(2021) 11 CESTAT CK 0066

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10336 Of 2019

Rishabh Plast Industries APPELLANT

Vs

C.C.E. And S.T.-Daman RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Finance Act, 1994 — Section 66E

Citation : (2021) 11 CESTAT CK 0066

Hon'ble Judges : Raju, Technical Member

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This appeal has been filed by M/s Rishabh Plast Industries against denial of cenvat credit on certain services, demand of interest and imposition of

penalty.

2. Learned counsel for the appellant pointed out that credit has been denied on the Works Contract Service used for Repair of their factory premises.

He pointed out that the definition of input service specifically includes in the inclusion part services used in relation to modernization, renovation or

repairs of a factory, premises of provider of output service or an office relating to such factory or premises. He pointed out that the services are

specifically included in the inclusive part in the definition of Input services. In view of that he argued that they are entitled to the credit of Rs 88,264/-

they are not contesting the balance of demand.

3. Learned AR relies on the impugned order.

4. I have considered the rival submissions. I find that the definition of input service reads as follows:-

I) Input servicesâ?? means any services:-

(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 upto the place of removal,]

and includes services used in relation to 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, 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.

(A) Service portion in the execution of a work contract and construction services including service listed under clause (b) of section 66E of

the finance act, in so far as they are used for-

(a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structure for support of capital goods, except for the provision of one or more of the specified

services.

Orâ?¦â?¦â?¦â?¦â?¦â??

It is seen that in the sequence of the definition of input service is that the first defined that is an Input service in following terms:-

(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 upto the place of removal,]

Thereafter it specifically includes the following in the definition of Input services.

and includes services used in relation to 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, 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.

Thereafter it is specifically excludes the following from the definition of Input services.

(A) Service portion in the execution of a work contract and construction services including service listed under clause (b) of section 66E of

the finance act, in so far as they are used for-

(a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structure for support of capital goods, except for the provision of one or more of the specified

services;

Orâ?¦â?¦â?¦â?¦â?¦â??

From the definition of input services and the sequence it is clear that the definition of Input service is first expanded by introducing the inclusive part in

the definition and thereafter restriction is placed by the exclusive part of the definition. The Commissioner (Appeals) has observes as follows:-

â??9. In this regard, on perusal of definition of â??input servicesâ?, I find that the renovation, repair and maintenances of service are

mentioned in inclusive part of definition in general. In other words all type of renovation, repair and maintenances will covered under this

category of service. However, further in exclusive part of definition at (A)(a), (mentioned above) Construction or execution of works contract

of a building or a civil structure or a part thereof, are being specifically excluded from the definition. As far second work is concerned, I

find that the flooring of any premises id undoubtedly apart of civil structure. Thus, the argument of the appellant that since it is not a new

construction, therefore, it is required to be considered as repair/maintenance rather than construction has no force. Hence, even if it had

been carried out for repairing purpose, because of services provided in relation to part of civil structure, this would appropriately fall under

the exclusive part of the definition of Input service. Thus, I fund that the Adjudicating Authority has rightly disallowed the Cenvat Credit on

the service provided in relation of civil structure.â??

I am in agreement with the argument made by the Commissioner (Appeals). The sequence of the definition which is-

(i) The main definition

(ii) Inclusive part

(iii) Exclusion Part.

Clearly suggest that the exclusive part supersedes or overrides the main definition and inclusive part.

It is obvious that a exclusive part can only exclude what is otherwise included in the inclusive part, therefore. If anything is covered in the exclusive

part it remains excluded irrespective of the fact that the same was specifically included in the main definition or the inclusive part. This is so because

the exclusive part comes at the end of the definition and not before the inclusive part.

5. In view of the above, I do not find any merit in the appeal the same has dismissed.

(Pronounced in the open court on 23.11.2021)

