(2021) 03 CESTAT CK 0108

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal Nos. 75746, 75747 Of 2017

M/s Landis + Gyr Limited APPELLANT

Vs

Commissioner Of Central Excise, Kolkata V RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 15(2)
Central Excise Act, 1944 — Section 11AC

Citation : (2021) 03 CESTAT CK 0108

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Advocate : Akash Santhalia, Santosh Agarwal, T.K.Mondal

Final Decision : Allowed

Judgement

1. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of electric meter classifiable under Chapter Heading

No.90283010 of the First Schedule to the Central Excise Tariff Act, 1985. They are also providing taxable services. For the purposes of clearing the

excisable goods from the factory of the appellants, services of goods transport operators were availed. The appellants were discharging service tax

under Reverse Charge Mechanism (RCM) on the freight amount reimbursed to goods transport operators. The appellants were availing cenvat credit

of service tax paid to the Government since the services of goods transport operators were in the nature of input services. Show-cause notices dated

10.07.2008 & 04.12.2008 were issued for the period from May, 2005 to March, 2006 & April, 2006 to March, 2007, alleging that since the appellant

had cleared its finished goods directly from factory to their buyers, they are not eligible to avail service tax paid on outward freight, of which, cenvat credit has been availed. Show-cause notice further mentions that the credit of service tax paid on services used in relation to the outward

transportation is available up to the place of removal whereas the appellants have availed cenvat credit of service tax paid on outward transportation

beyond the place of removal. The adjudicating authority confirmed the demand along with interest and imposed penalty of equal amount under Rule 15

(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. On appeal, the lower appellate authority upheld the order-inoriginal and rejected the appeal before him. Hence the present appeals before the

Tribunal.

3. Heard both sides through video conferencing and perused the appeals records.

4. I find that the present issue is no more res-integra in view of the recent decision of the Honâ??ble Supreme Court in the case of Commr. of

Central Excise, Belgaum Vs. Vasavadatta Cements Ltd. reported in 2018 (11) GSTL 3 (S.C.), wherein the Apex Court has held thus:

â??2. The entire issue hinges upon the interpretation that has to be given to input service which is defined in Rule 2(l) of the Cenvat Credit

Rules, 2004. It may be stated at this stage itself that all these appeals relate to a period prior to 1-4-2008. The aforesaid Rule was amended

w.e.f. 1-4-2008 as would be noticed hereafter. However, since we are concerned with the unamended Rule, we reproduce the same

hereunder : â??(l) â??input serviceâ?? 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 upto 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 upto the place of removal;â??

3. The Full Bench of CESTAT in M/s. ABB Limited case, which has been upheld by the Karnataka High Court as mentioned above, has

interpreted the aforesaid Rule observing that it is in two parts. In the first part, input service is defined with the expression â??meansâ? and

in that context input service is defined as any service used by a provider of a taxable service or providing an output service or used by the

manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products â??from

the place of removalâ?. It is further held that second part of the definition starts from â??includesâ? where some of the services are

mentioned, which are included as â??input servicesâ??.

4. We may make it clear that in the instant appeals, we are concerned with the first part of the definition. Insofar as second part is

concerned, certain contentions, which have been raised by some of the assessees, have been rejected and that aspect is decided in favour of

the Department. Since these appeals are filed by the Department questioning the interpretation that is given by the CESTAT as well as the

High Court in respect of first part, we are not making any comments insofar as judgment of the CESTAT pertaining to second part is

concerned.

5. Coming back to the first part of the definition as to what input service means, the Full Bench of the CESTAT held that all input services

which are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final

products from the place of removal are concerned, they are treated as input services and Cenvat credit in respect of expenditure incurred in

relation to such services would be admissible. The expression with which the CESTAT was concerned, and which was the subject matter of

discussion, was as to what would be the meaning of â??from the place of removalâ?. Obviously, any input service given for clearance of

the final products â??from the place of removalâ? and tax paid thereon the Cenvat credit has to be given. The question is from the place of

removal up to what place. The assessees had claimed the tax paid on the transportation of final products from the place of removal (i.e. the place of manufacture) to either the place to their respective depots or transport upto the place of the customers, if from the place of removal

the goods were directly delivered at customers place. It is made clear that only first set of transportation from the place of removal was

claimed. To put it otherwise, in those cases where the tax paid on transportation on the goods from the place of removal upto the place of

depot only that was claimed and if there was any such tax again paid from the place of depot to the place of customers, the Cenvat credit

thereof was not claimed and there is no dispute about it.

6. The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not

find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the

High Court.

â??30. The definition of â??input serviceâ?? contains both the word â??meansâ?? and â??includesâ??, but not â??means and

includesâ??. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However,

the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the

definition of â??input serviceâ?? deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the

manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or

rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the

services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading,

transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase

â??clearance of final products from the place of removalâ?? is used, it includes the transportation charges. Because, after the final

products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final

products to the ultimate destination i.e. the customerâ??s/buyer of the said product, apart from attending to certain ancillary services as

mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the

manufacturer are included in the definition of â??input serviceâ??. However, as the legislature has chosen to use the word â??meansâ??

in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the â??input serviceâ?? used by

the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word â??includesâ??. Therefore,

the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of â??input

serviceâ?? has been clearly set out in that portion of the definition. Thereafter, the words â??activities relating to businessâ?? - an omni-

bus phrase is used to expand the meaning of the word â??input serviceâ??. However, after using the omni-bus phrase, examples are given.

It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the

place of removal. While dealing with inward transportation, they have specifically used the words â??inputsâ?? or â??capital goodsâ??.

But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of

inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory

premises till the godown before it is removed for being delivered to the customer. Therefore, â??input serviceâ?? includes not only the

inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal.

Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.

7. As mentioned above, the expression used in the aforesaid Rule is â??from the place of removalâ?. It has to be from the place of removal

upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it

is depot or the customer, has to be allowed.

8. Our view gets support from the amendment which has been carried out by the

rule making authority w.e.f. 1-4-2008 vide Notification No.

10/2008-C.E. (N.T.), dated 1-3-2008 whereby the aforesaid expression â??from the place of removalâ? is substituted by â??upto the place

of removalâ?. Thus from 1-4-2008, with the aforesaid amendment, the Cenvat credit is available only upto the place of removal whereas as

per the amended Rule from the place of removal which has to be upto either the place of depot or the place of customer, as the case may be.

This aspect has also been noted by the High Court in the impugned judgment in the following manner :

â??However, the interpretation placed by us on the words â??clearance of final products from the place of removalâ?? and the

subsequent amendment by Notification 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word â??fromâ?? in the said phrase in place of

â??uptoâ?? makes it clear that transportation charges were included in the phrase â??clearance from the place of removalâ?? upto the

date of the said substitution and it cannot be included within the phrase â??activities relating to businessâ??.â??

5. By respectfully following the ratio as laid down by the Honâ??ble Supreme Court, I set aside the impugned orders and the appeals filed by the

appellants are allowed.

Pronounced in the open Court.