hereinafter referred to as the "2004 Rules"). Rule 2(b) of the 2002 Rules is identical to Rule 2(a) of the 2004 Rules except that, after the words "in an office", the words "or for providing output service" have been added in Rule 2(a) of the 2004 Rules. Similarly, Rule 2(g) of the 2002 Rules is identical to Rule 2(k) of the 2004 Rules, but, in Rule 2(k) of the 2004 Rules, the words "in or in relation to" have been inserted after the words "steam used" and before the words "manufacture of final products" contained in Rule 2(g) of the 2002 Rules. Rule 2(l) of the 2004 Rules is a new provision, which was not there in the 2002 Rules. Rule 2(l) of the 2004 Rules is as follows:

(I) "input service'' means any service,-

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

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from 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 up to 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 up to the place of removal;

5. Even though one may contend that Welding Electrodes will not come within components, spares and accessories of goods specified in Rule 2(b)(i) of the 2002 Rules and Rule 2(a)(i) of the 2004 Rules, but it is difficult to hold that the same will not come within the meaning of Rule 2(g) of the 2002 Rules and Rule 2(k) of the 2004 Rules for the reason that the said Rules contemplate goods used in or in relation to manufacture of final products, whether directly or indirectly or whether contained in the final product or not excluding light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol. In terms thereof, input includes lubricating oils, greases, cutting oils, coolants, goods used as paint or as packing material or as fuel or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production; and also accessories of the final products cleared along with the final product.

6. We hold that the Legislature, while furnishing the definition of inputs, clearly indicated three types of goods. They are independent of each other. It is impossible to locate one single goods, which has characteristics of all the three ingredients furnished. Taking the same into account, and there being no dispute that Welding Electrodes were used in relation to manufacture of final products, we have no reason to differ from the finding recorded by the Tribunal.

7. The learned counsel for the appellant drew our attention to the show-cause notice pertaining to Plastic Crates & Pallets. The contents thereof are as follows:

(i) Plastic Crates:- The party are transferring glass bottles of soft drinks to their printing unit situated at Tapovan on payment of duty on cost of production basis under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The glass bottles are finally sold from Tapovan unit on payment of duty to their customers. Plastic Crates (Ch. 39) are used for transportation of these glass bottles and are returned back for reuse. Thus, these plastic crates appear to have not been used in or in relation to manufacture of final product i.e. glass bottles. For being used and reused for transportation of bottles, these crates appear to be not covered as packing material. Thus, it appears that neither it is covered under the definition of input nor capital goods.

Further, duty on these soft drinks bottles is being paid u/s 4 of the Central Excise Act, 1944 read with Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on cost of production basis. Cost of these crates has not been included in the cost of production of the soft drink bottles. Therefore, the cenvat credit on plastic crates amounting to Rs. 21,440/- taken/ availed during the period, appears to have been wrongly taken by the party as detailed in Annexure-C(i) to this notice and therefore does not appear to be admissible to them.

(ii) Plastic Pallets:- (Ch. 39) These items are used for warehousing the bottles to avoid the seepage in the bottle cartons. It appears that neither it is packaging material for the final product nor covered under the definition of capital goods. It also appear to have not been used in relation to manufacture of final product. Therefore, it appears that cenvat credit of amounting to Rs. 77,574/- + Ed. Cess Rs. 1,551/- wrongly taken by the party during the period 04/2003 to 12/2005 as detailed in Annexure-C (ii) to this notice and Rs. 99014 + Ed. Cess Rs. 1551/- wrongly taken Cenvat credit on the Plastic Pallets is not admissible to the party.

8. In the show-cause notice, it has been unwittingly accepted that Plastic Pallets are used in or in relation to manufacture of final products, as it has been specifically accepted that the Plastic Pallets are required for warehousing of bottles to avoid seepage in the bottle cartons; in other words, to ensure that the bottle remains bottle until such time it is cleared from the factory or the manufacturing premises.

9. As would be evident from the show-cause notice, since the Plastic Crates were taken out from the factory premises in order to enable printing on the bottles those were manufactured, it was thought that the user of Plastic Crates was not in relation to manufacture of final products. It has not been doubted that the manufacture of the final product comes to an end only after the printing is done. While formulating the show-cause notice, reference was made to Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The said Rule is as follows:

8. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

10. Rule 8 makes it abundantly clear that, at the stage of complying with the provisions of Rule 8, excisable goods may be taken for in the production or manufacture of the other articles. The fact remains that the bottle, as was manufactured on being printed, becomes a printed bottle. The setup of the respondent is to manufacture printed bottle for the purpose of sale thereof. In those circumstances, there cannot be any dispute that the Plastic Crates are used in or in relation to manufacture of final product, i.e. the printed bottle.

11. Insofar as the input services are concerned, as has been noted by the Tribunal, it was never contended that such services were not used by the respondent in relation to the manufacture of final products. In other words, while issuing the show-cause notice, the claim of the respondent that the subject input services are being used by the respondent in relation to manufacture of final products was not disputed and, accordingly, there is no scope of interference with the finding recorded by the Tribunal in relation to input services. We, thus, conclude the matter and dismiss the appeal.