
(2023) 04 CESTAT CK 0008

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 60397 Of 2022

M/s. Chemix Oil Pvt.Ltd

APPELLANT

Vs

Commissioner Of CE & ST, Shimla

RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(I), 9(2)
Central Goods And Services Tax Act, 2017 — Section 174
Finance Act, 1994 — Section 77, 77(2), 78

Citation : (2023) 04 CESTAT CK 0008

Hon'ble Judges : S. S. Garg, Member (J)

Bench : Single Bench

Advocate : Naveen Bindal, Geetika

Final Decision : Disposed Of

Judgement

S.S.Garg, Member (J)

1. The present appeal is directed against the impugned order dated 12.10.2022 passed by the Ld. Commissioner (Appeals), who has dismissed the appeal of the appellant and confirmed the demand of service tax amounting to Rs.17,02,128/- along with interest and penalty of Rs.17,02,128/- under section 78 and Rs.10,000/- under section 77 (2) of Act read with section 174 of CGST Act, 2017.

2. Briefly facts of the case are that the appellant is registered with service tax department and was engaged in providing job work to M/s. Hindustan Unilever Ltd., Baddi and was paying service tax on the job charges received from M/s. HUL, Baddi. The appellant's premises was visited by the audit party and during the audit certain discrepancies were noticed noted by the audit team and thereafter a show cause notice was issued to the appellant alleging that:

(i) The appellant has availed and utilized Cenvat credit of service tax paid on services related to building construction i.e. fabrication of roof and walls of the factory building, post manufacturing activity such as sludge removal and invoices

which do not bear the address of the appellant.

(ii) That the appellant has received manpower supply services from various service providers during the period of October, 2014 to June, 2017 and has not discharged service tax under reverse charge mechanism.

(iii) That the appellant had received legal consultancy services from Advocates and had incurred expenses on fees paid to various government departments on which service tax is payable under reverse charge mechanism.

3. After following due process, the adjudicating authority upheld the demand of service tax as well as credit allegedly wrongly availed by the appellant. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) and the Commissioner (Appeals) dismissed the appeal. Hence, the present appellant.

4. Heard both the parties and perused the record.

5. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without proper appreciation of facts and precedent decision the same issue. He further submits that the Commissioner (Appeals) has not considered submissions made by them and also chosen to ignore the precedent decision cited before him. He further submits that the input service as per Rule 2(I) of Cenvat Credit Rules, 2004 means any service used by manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products and also services which are used directly or indirectly in relation to business. He further submits that the appellant received services from M/s. Shivalik Solid Waste Management for disposal of sludge (waste). He also submits that the said activity of disposal of waste is an integral part of manufacturing process of the business and removal of waste is necessary for the purpose of running of business and therefore fully qualified under the definition of input service. He also submits that the disposal of waste generated out of manufacturing is a statutory obligation of the appellant and violation of the same would attract penal consequences.

6. In support of this submission, the appellant relied upon the decision of this Tribunal in the case of CCE & ST vs. Lupin Limited-2012 (28) STR 291 (Tri.-Mum.) wherein the Tribunal has categorically held that the waste management is statutory requirement and engaging third party for such management to remove waste from the factory premises is an integral part of the manufacturing and hence, the activity is eligible to credit.

7. With regard to the second allegation that the invoices shown the head office address of the appellant, he submits that they have received services from D.K. Chajjar & Co. but on their invoice the address of Kolkata office was mentioned which is head office of the appellant and the address of the Kolkata office was inadvertently mentioned whereas the services were received by the appellant at Baddi, therefore, the credit was rightly taken. He further submits that mere

mention of address of head office cannot be a ground to deny the credit which is substantive benefit and cannot be denied on mere technical/procedural lapse. In support this submission, he relied upon the following decision:

(i) Rajender Kumar & Associates vs. CST, Delhi-II-2021 (45) GSTL-184 (Tri.-Del.)

(ii) Abdur Pvt.Ltd. vs. CST, Delhi-2017 (5) GSTL 334 (Tri.-Del.)

