M/s. Deepak Fertilizers and Petrochemicals Corporation Ltd. Vs The Commissioner of Central Excise

Court: Bombay High Court

Date of Decision: March 6, 2013

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 11A(1)

Citation: (2013) 21 GSTR 192 : (2013) 32 STR 532 : (2013) 39 STT 425

Hon'ble Judges: D.Y. Chandrachud, J; A.A. Sayed, J

Bench: Division Bench

Advocate: V. Sridharan, with Mr. Prakash Shah and Mr. Jas Sanghavi instructed by PDS Legal, for the Appellant; S.I. Shah with Ms. Suchitra Kamble, for the Respondent

Judgement

D.Y. Chandrachud, J.
This Appeal arises from the order of the CESTAT dated 12 November 2012. The Appeal raises on the following

substantial questions of law:

i) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that the Appellants would not be

entitled to credit of service tax paid on input services received for setting up of storage tanks;

ii) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that services used in relation to

storage of inputs outside the factory will not be eligible for credit as services are received outside the factory.

The appeal is admitted on the above substantial questions of law. By consent, the Appeal is taken up for hearing and final disposal.

2. The Appellant is engaged in the manufacture of excisable goods which fall under Chapters 28, 29 and 31 of the Central Excise Tariff Act 1985.

The Appellant has installed storage tanks for storing ammonia at its premises situated at JNPT. The Appellant claims that it is eligible for CENVAT

credit of service tax paid on input services used for the ammonia storage tanks installed at JNPT since the input/raw material stored there is

intended for manufacture of the final product at the factory of the Appellant at Taluja. The Appellant availed of CENVAT credit in respect of the

services of consulting engineers, technical inspection and certification, construction, erection, commissioning and installation services for the

installation of the ammonia storage tanks. A show cause notice dated 31 July 2009 was issued to the Appellant demanding CENVAT credit of Rs.

2.78 Crores under Rule 14 of the rules read with Section 11A(1) of the Central Excise Act together with interest u/s 11AB and a penalty was

proposed to be imposed under Rule 15(A). After adjudication the demand was confirmed together with interest and a penalty of Rs. 5,000/-. The

Appellant filed an Appeal before the Tribunal which was dismissed by the impugned order dated 12 November 2012.

3. Rule 3(1) of the CENVAT Credit Rules 2004 provides that a manufacturer or producer of final products or a provider of taxable service shall

be allowed to take credit inter alia of the service tax leviable u/s 66 of the Finance Act, paid on the following:

i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the

10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September,

2004.

The expression "input service" is defined in Rule 2(1) as follows:

(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 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.

4. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of service tax which is paid on

(i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) Any input service received by the manufacturer of

the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input

services on the other. Clause (i) above provides that the service tax should be paid on any input or capital goods received in the factory of

manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that

the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal

construction of Rule 3(1) the Tribunal was not justified in holding that the Appellant would not be entitled to avail of CENVAT credit in respect of

services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the

expression "input service" covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final

products. The words "directly or indirectly" and "in or in relation to" are words of width and amplitude. The subordinate legislation has advisedly

used a broad and comprehensive expression while defining the expression "input service". Rule 2(1) initially provides that input service means any

services of the description falling in sub clause (i) and (ii). Rule 2(1) then provides an inclusive definition by enumerating certain specified services.

Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to

interpret the inclusive part of the definition and held that the legislature restricted the benefit of CENVAT credit for input services used in respect of

inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been

placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(1). The first part of Rule 2(1) inter alia covers any services used by

the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain

specified categories of services. However, it would be farfetched to interpret Rule 2(1) to mean that only two categories of services in relation to

inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(1).

Rule 2(1) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words

used in Rule 2(1). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and

service tax among others paid on any input or capital goods received in the factory of manufacture of the final product, insofar as any input service

is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and

comprehensive meaning of the expression "input service" in Rule 2(1). The input services in the present case were used by the Appellant whether

directly or indirectly, in or in relation to the manufacture of final products. The Appellant, it is undisputed, manufactures dutiable final products and

the storage and use of ammonia is an intrinsic part of that process. For these reasons, we have come to the conclusion that the judgment of the

Tribunal is ex facie unsustainable. The questions of law as framed are accordingly answered in the negative. The Appeal is accordingly allowed.

There shall be no order as to costs.