Commissioner of Customs and Central Excise Vs ITC Ltd.

Court: Andhra Pradesh High Court

Date of Decision: Nov. 8, 2011

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 35G

Citation: (2013) 39 STT 654

Hon'ble Judges: V.V.S. Rao, J; P.V. Sanjay Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.V. Sanjay Kumar, J.
These appeals by the Revenue u/s 35G of the Central Excise Act, 1944 are directed against the common order

dated 13.05.2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, (CESTAT), South Zonal Bench, Bangalore, in Service Tax

Appeal Nos. 414 & 415 of 2008. By the said order, the CESTAT upheld the entitlement of the respondent Company to the input service tax

credit availed by it in respect of maintenance of its staff colony and plantation. The respondent Company manufactures paper and paper boards

falling under Chapter 46 of the Central Excise Tariff Act, 1985 at its factory at Sarapaka, Khammam District. It availed service tax credit on the

input services pertaining to maintenance of its staff colony, plantation and godown for the period October, 2005 to January, 2007. Show Cause

Notices dated 18.10.2006 and 11.04.2007 were issued by the excise authorities calling upon the respondent Company to show cause as to why

this input service credit should not be recovered along with interest. Levy of penalty under Rule 15 of the CENVAT Credit Rules, 2004 was also

threatened. The respondent Company pointed out in its reply that its factory at Sarapaka, where it was maintaining the staff colony, was located in

a remote scheduled area and that the nearest town with a railway station was at a distance of 35 K.Ms. As its factory worked round the clock, it

necessarily had to provide residential accommodation to its managers/employees in the vicinity. As a residential colony was established by it due to

this reason, it necessarily had to maintain the same so as to create a conducive working/living environment for its employees. The respondent

Company therefore justified the availing of CENVAT credit on the input services relating to the maintenance of its staff colony.

2. With regard to its claim in connection with the maintenance of a plantation, the respondent Company stated that wood was the essential raw-

material for manufacture of paper and paper boards and to ensure sustained availability of this essential raw-material, it had undertaken research

and developed a high yielding disease resistant sapling of eucalyptus. Clones of this sapling were sold to farmers through its in-house plantation

department and the farmers, in turn, cultivated the same and sold back the fully grown trees to it at market price. It therefore justified availing

CENVAT credit on the service tax paid by it on the input services relating to maintenance of this plantation.

3. With regard to its Indian Leaf Tobacco Division (ILTD) godown, the respondent Company averred that it stored materials required for

manufacture of its final products in the said godown before transfer to the factory and that the godown fell within the description of ''services used

in relation to procurement of inputs''.

4. The Assistant Commissioner of Customs and Central Excise, Hyderabad-III Commissionerate, by Order-in-Original dated 31.12.2007, held in

favour of the respondent Company in so far as its claim pertaining to the godown was concerned but negatived its entitlement to claim CENVAT

credit in connection with the maintenance of its colony and plantation. She accordingly directed recovery of CENVAT credit to the tune of Rs.

40,96,052/- along with interest on these two counts. As the amount had already been paid under protest by the respondent Company, the same

was directed to be appropriated. She also imposed a penalty of Rs. 10,000/- upon the respondent Company.

5. Aggrieved thereby, the respondent Company filed Appeal Nos. 20 and 21 of 2008 before the Commissioner of Customs, Excise and Service

Tax (Appeals-III), Hyderabad. The appeals were disposed of by common order dated 27.05.2008 whereby the Commissioner concurred with

the lower authority as to the disentitlement of the respondent Company to avail credit on the input services relating to maintenance of its staff

colony and plantation. The imposition of penalty was however set aside. Challenging this order, the respondent Company approached the

CESTAT by way of Service Tax Appeal Nos. 414 and 415 of 2008. By its common order dated 13.05.2009, the CESTAT reversed the

decision of the authorities below and held that the respondent Company was entitled to avail input service credit in respect of the maintenance of its

staff colony and plantation also. Hence, these appeals by the Revenue.

6. Rule-2(1) of the CENVAT Credit Rules, 2004 defines input service as under:

2(1) ""input service"" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products,

upto 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 up to 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. The language of the definition makes it clear that the phrase ''input service'' has been given the widest amplitude. The definition by its very nature

is an inclusive one and the words used therein leave no room to doubt that all services used in relation, directly or indirectly, to the manufacture of

final products and clearance of such products up to the place of removal are covered. The inclusive part of the definition manifests that services

used in relation to the setting up of the factory or office or premises, including its modernization, renovation, repair etc., and also services used in

relation to advertisement, sales promotion, market research, procurement of inputs and all activities relating to the business would also fall within

the ambit of ''input services''.

8. The Commissioner''s Order-in-Appeal dated 27.05.2008 reflects that he accepted that the efficiency of the employees of an organization would

be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the

enhancement of the productivity of the organization. Having stated so, the appellate authority surprisingly took the view that maintenance of the

residential colony by the respondent Company was only an obligatory activity owing to situational exigencies and was not connected either directly

or indirectly to the manufacture of its final products! This inherent contradiction in the Order-in-Appeal was noted by the CESTAT, which opined

that if accommodation was not provided by the respondent Company to its employees at this remote location, it would not be feasible for it to

carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly

connected with the manufacturing activity of the respondent Company was therefore not borne out on facts. The staff colony, provided by the

respondent Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration.

Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming

pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as ''input services'' falling within the ambit of

Rule 2(1) of the CENVAT Rules, 2004.

9. As regards the plantation activity, the same had an obvious nexus with the manufacturing activity of the respondent Company. As pointed out by

the CESTAT the matter had to be viewed in a broader perspective given the wide amplitude of the definition of input services in the Rules. It is not

in dispute that the respondent Company''s factory is in a scheduled area and owing to its situation, the respondent Company could not have

acquired land for undertaking its own plantation. In such a scenario, its activity in distributing saplings to the farmers in the vicinity and buying back

the fully grown trees from them cannot be said to be an activity unconnected with the manufacture of its final products. No evidence to the contrary

was brought on record by the Revenue. Services pertaining to procurement of inputs also being covered by the definition clause in Rule 2(1), the

plantation activity undertaken by the respondent Company for ensuring steady supply of raw-material (wood) cannot be excluded.

10. The common order dated 13.05.2009 of the CESTAT therefore does not brook interference on any count. We find no question of law, much

less a substantial one, in these appeals warranting their admission. The appeals are accordingly dismissed at the admission stage. There shall be no

order as to costs.