(2022) 01 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52555 Of 2019

M/s. RSPL Limited (Dhar Unit-IV) — APPELLANT

Vs

Commissioner Of Central Goods Service Tax And Central Excise — RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 6, 9(6)
Central Excise Rules, 2002 — Rule 12AA

Citation : (2022) 01 CESTAT CK 0013

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue in this appeal is as follows:-

(1) Whether the cenvat credit availed on ISD invoices in respect of management and repair services have been rightly disallowed, amounting to Rs.1,23,779/-; and

(2) Demand under the provisions of Rule 9 (6) of CCR has been rightly upheld on clearance of waste and scrap (old empty soda bags), guddar, old PVC drum, old empty bags, etc.)

2. The brief facts are that the appellant is a manufacturer of Detergent Powder, Acid Slurry and Acid Spent, which are dutiable. So far the issue of disallowance of cenvat credit on management and maintenance and repair services is concerned, the appellant have paid the amount (including service tax) for services provided by the Audyogik Kendriya Vikas Nigam (AKVN), Indore, which is a statutory body of the Government of Madhya Pradesh, for providing the services – maintenance of road, drainage, street lights, etc. The Adjudicating Authority held that these services are received beyond the place of removal and outside the factory premises.

3. It is urged that the appellant industry is set up on the plot leased by AKVN. The Court below has relied on the precedent order of this Tribunal in the case of Mahle Engine Components India Pvt. Ltd. Vs. Commissioner, CGST, CE & ST, Indore (Final Order No.50046/2019 CESTAT-New Delhi), wherein under the similar facts and circumstances, the maintenance charges were paid to AKVN, who have leased plot to Mahle Engine.

4. The Commissioner (Appeals) taking notice that as per the definition of 'input service" credit is available to the manufacturer, of those services, which are used directly or indirectly in or in relation to the manufacture of final products and clearance of final products upto the place of removal. He further observed that the maintenance charges are part of the lease/rent charges. AKVN is lessor, which is charging the service charges in their lease bills raised for the lease amount, as well as maintenance amount. Though the maintenance is for road, streetlight, drainage, etc., which are the facility provided beyond the manufacturing/factory premises of the appellant. Further, the fact is that such services are charged on the basis of the per sq. Meter of the business premises occupied by the assessee. Hence, these are part of lease rent of the impugned premises. The lease rent charges are eligible inputs and so are the maintenance charges. Reliance was placed by this Tribunal on the ruling of Karnani Properties, wherein it was held that without maintenance of adjoining roads, etc., the business premises cannot function, and without maintenance charges lease of business premises cannot continue. Thus, it was held that these maintenance charges are indirectly related to the business and fell in the main part of the definition of input services. The Tribunal allowed the ground in favour of the appellant.

5. Ld. Commissioner (Appeals) further observed that as regards other ISD invoices, on which cenvat credit has been availed on maintenance and repair services, these pertains to civil and electrical and maintenance work. However, it has not been clarified that, as to where or in which factory these services were availed, and it is not clear as to whether the services were provided exclusively to any of the factories. As all these receipts are ISD invoices, it is essential on the part of the appellant to have clarified the nature of the services and location/ factory where such services were availed by them. In the absence of clarity, the cenvat credit for maintenance and repair, other than in respect of services from AKVN was held not admissible.

6. Ld. Counsel assailing the confirmation of demand urges that the Commissioner (Appeals) has erred in his findings treating that services in dispute, have to be used by the appellant unit only. He further relies on the definition of 'input service'. He states that once service and inputs are used in the factory of production, the credit on the same is available. As the benefit of maintenance service is indirectly available to the manufacturer, cenvat credit is available. Further, there is no issue of any disproportionate allocation of credit vide ISD invoices. The appellant also relies on the Final Order of this Tribunal in the case

of Mahle Engines (Supra).

7. Having considered the rival contentions on this issue, I hold that disallowance by the Court Below is for vague reasons. The cenvat credit received by the appellant unit through ISD invoices is wholly allowable in respect of the repair and maintenance services received. Further, I hold that the Court Below have erred in allowing part of such services and have disallowed the part of amount for no ostensible reasons. Accordingly, I hold that the amount disallowed is bad and the ground is allowed in favour of the appellant.

8. As regards the demand of 6% on clearance of waste and scrap, the Court below has, relying on Rule 6 of CCR, held that exempted goods also include non-excisable goods after the amendment vide notification no.6/2015-CE (NT) dated 1.3.2015, wherein Explanation I and II have been inserted and the amended rule reads as under:-

“1. The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted goods and their clearance upto the place of removal or for provision of exempted services except in the circumstances mentioned in the sub-rule (2).

Provided that Cenvat Credit on inputs shall not be denied to job worker referred to in Rule 12 AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1: For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. Value of non-excisable goods for the purposes of this Rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act, and the rules made thereunder.”

9. Ld. Counsel for the appellant has urged that from a plain reading of Rule 6 of CCR, it is evident that the same is applicable in the case of clearance of manufactured exempted goods, but the same is not applicable to the clearance of non-manufactured goods. Rule 6 is attracted only in case of clearance of manufactured exempted goods or in case of clearance of both the manufactured dutiable and exempted goods. The waste and scrap cleared by the appellant being gunny bags, etc., being the items not manufactured by the appellant, Rule 6 of CCR is not attracted. Such waste items admittedly are neither the main products nor the bye products nor emerged in the course of manufacture as waste. Further, reliance is placed on the Board’s Circular No.721/37/2003-CX dated 6.6.2003, wherein the Board relying on the ruling of the Hon’ble Supreme Court in the case of West Coast Industrial Gases Ltd. Vs. CCE [2003 (4) TMI 110 has clarified that no duty is payable on removal of empty bags and empty boxes

and wooden bags.

10. Having considered the rival contentions on this issue, I hold that the provisions of Rule 6 is attracted, only where the manufacturer clears both manufactured dutiable and exempted goods. Admittedly, the scrap cleared by the appellant are not manufactured scrap or scrap arising in the course of manufacture of final products or bye-products.

11. Accordingly, I hold that the provisions of Rule 6 are not attracted in the facts and circumstances. Thus, this ground is also allowed in favour of the appellant.

12. To sum up, the appeal is allowed. The impugned order is set aside. So far it confirms the demand of duty and penalty as well as interest. Thus, the appeal is allowed with consequential benefit.

[Order pronounced on 18.01.2022.]