(2021) 06 CESTAT CK 0057

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40967 Of 2019

M/s. Addison And Co. Limited APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 87
Cenvat Credit Rules, 2004 — Rule 2(1), 14, 15(1)
Central Excise Act, 1944 — Section 11AC(1)(a)

Citation : (2021) 06 CESTAT CK 0057

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : M.N. Bharathi, Vikas Jhajharia

Final Decision : Partly Allowed

Judgement

1. The issue relates to the availment of CENVAT Credit on Outdoor Catering Services and Landscape/Gardening Services.

2. Facts are not in dispute. The assessee is engaged in the manufacture of Tools falling under Chapter 87 of the Central Excise Tariff Act, 1985. The

assessee were availing CENVAT Credit of the Excise Duties paid on inputs, capital goods and Service Tax payment of Excise Duties on the final

products in terms of the CENVAT Credit Rules, 2004. During the course of verification of CENVAT input service documents, it was noticed that the

assessee had availed CENVAT Credit of Rs.14,72,860/- of the Service Tax paid on Outdoor Catering charges on invoices issued by M/s. Sodexo

Food Solutions India P. Ltd. and Rs.1,36,542/- on Landscape Services provided by M/s. Sodexo Facilities Management Service India Pvt. Ltd. for the

period from June 2016 to June 2017, which according to the Revenue were ineligible.

3. A Show Cause Notice dated 11.06.2018 was issued to the assessee proposing to disallow and demand allegedly wrongly availed ineligible

CENVAT Credit of Rs. 16,09,402/-, under Rule 14 of the CENVAT Credit Rules, 2004. The Adjudicating Authority vide Order-inOriginal No.

24/2019 dated 06.02.2019 confirmed the demand along with appropriate interest, appropriated the amount of Rs.16,09,402/- paid towards demand and

imposed penalty under Rule 15 (1) of the CENVAT Credit Rules read with Section 11AC(1)(a) of the Central Excise Act, 1944. Against this Order,

the assessee preferred first appeal before the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai, who vide impugned Orderin-Appeal

No. 47/2019 (CTA-II) dated 29.03.2019 upheld the order passed by the Adjudicating Authority. Aggrieved, the assessee has filed the present appeal

before this forum.

4. Today, when the matter was taken up for hearing, Shri M.N. Bharathi, Learned Advocate, appeared for the assessee-appellant and Shri Vikas

Jhajharia, Learned Authorized Representative appeared for the Revenue-respondent.

5. Regarding the issue of Landscape/Gardening Services and Outdoor Catering Services, Learned Advocate for the appellant relied on the decision of

this Bench of the Tribunal in the case of M/s. Roca Bathroom Products (P) Ltd. v. The Commissioner of G.S.T. and Central Excise, Chennai Outer

Commissionerate [2018 (11) T.M.I. 1446 â?" CESTAT Chennai] wherein the decision of the Honâ??ble High Court of Judicature at Madras in the

case of M/s. Wipro Ltd. v. Commissioner of C.Ex., Pondicherry reported in 2018 (10) G.S.T.L. 172 (Mad.) is relied upon.

6. Per contra, Learned Departmental Representative would submit that in so far as services received in relation to Outdoor Catering charges are

concerned, the Adjudicating Authority has rejected the same as being personal in nature i.e., the same was catered only for specific individuals (such

as VIP Lunches, Dinner and Hi Tea Canteen). He therefore requests for sustenance of the disallowance.

7. Per contra, Learned Advocate for the appellant would submit that no such service to any specific person was involved, but the same relates to the

services catered to all the employees and in any case, he would submit that he has no objection for verification by the Adjudicating Authority.

8. After hearing both sides, I am of the view that in so far as the availability of CENVAT Credit on Landscape/Gardening Services is concerned, the

Honâ??ble jurisdictional High Court has ruled in favour of the assessee. The Honâ??ble jurisdictional High Court has also referred to a decision of

the Honâ??ble High Court of Karnataka in the case of Commissioner of C.Ex., Bangalore-II v. M/s. Millipore India Pvt. Ltd. reported in 2012 (26)

S.T.R. 514 (Kar.), wherein the Honâ??ble Court has extracted the definition of input services and the same has been interpreted, in the following

words:

â??5.5 This Court, followed the view of the Division Bench of the Karnataka High Court in Commissioner of Central Excise, Bangalore-II

v. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.). The relevant observations of this Court in Rane TRW Steering Systems Limited case

are extracted hereinafter :

â??7. In Commissioner of Central Excise, Bangalore-II v. Millipore India Pvt. Ltd. [2012 (26) S.T.R. 514 (Kar.)], the Division Bench of the

Karnataka High Court had occasion to consider similar issue and in the facts of the said case, while considering the definition â??input

servicesâ?? as defined under Section 2(l) of the Cenvat Credit Rules, 2004, the Karnataka High Court held as under :-

â??7. 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.â??

8. A cursory reading of the said judgment reveals that the facts in issue therein are similar to the facts in the present case. It is clear from

the decision that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such

services would form part of the cost of the final products and the same would fall within the ambit of â??input servicesâ? and, therefore,

the assessee is entitled to claim the benefit. This Court is in agreement with the ratio laid down in Millipore India Pvt. Ltd. case (supra),

which is equally applicable to the case on hand and following the said decision, this appeal is liable to be dismissed. Accordingly, the

substantial question of law is answered in favour of the assessee/respondent and against the appellant/Revenue.â??

9.1 Although the above interpretation squarely applies to Catering Services as well, but however, a factual verification as to whether the said services

were availed by all the employees or were they provided only to specific employees, is required to be ascertained.

9.2 In view of the above, this issue alone is sent back to the file of the Adjudicating Authority for the above factual verification and if it is found that

the service was provided to the employees in general, then no denial is called for.

10. There is also issue of interest and penalty, which though was not argued, but are only consequential. In any case, the penalty cannot be sustained

as it is the case of mere disallowance. The same is directed to be set aside.

11. The appeal therefore stands partly allowed and partly remanded on the above terms.

(Operative part of the order pronounced in open court)

