(2010) 10 BOM CK 0146

In the Bombay High Court

Case No : Central Excise Appeal No. 22 of 2008

The Commissioner Central Excise — APPELLANT

Vs

Manikgarh Cement and The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench — RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:
CENVAT (Credit) Rules, 2004 — Rule 2(1)

Citation : (2010) 20 STR 456 : (2010) 29 STT 230

Hon'ble Judges : J.P. Devadhar, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.K. Mishra, for the Appellant; H.V. Thakur, for the Respondent No. 1, for the Respondent

Judgement

J.P. Devadhar, J.—The Revenue has filed this appeal against the order of the Customs, Excise & Service Tax Appellate Tribunal, Mumbai dated 4-12-2007, raising the following substantial questions of law:

Whether the CESTAT was correct in holding that the Service tax Credit on services of repair, maintenance and Civil constructions used in the residential colony is admissible when such services are not related to manufacture whether directly or indirectly in or in relation to the manufacture of final product especially when the service rendered in residential colony of the factory for maintenance and up keeping of the same are not covered in the definition of inputs service defined under Rule 2(1) of CENVAT Credit Rules, 2004 and judicial authorities have held that such service would not fall as inputs service in terms of Rule 2(1) ibid.

2. The appeal is admitted on the above question of law and is taken up for final hearing by consent of both the parties.

3. The respondent-assessee is engaged in the manufacture of cement. In the present case, the Assessing Officer had disallowed the credit of service tax paid

by the respondent-assessee on account of repairs, maintenance and civil construction etc. as the services were used in the residential colony of respondent-assessee on the ground that the said services were not covered under the definition of input service and hence ineligible as input service.

4. Being aggrieved by the aforesaid order, the respondent-assessee filed an appeal before the Commissioner Central Excise (Appeals) who by his order dated 20th February, 2007 rejected the appeal and upheld the order-in-original passed by the Deputy Commission, Central Excise Division, Chandrapur.

5. Being aggrieved by the aforesaid order, the respondent-assessee filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal and the Tribunal by the impugned order dated 04-12-2007 allowed the appeal and held that the respondent-assessee is entitled to a CENVAT credit on the service tax paid in respect of repairs, maintenance, civil construction, clearing service etc. used at the residential colony of the respondent-assessee.

6. Learned Counsel appearing on behalf of the appellant Revenue submitted that in the light of the decision of the Hon''ble Apex Court in the case of Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III, , it must be held that the CESTAT was wrong in holding that the assessee was entitled to credit of service tax paid on services of repair, maintenance and civil construction used in the residential colony.

7. Learned Counsel appearing on behalf of the respondent-assessee submitted that establishing a residential colony was indirectly connected with the manufacturing of cement and in any event the said activities in question were relating to the business of the respondent-assessee and therefore, the Tribunal was justified in holding that the respondent-assessee is entitled to credit of service tax in respect of the services in question.

8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression ''relating to business'' in Rule 2(l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

9. Applying the ratio laid down by the Hon''ble Apex Court in the case of Maruti Suzuki Limited v. Commissioner of Central Excise, Delhi (Supra), we hold that unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable. In the present case, in our opinion, rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and therefore, the Tribunal was not justified in holding that the services such as repairs,

maintenance and civil construction rendered at the residential colony constitutes ''input service'' so as to claim credit of service tax paid on such services under Rule 2(l) of the CENVAT Credit Rules, 2004.

10. Accordingly, the question set out hereinabove is answered in favour of the Revenue and against the respondent-assessee. The appeal is disposed of accordingly with no order as to costs.

