SUPREME COURT OF INDIA

Commissioner of Customs Central Excise and Service Tax

Vs.

Andhra Sugars Ltd.

C.A.No.11711 of 2016

(A.K.Sikri and Ashok Bhushan,JJ.,)

05.02.2018

JUDGMENT

A.K.Sikri,J.,

1. The question of law which needs determination in all these appeals is identical. It pertains to Cenvat Credit in respect of service tax paid on goods that are transported to the purchaser after the sale. The question, therefore, which needs determination is as to whether the expression 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the 'Rules, 2004'), in the context of a service provider, would also include services which are used in or in relation to providing taxation output services described in the definition and the outward transportation to the purchaser would be treated as beyond the 'place of removal'.

2. For the sake of convenience, we may reproduce the events from Civil Appeal No. 11711 of 2011. The respondent M/s. Andhra Sugars Ltd. are the manufacturers of sugar, molasses etc. at their Tanuku, Taduvai & Bhimadole units and manufacturers of various inorganic chemicals at their Kovvur and Saggonda units. They were availing credit on inputs, capital goods and input services and utlising the same for payment of duty. It came to the notice of the Revenue that during the periods December, 2007, the respondent at their unit Saggonda, had taken credit of input services namely service tax paid on transportation charges upto the place of customers which according to the Revenue is inadmissible. Accordingly, show cause notice dated November 3, 2008 was issued to the respondent demanding the Cenvat Credit of Rs.3,87,763/- availed during the above mentioned period along with interest and proposing to impose penalty under Rule 15 of the Rules, 2004. The aforesaid show cause notice was duly adjudicated by the Assistant Commissioner, Eluru Division vide Order-in-Original No. 01/2009 dated January 9, 2009 confirming the demands initiated in the aforesaid show cause notice.

3. The respondent being aggrieved by the Order-in-Original No. 01/2009 dated January 9, 2009 filed appeal before the Commissioner (Appeals), Guntur. Vide Order-in-Appeal Nos.

46/2011 (G) ST dated December 2, 2011, allowed the appeals by setting aside the Order-in-Original with consequential relief to the respondent. The Revenue challenged the Order-in-Appeal No. 46 of 2011 (G) ST dated December 2, 2011 by preferring appeal bearing Appeal No. E/510/2012-DB before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore. The CESTAT vide final Order No. 26346/2013 dated August 14, 2013 dismissed the appeal filed by the Revenue holding that the same is covered by the decision of the High Court of Karnataka in the case of Commissioner of Central Excise and Service Tax, Bangalore v. ABB Ltd., Vadodara . Further, the CESTAT observed that the Revenue could not have filed appeals as per the instructions of the CBEC vide Circular F.No. 390/Misc./163/2010-JC dated August 17, 2011, as the amount involved is less than Rs.5 lakhs. Not satisfied with this outcome, the Revenue took the matter to the High Court in the form of Appeal No. 88/2014. The High Court vide its impugned judgment dated July 16, 2014 has dismissed the appeal filed by the Revenue holding that "on an identical issue, this Court dismissed Central Excise Appeal No. 31 of 2013. Hence, this appeal is also dismissed."

4. Before we proceed further, it would be necessary to take note of the definition of 'input service' which was prevailing at the relevant period i.e. prior to April 1, 2008. This definition contained in Section 2(l) of the Rules, 2004 reads as under:

> "Input Service" means any service-
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> (i) Used by a provider of taxable service for providing an output service; or
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> (ii) 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, 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 from the place of removal; The phrase 'place of removal' is defined under Section 4 of the Central Excise Act, 1944. It states that- 'place of removal' means,-
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> (i) a factory or any other place or premises of production or manufacture of the excisable goods;
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> (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed."

5. We may also refer to Circular No. 97/8/2007-ST dated August 23, 2007 issued by the Central Board of Excise and Customs (CBEC) (hereinafter referred to as the 'Board') as per which the definition of 'input service' was clarified and the Circular also provided the conditions which are to be satisfied to cover the case within 'place of removal'. The three conditions contained in the circular are (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination and; (iii) freight charges to be integral part of the price of the goods.

6. As mentioned above, in these cases, the assessees are claiming Cenvat Credit in respect of service tax paid on outward transportation from their factory to the premises of customers. As per the Department, outward transportation engaged for removal of goods from factory to customer premises cannot be considered as an input service since premises of customer is not recognized as a place of removal under the Central Excise Act. To put it differently, the Department contends that the outward transportation provided beyond the place of removal is not eligible for input service for availing Cenvat Credit.

7. Having regard to the definition of 'input service' that was prevailing at the relevant time i.e. prior to April 1, 2008, the aforesaid contention of the Department cannot be accepted. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place etc., was exigible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. The matter is squarely covered by the Board's Circular dated August 23, 2007, relevant portion whereof is as under:

> "ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road? COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (6) STR 249 Tri-D]. In this case, CESTAT has made the following observations:- "the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing

with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods ;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;from where such goods are removed." It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or

damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

8 As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s. Ultratech Cement Ltd. Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' are defined in Section 4 of the Act. It is not the case of the Department that the three conditions laid down in the said Circular are not satisfied. If we accept the contention of the Department, it would nullify the effect of the word 'from' the place of removal appearing in the aforesaid definition. Once it is accepted that place of removal is the factory premises of the assessee, outward transportation 'from the said place' would clearly amount to input service. That place can be warehouse of the manufacturer or it can be customer's place if from the place of removal the goods are directly dispatched to the place of the customer. One such outbound transportation from the place of removal gets covered by the definition of input

9.We, thus, do not find any infirmity in the impugned judgment. Appeals are devoid of any merit and are accordingly dismissed.