
(2021) 11 CESTAT CK 0037

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 11229 Of 2015

L And T Hydrocarbon Engineering Limited

APPELLANT

Vs

C.C.E. And S.T.-Vadodara-I

RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(I), 3

Citation : (2021) 11 CESTAT CK 0037

Hon'ble Judges : Ashok Jindal, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant is a service provider and registered under the category of Renting of Immovable property Service, Consulting Engineers Service, Commercial Construction, Erection & Commissioning Services, GTA Service & Works Contract Service for providing these output services, the appellant was availing Cenvat Credit on input services used in providing the output service.

1.1 During the course of audit in October, 2011 it was found that M/s. L&T EPC Centre has entered into a Turnkey agreement with M/s.L&T Sergeant & Laundry Ltd., Modular Fabrication Facility, Hazira in June 2008 for Survey, Design, Engineering, Procurement, Fabrication, Load out, Tie down, Sea fastening, Tow-out/Sail out, Transportation and installation of MNW-NF Bridge for installation, commissioning of the bridge, Jacket and Piles. The appellant hired services of various vendors and one of the vendor namely, M/s. GLOBAL INDUSTRIES ASIA PACIFIC PTE LTD., entrusted work of installation and commissioning of Bridge, Jacket and Piles up to 07.05.2009 the fabrication of bridge, Jacket and Piles was completed. During installation, tripod tilted and sunk and the project was derailed but the appellant made payment to M/s. GLOBAL INDUSTRIES ASIA PACIFIC PTE LTD. for pre-installation survey, installation, mobilization of Barge, etc. as loss of tripod jacket and the service tax was also paid. The appellant took Cenvat Credit of Service tax paid to M/s. GLOBAL INDUSTRIES ASIA PACIFIC PTE

LTD. Further, the appellant availed Cenvat Credit on services provided by various foreign vendors i.e. vessel renting, manpower supply, etc. in relation to installation and commissioning of MNW-NF bridge.

1.2 It was alleged that as the project was derailed therefore, input services utilized by the appellant have not resulted in providing any output service. Therefore, Cenvat Credit on such input services cannot be allowed. Further, the appellant claimed insurance of Rs.46.26 crores for the accident occurred during installation and they have not paid any service tax on the insurance amount received. In view of these facts, it was alleged that as the input service availed has not resulted in providing output service therefore, appellant is not entitled to take Cenvat credit of Rs.5,57,25,547/- in respect of the services discussed hereinabove during the period April-2009 to March-2010, therefore, a show cause notice dated 8.10.2014 was issued for disallowing and recovery of the Cenvat credit availed during the period April-2009 to March-2010 for demand, recovery of interest and penalty was also proposed. The matter was adjudicated, the Cenvat credit was denied. Consequently, demand of interest was confirmed and penalty was also imposed. Aggrieved from the said Order, appellant is before us.

2. Shri V.Sridharan, Advocate learned counsel for the appellant appeared and submits that Rule 2(I) of Cenvat Credit Rules, 2004 which defines the "input service" which means any service used by a provider of taxable service for providing an output service. It is his submission that although, initially the project was derailed but later on, further design and drawing was changed and work was executed by the appellant on which they have paid service tax. Therefore, in terms of Rule 2(I) of Cenvat Credit Rules, 2004 being provider of output service, any service used by the appellant, the appellant is entitled to take Cenvat credit. It is his further submission that a show cause notice issued to them is barred by limitation as audit took place during October, 2011 for the period April-2009 to March-2010, a show cause notice has been issued on 08.10.2014 by invoking extended period of limitation as there was no suppression of facts, therefore, the show cause notice is barred by limitation.

3. On the other hand, learned Authorized Representative reiterated the findings of the impugned order.

4. Heard parties, considering the submission in detail and examined the records placed before us. For better appreciation of the provision of law, 2(I) of the Cenvat Credit Rules, 2004 which defines "input service" means any service used for providing of taxable service for providing an output service.

4.1 The facts of the facts are not in dispute that appellant has provided the output service and paid service tax thereon. Therefore, any service received by the appellant is an input service and is entitled for Cenvat credit in terms of Rule 3 of Cenvat Credit Rules, 2004. The adjudicating authority fell in error by holding that as the project was derailed therefore, no service has been provided by the

appellant. Although, during impugned period i.e. April-2009 to March-2010, the project was work in process therefore, it cannot be held that no taxable service has been provided by the appellant. Therefore, the observations made by the learned adjudicating authority in the impugned order are incorrect as later on the appellant has completed the project and paid service tax thereon.

4.2 As the facts of the case are not in dispute that the appellant has provided taxable services and paid service tax thereon, therefore, any service used by the appellant for providing the above said taxable service the appellant is entitle to take Cenvat Credit of the service received. Therefore, we hold that the appellant is entitle to take Cenvat credit of Rs.5,57,25,547/-, hence no demand is sustainable against the appellant, consequently, no penalty is imposable on the appellant.

4.3 We further take note of the fact that as the availment of Cenvat credit and derailment of project was well known to the respondents in October, 2011 itself, therefore, the show cause notice issued to the appellant beyond normal period of limitation i.e. one year is barred by limitation.

5. In view of the above discussion, the impugned order is set aside and the appeal is allowed with consequential relief.

(Operative portion pronounced in the open court)