The Commissioner of Central Excise Vs. Excel Crop Care Ltd.

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Court : Gujarat

Decided On : Jul-29-2008

Reported in : (2009)224CTR(Guj)59; 2008[12]STR436; [2009]20STT164

Judge : D.A. Mehta and; H.N. Devani, JJ.

Acts : Service Tax Credit Rules, 2002; Cenvat Credit Rules, 2004 - Rules 2L, 3 and 9(5)

Appeal No. : Tax Appeal No. 1543 of 2007

Appellant : The Commissioner of Central Excise

Respondent : Excel Crop Care Ltd.

Advocate for Def. : None

Advocate for Pet/Ap. : Harin P. Raval, Adv. for Appellant 1

Disposition : Appeal dismissed

Judgement :

D.A. Mehta, J.

1. The appellant- Revenue has proposed the following question:

Whether in the facts and circumstances of the case, the Tribunal is justified in permitting input credit on mobile services following the decision in the case of Indian Rayon Industries Limited reported in 2006 [4] STR 79 [Tri.]?

2. The respondent - assessee availed Cenvat credit of Service Tax paid on mobile phone services in respect of mobile phones used by employees and officers of respondent assessee. The dispute relates to the period from March 2005 to September 2005 involving an amount of Rs. 56,188/-. According to the appellant, the assessee was not entitled to the credit on the ground that mobile phones are not phones installed in the factory premises and therefore, cannot be treated as 'input service' in terms of Circular No. 59/8/2003 dated 20.6.2003 issued by the Central Board of Excise & Customs. The contention of the assessee that the said circular was issued in context of Service Tax Credit Rules, 2002 and hence, is not applicable in relation to a claim under Cenvat Credit Rules, 2004 (the Rules), has been rejected by the appellant. The matter was carried in appeal and after failing before the Commissioner (Appeals), the assessee succeeded in second appeal before the Central Excise & Service Tax Appellate Tribunal (the Tribunal). The Tribunal has relied on its own decision in the case of Indian Rayon Industries Limited reported in 2006 [4] STR 79 [Tri.].

3. The learned Counsel for the appellant, at the outset, submitted that, in another matter, i.e. in Tax Appeal No. 391 of 2007, vide order dated 12.3.2007, the appeal was admitted and hence, the present appeal also deserves admission. The question in the said appeal reads as under:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the respondent was entitled to avail CENVAT Credit on service tax paid on mobile phones services in terms of Rule 3 read with Rule 2(L) of the CENVAT Credit Rules, 2004 despite the respondent not having established that the same was in relation to the business activity as envisaged under Rule 9(5) of the CENVAT Credit Rules, 2004

4. Thus, the frame of the question itself suggests that, in the facts of that case, the assessee had not been able to establish that the credit was in relation to the business activity of that assessee.

5. The learned Counsel for the appellant also submitted that the definition of the term 'input service' as appearing in Rule 2(1) of the Rules would not bring the service in question within the scope of 'input service' so as to be eligible for credit under Rule 3 of the Rules.

6. In the facts of the case, it is not in dispute that mobile phones were provided by the employer, namely the respondent assessee, to its employees and officers. There is nothing on record to indicate that the activities carried out by such staff members are not relatable to the business of manufacturing carried on by respondent assessee. The said Rule reads as under:

[1] 'input service' means any service:

[i] used by a provider of taxable service for providing an output service, or

[ii] used by the manufacture, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, 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, activities relating to business, such as 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;

7. On a plain reading of Rule 2(1)(i), 'input service' means any service used by a provider of taxable service for providing an output service, or, means, any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization etc., advertisement or sales promotion, procurement of inputs, accounting, auditing etc., including computer networking etc. The definition of the term 'output service'

under Rule 2(p) of the Rules means any taxable service provided by the provider of taxable service, to a customer, client, subscriber etc. The Explanation to the said clause makes it clear that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service. Similarly, the definition of the phrase 'provider of taxable service' appearing in Rule 2(r) includes a person liable for paying service tax.

8. Therefore, on a conjoint reading of the aforesaid provisions, it is apparent that the mobile service provider, who is liable to pay service tax, and recovers the same by adding such service tax in his bill, is the person providing taxable service and is rendering 'output service' so as to constitute 'input service' in hands of respondent assessee.

9. In the aforesaid circumstances, the ground on which the credit was disallowed, namely, the phones were not installed in the factory premises, cannot be termed to be a ground germane to the provisions of the Rules relevant for the present purpose.

10. In the aforesaid set of facts and circumstances of the case, the appeal does not deserve to be admitted in absence of any question of law, as proposed or otherwise, much less a substantial question of law. The appeal is, accordingly, dismissed.