8. Ld. Counsel further submits that the appellant received services from Chhatrapati Engineering and Sai Engineering works with regard to repair and maintenance of plant and machinery. But audit staff wrongly presumed that the said activity was used for building structure and therefore the same is excluded from the definition of input service and the credit was not admissible. Ld. Counsel submits that in fact the appellant has availed services on account of repair and maintenance of plant and machinery and the Revenue without basis has held same services as construction of building structure. No statement of the appellant was recorded in this regard to clarify the exact position. He also submits that the appellant received services from M/s. Sai Enterprises which was assigned job worker of coal feeding in boilers. M/s. Sai Enterprises raised invoices and collected service tax on 100% value but the Revenue presumed that the said services qualified as manpower supply services whereas M/s.Sai Enterprises has provided services of coal feeding in boilers. No manpower supply service has been provided by M/s. Sai Enterprises which is evident from the invoices itself. Moreover, M/s.Sai Enterprises raised the invoices and collected service tax on full value and further deposited it in the government exchequer. As 100% tax has been paid by the service provider further recovery from the appellant is barred as there can be no double taxation on the services. In this regard, he relied on the following decision:-

(a) Mahanadi Coalfield Ltd. vs. CCE, Rourkela, 2020 (43) GSTL 263 (Tri.-Calcutta)

(b) Mandev Tubes vs. CCE, Vapi, 2009 (16) STR 724 (Tri.-Ahmd.)

9. He further submits that the appellant has paid fee to the Govt. department where no activity has been performed by the Government in lieu of such expenses and therefore, as per circular dated 1.4.2016, the appellant is not liable to pay tax on said services under reverse charge mechanism. The service tax if any payable under reverse charge mechanism was available to the appellant as Cenvat credit. Hence, the whole situation is Revenue neutral and no demand is sustainable.

10. He also submits that the allegation of suppression is also without any basis because suppression can be alleged if there is act of or omission on the part of the assessee coupled with intent to evade payment of duty/tax. There is no act of suppression misstatement ascertained by the department, as they have provided all information asked by the department, therefore, he prayed the extended period cannot be invoked on the basis audit points, and penalty also be dropped.

11. On the other hand, Ld.DR reiterated the findings of the Commissioner (Appeals). She further submits that the appellant is not entitled to claim Cenvat credit on sludge/waste management service because the said service has not been used in or in relation to output services neither directly nor indirectly. The said activity of disposal of waste is post manufacturing activity and cannot be covered under the definition of input service.

12. With regard to the invoices not bearing the address of registered premises, she submits that the invoices were issued by D.K.Chajjar & Co. mentioning the address of Kolkata whereas the service has been received at Baddi and therefore the appellant are not entitled to Cenvat credit as per Rule 9 (2) of Cenvat Credit Rules, 2004.

13. She further submits that services received by the appellant from Chhtrapati Engineering and Sai Engineering Works are related to fabrication/ construction of plant building and the said service has been specifically excluded as per clause (A) (a) of exclusion clause to the definition of input service as provided under Rule 2 (I) of Cenvat Credit Rules , 2004. She also submits that in reply to audit objection, the appellant could not explain anything with regard to this objection raised by the department and only submitted that they are contesting the same.

14. Ld. DR placed on record various invoices issued by the Chhtrapati Engineering which clearly mentioned service provided as follows:

"Carry of various fabrication works for pre-coated sheet removing and Re-fixing."

15. In support of this submission, he relied on the decision in the case of Forbes Marshall Pvt. Limited vs. CCE, Pune-2010 (258) ELT 571.

16. With regard to input service of manpower supply service received from M/s. Sai Enterprises and M/s. JNV Enterprises, Ld. DR submits that the manpower supply services are taxable and tax is to be paid by service recipient under reverse charge mechanism. She also submits that the appellant has not submitted anything specifically regarding service received from /s. JNV Enterprises,

17. With regard to the fee paid to the various Govt. departments, Ld.DR submits that in terms of circular No.192/02/2016-ST dated 13.4.2016 which reads as under:-

"It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and Page 3 of 13 the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is

leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.

The appellant has failed to explain as to why fees was paid to government departments, if not for some activity in return, as claimed by the appellant.”

18. She further submits that the arguments of Ld. Counsel for the appellant that the whole situation is revenue neutral will not help the appellant. She also submits that the extended period was rightly invoked because the fact came to the knowledge of the department during the period of audit and if during audit, investigation has not been conducted, the material fact of receipt of invoices and payment made to the service provider would have remained unnoticed.

19. After considering the submissions made by both sides and perusal of the record.

20. I find that the issue involved in the present case is with regard to the denial of Cenvat credit on various input services as alleged by the department. I have carefully gone through the definition of input service as provided under Rule 2(I) of Cenvat Credit Rules, 2004.

21. With regard to the denial of Cenvat credit on sludge/waste removal service, I hold that the disposal of waste generated out of manufacturing is a statutory obligation of the appellant and violation of the same would attract penal consequences. This service has been held to be input service by the Tribunal in the case of Lupin Ltd. cited(supra) wherein the Tribunal has held that transportation and clearance of waste is an activity of the appellant’s manufacturing business. The service availed by the appellant is an integral part of the manufacturing process and hence the appellant is eligible for Cenvat credit.

