Ultra Tech Cement Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-22-2008

Reported in : (2008)10STR467

Judge : M Ravindran

Appellant : Ultra Tech Cement Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal is directed against the Order-in-Appeal No.SVS/143/NGP-C/2007 dated 14-3-2007 passed by the Commissioner of Customs (Appeals), Nagpur vide which the Commissioner (Appeals) has upheld the entire Order-in-Original confirming the demand of duty and imposing penalty on the appellants, ordering recovery of interest under Section 14(sic)(Rule 14) of Cenvat Credit Rules, 2004.

2. The issue in this appeal is regarding availment of Cenvat credit on the input service (security agency) utilized by the appellants for residential colony which is adjacent to the factory. It is the contention of the Revenue that the security services utilized by the appellant would not fall under the category of input service for residential colony used directly or indirectly in the manufacture of final products. The adjudicating authority upheld the charges alleged in the show cause notice and confirmed the demand. The appellants aggrieved by such order preferred an appeal before the Commissioner (Appeals) who also upheld the Order-in-Original. Hence, this appeal.

3. The learned Counsel appearing on behalf of the appellant categorically states that the issue involved in this case requires de novo adjudication proceedings as the first appellate authority has not given any finding on merits. It is the submission that the first appellate authority has only reproduced the finding which has been arrived at, by the adjudicating authority and has not given any findings against the grounds of appeal, filed by the appellants. He draws my attention to the specific paras. He relies upon the judgement of the Supreme Court in the case of Cyril Lasrado (Dead) by Lrs and Ors. v. Juliana Maria Lasrado and Anr.

He draws my attention to paras 11 and 12 of the above judgement of the Supreme Court.

4. The learned SDR on this point submits that the Order-in-Original has given a detailed reasoning. It is the submission that if the appellate authority has not given any reason automatically the order-in-review has to be read. He submits that the appellate authority has applied his mind on the findings given by the adjudicating authority and there is no case for remanding the matter back to the appellate authority, on this around.

5. Regarding merits, it was submitted that the security services utilized at Residential colony, does not play any part either directly or indirectly in the manufacture of final products.

On perusal of the record, I find that the Commissioner (Appeals) while/upholding the Order-in-Original in paras 9.5 and 9.6 holds as under: 9.5. The adjudicating authority in para 14 and 15 in its order while rejecting the contention of the appellant has examined and observed as under: 14. Further, I find that 'Security' is included in the definition of input service referred above. But that does not imply that Security of residential colony is included. The residential colony is outside the purview of the factory premises and hence does not fall within the meaning of this definition.

15. Further, presuming that if we consider the contention of the No-ticee, then there would be no end for availment of Cenvat credit on various services provided in the residential colony e.g. repair and maintenance, security services, etc.

Obviously, the residential colony of the Noticee are occupied by the employees/staff of the Noticee only and there are many services as mentioned above which are required for upkeepment/maintenance of the residential colony.

Just that the staff/employee of the Noticee are staying in the residential colony and hence services utilized in residential colony cannot be deemed to be used. In relation to the manufacture of final product, hence contention of the Noticee of availing credit on services provided in the residential colony is not at all acceptable and logically right. The department is not denying the Noticee the service utilized inside the factory and are also allowing them to take credit on such services.

9.6. The above makes it clear that service so utilized in residential colony of the factory is not covered in the definition of input service and the lower authority has correctly denied the credits.

6. On perusal of the defence of the appellant before the learned Commissioner (Appeals), I find that the appellants had taken various grounds of appeal before him as is reflected from paras 7.2 to 7.15 of the Order-in-Appeal. Mere reading of these paragraphs indicate that the appellants have challenged, very same findings on which the Commissioner (Appeals) is agreeing with the adjudicating authority (as reproduced in para 4 above). This would indicate that the Commissioner (Appeals) has not dealt with any of the grounds which are raised by the appellant before him. The reliance on the judgment of the Supreme Court in the case of Cyril Lasrado (Dead) by Lrs and Ors. v. Juliana Maria Lasrado and Anr.

11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgement not sustainable.

12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed: (All ER p.H54h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to given reasons amounts to denial of

justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

7. As such, I find that the ratio as laid down by the Apex Court is squarely applicable to the facts of the present case.

Hence, without expressing any opinion on the merits of the case, the Impugned order being non-speaking as it has not dealt with grounds of appeal raised by the appellants, is unsustainable and liable to be set aside. Accordingly, the impugned order is set aside and the matter is remanded for de novo adjudication proceedings to the Commissioner (Appeals). The Commissioner (Appeals) shall grant an opportunity of personal hearing to the appellants and shall consider all the grounds of appeal raised by the appellant at the time of hearing. The appeal is allowed by way of remand.