**Commissioner of Central Excise Vs. M/s. Essel Propack Ltd. and Others**

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**SooperKanoon Citation** : sooperkanoon.com/1174074

**Court** : Mumbai Goa

**Decided On :** Feb-18-2015

**Judge** : F.M. Reis &Amp; K.L. Wadane

**Appeal No.** : Excise Appeal Nos. 4 of 2008, 5 of 2008, 6 of 2008, 6 of 2009, 7 of 2008, 9 of 2008, 10 of 2008, 10 of 2009, 11 of 2008, 12 of 2008, 13 of 2008, 14 of 2008, 15 of 2008, 16 of 2008, 17 of 2008, 18 of 2008, 19 of 2008, 20 of 2008, 21 of 2008, 22 of 2008, 23 of 2008, 26 of 2008 & 27 of 2008

**Appellant** : Commissioner of Central Excise

**Respondent** : M/s. Essel Propack Ltd. and Others

**Judgement** :

Oral Judgment: (F.M. Reis, J.)

1. All the above appeals were ordered to be taken up together as the Counsel appearing for the parties had contended that common substantial questions of law arise in all the above appeals.

2. The above appeals came to be admitted by this Court by an order dated 21st July, 2008. Thereafter, at the request of and by consent of the learned Counsel, the substantial questions of law came to be modified by an order dated 29th January, 2015. The modified substantial question of law by consent, reads thus:

Whether the respondent is entitled to claim CENVAT Credit prior to 16/06/2005 on the basis of TR6 Challan, in terms of Rule 9 which was introduced on 16/06/2005?

3. Learned Counsel appearing for the appellants have pointed out that Rule 9 of CENVAT Credit Rules, 2004 clearly provides the requisite documents to be produced in order to avail of the CENVAT Credit. The learned Counsel further point out that the respondents have not produced any of such documents and, as such, the question of availing of any credit, on such basis, would not arise at all. The learned Counsel further points out that the respondents have a TR6 Challan to substantiate their claim for refund of service tax though such document was introduced by the amendment to the Rule in 2005 to avail of CENVAT credit. The learned Counsel further points out that the subject period, in the present proceedings, is from 1/5/2005 to 15/6/2005 when the said amendment was not in force, and as such, the question of relying upon such TR6 Challan does not arise at all. The learned Counsel further point out that the Authorities below have misconstrued the relevant provisions of the Rules to come to the conclusion that the respondents were eligible for such credit. The learned Counsel, as such, submits that the substantial question of law be answered in favour of the appellants.

4. On the other hand, learned Counsel appearing for the respondents have supported the orders passed by the Authorities below. The learned Counsel points out that the fact that the respondents are eligible for such credit, has not been disputed by the Authorities. The learned Counsel further submits that the right to avail such credit flows from Rule 3 of the CENVAT Credit Rules, 2004 and not under Rule 9 which is only procedural. The learned Counsel further submits that even in the year 2004-05 TR6 challans were issued when certain tax was paid and such documentary evidence which comes from the Department itself can be accepted to substantiate their claim for CENVAT credit. The learned Counsel, as such, submits that the substantial question of law be answered in favour of the respondent.

5. We have duly considered the submissions of learned Counsel and we have also gone through the records.

6. In the present case, the respondents are availing facilities of CEVAT Credit for duty paid on inputs, capital goods and input services in terms of Rule 3 of the CENVAT Credit Rules, 2004. It was the contention of the appellant that the respondents have to reverse the CENVAT credit of service tax paid on goods transport agencies between the period of March, 2005 to 15/6/2005 which they did not accept. It is further the contention of the appellant that Rule 9 specified the documents on which CENVAT credit can be availed of by a manufacturer prior to 16/6/2005. In terms of clause (e) of sub-Rule (1) of Rule 9, of the Rules of 2004, a challan evidencing payment of service tax was a specified document for the purpose of availing service tax credit and the entities listed in clauses (i), (ii), and (iv) of Rule 2 of the Service Tax Rules, 1994 can take the service tax credit on the strength of such challan. But, however, in the case of goods transport agency, although the recipient of the services has been made liable to pay service tax with effect from 1st January, 2005 vide Notification dated 3/12/2004, but the agency has been made eligible to take credit thereof only from 16th June, 2005, vide Notification dated 7th June, 2005, by virtue of which clause (v) of sub-Rule (1) of Rule 2 of the Service Tax Rules, 1994 was inserted making the recipients of goods transport agency service eligible to take credit of the service tax paid on such goods transport agency services. As such, it is the contention of the appellant that the respondents who have paid service tax for goods transport agency services could not have taken the credit on the basis of the TR 6 Challans prior to 16th June, 2005. As, admittedly, the respondents have availed of such credit during the said period, it was the contention of the appellants that the respondents were not entitled to such credit. The fact that the respondents have paid service tax and, as such, are entitled to Credit during the said period has not been disputed by the appellant. As per Rule 3 of the CENVAT Credit Rules, 2004, CENVAT credit of, inter alia, service tax leviable and paid on any input services can be availed of.

7. On going through the CENVAT Credit Rules, 2004, we find that they do not prescribe any documents for availing of service tax credit during the disputed period in respect of the service tax paid on goods transport agency services. The appellant, in the present case, has nowhere contended which were the specified document for availing of such credit during the relevant time. If no documents have been mentioned, TR 6 challan has to be considered as a proper document,

reflecting payment of such tax. Further, it is also not the case of the appellant that service tax was not paid by the respondents or that they were otherwise not entitled to such credit.

8. The Punjab and Haryana High Court, in the case of **Commissioner of Central Excise, Ludhiana vs. Ralson India Ltd.**, reported in 2006 (202) E.L.T. 759 (P andH) held that if the duty paid has the character of inputs and their receipt in manufacturer's factory and utilization in manufacture of final product is not disputed, then the credit cannot be denied to such person. It is also to be noted that the Department's Circular dated 19th November, 2001 observes that once the duty payment is not disputed and it is found that the documents are genuine and not fraudulent, then the manufacturer would be entitled to CENVAT credit on duty paid inputs.

9. In the present case, the authorities below have accepted that the respondents are entitled to such CENVAT Credit. The only point for consideration, in such circumstances is the type of document required to be produced to avail of such credit. The respondents have produced the TR 6 Challan which is emanated from the office of the appellants themselves to support their claim for such CENVAT Credit, which material was accepted by the authorities below whilst passing the impugned order.

10. For the aforesaid reasons, the question of discarding the said Challan to avail of such CENVAT Credit, as contended by the learned Counsel appearing for the appellant, cannot be accepted. The Authorities below, as such, have rightly accepted the said Challan as proof of payment of service tax and, as such, no infirmity can be found in the orders passed by the Authorities below. In any vent, the appellants are not entitled to rely upon Rule 9 to refuse the credit to the respondents, as Rule 9 is a procedural aspect which cannot deny the claim of the respondents to avail of such CENVAT Credit which they are, otherwise, admittedly, entitled to. The substantial question of law is answered accordingly.

11. In view of the above, we find no merit in the above appeals which stand, accordingly, dismissed.