22. Coming to the next input service which was denied on the ground that the invoices not bearing registered address of the appellant and only having the address of the head office at Kolkata. In this regard, I find that the services were availed in Baddi but inadvertently address of the head office was mentioned in the invoice. The Tribunal has been consistently holding that the Cenvat credit/substantial benefit cannot be denied on technical/procedural lapse as held by the Tribunal in the case of Rajender Kumar & Associates (supra) and Abdur Pvt.Ltd. (supra).

23. In view of these decisions, I find that the appellant is entitled to Cenvat credit on the input service received from D.K.Chajjar & Co.

24. With regard to the services received from Chhtrapati Engineering and Sai Engineering Works, I find that the stand of the department is that the said activity was used for building structure whereas the stand of the appellant is that these services were availed with regard to repair and maintenance of plant and machinery. But the appellant has not given any material to show or the certificate from the chartered engineer regarding the actual use of these services. Hence, I hold that the appellant is not entitled to avail Cenvat credit on

the services received from Chhtrapati Engineering and Sai Engineering Works because the said service is excluded from the definition of input service as provided under Rule 2 (I) of Cenvat Credit Rules, 2004.

25. With regard to the service availed from Sai Enterprises is concerned, I find that Sai Enterprises collected service tax on the 100% value and deposited the same to the government exchequer. Now demanding service tax from the appellant would amount to double taxation on the service. This issue has also been considered by the Tribunal in the case of Mahanadi Coalfield Ltd. (supra) and Mandev Tubes (supra) wherein it has been held that even if the tax is liable to be paid under RCM but the same is paid by the service provider, it was not open to the department to demand the same again from the assessee. Hence, I hold that demanding service tax from the appellant under reverse charge mechanism is not sustainable in law. As far as the demand of service tax paid to legal consultancy services is concerned, the same has been accepted by the appellant and amount of Rs.7,155/- has already been paid along with interest and penalty and the same has been appropriated by the original authority in their order.

26. Further, with regard to the demand of service tax under reverse charge mechanism on the expenses incurred on fee paid to various government department is concerned, I find that the issue is covered by the circular No.192/02/2016-ST dated 13.4.2016 and as per this circular the appellant is liable to service tax on this service. Moreover, the appellant has failed to explain as to why the fee was paid to the government department if not for some activity in return, as claimed by the appellant.

27. Now coming to the issue of extended period, I find that there

is force in the appellant's contention and in view of law laid down by the Apex Court in the case of Uniworth Textile Limited vs. CCE, Raipur-2013 (288) ELT 161 (SC). I hold that in absence of positive action, suppression of facts, wilful misstatement with intent to evade duty, the extended period cannot be invoked.

28. It is pertinent to note that this Tribunal consistently held the view that larger period cannot be invoked on the basis of audit points/objections. Few judgements are noted below:-

(i) Reliance Infratel Limited v. C.C.E. : 2016 (42) S.T.R. 452 (Tri. - Mum.)

(ii) Industrial Filter & Fabrics Pvt. Ltd. v. CCE, Indore : 2014 (307) E.L.T. 131 (Tri. - Del.)

(iii) CCE, Pune-II v. Kumbhi Kasari Sahakari Karkhana Ltd. : 2011 (266) E.L.T. 87 (Tri. - Mum.)

(iv) CCE, Raipur v. Shyam Enterprises : 2011 (23) S.T.R. 29 (Tri. - Del.)

(v) Kirloskar Pneumatic Co. Ltd. v. CCE, Pune : 2010 (254) E.L.T. 328

(vi) Ram Steel Rolling & Forging Mills v. CCE, Mumbai : 2006 (204) E.L.T. 87 (Tri. - Mum.)

(vii) Aditya College of Competitive Exam v. C.C.E. : 2009 (16) S.T.R. 154 (Tri. - Bang.)

(viii) Acra Pac (India) Pvt. Ltd. : 2008 (229) E.L.T. 473 (G.O.I.)

(ix) Swastik Tin Works v. CCE, Kanpur : 1986 (25) E.L.T. 798.

29. Hence, the demand is confirmed is restricted to normal period only in the case of input service received from Chhtrapati Engineering and Sai Engineering Works used for building structure and also expenses incurred on fee to Govt. department. In the circumstances, penalty under section 78 and 77 of Finance Act, 1994 are dropped.

30. In view of my discussion above, I allow the appeal by way of remand to original authority to quantify the duty for the normal period as stated (supra).

31. Consequently, the appeal is disposed of by way of remand.