



:: आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

BY Speed Post
743 & 744 (1st & 2nd)
राजकोट

DIN - 20210564SX0000555CD4

Eq 30/20 25 55 71
Pran

क अपील / फाइल संख्या / Appeal / File No. **V2/91/RAJ/2021** मूल आदेश सं / OIO No. **3/D/Supdt/2020-21** दिनांक / Date **26.6.2020**

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-13-2021

आदेश का दिनांक / Date of Order: **24.05.2021** जारी करने की तारीख / Date of issue: **27.05.2021**

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित /

Passed by **Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा उपयुक्तलिखित जारी मूल आदेश से सृजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Bhavani Industries, Behind PTD Ground, Ganjiwada Road, Rajkot.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। / Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 of the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो अट्टी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत बिलिदिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER-IN-APPEAL ::

M/s. Bhavani Industries, Rajkot (hereinafter referred to as “appellant”) has filed Appeal No. V2/91/RAJ/2020 against Order-in-Original No. 3/D/Supdt/2020-21 dated 26.6.2020 (hereinafter referred to as “impugned order”) passed by the Superintendent (Adjudication), Central GST & Central Excise, Rajkot-I Division (hereinafter referred to as “adjudicating authority”).

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of goods falling under Chapter No. 84 and 87 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department having Registration No. AAFC8046RXM004. During the course of Audit of the records of the Appellant undertaken by the Departmental officers, it was observed that they had availed Cenvat credit of Service Tax paid on Product Liability and Product Recall Insurance Policy. The said policy was taken to cover up financial loss incurred on account of recall of their final products already sold to their customers. It appeared that any service availed after clearance of goods from factory is not covered under the definition of ‘input service’ in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as “CCR,2004”) and therefore, the Appellant had wrongly availed Cenvat credit of service tax. Show Cause Notices were issued to the Appellant during the period from April, 2014 to November, 2016.

2.1 Since the Appellant continued to avail Cenvat credit of service tax paid on said ‘Insurance Service’ during the period from December, 2016 to June, 2017, a Statement of Demand bearing No. V.84(4)-12/MP/D/Supdt/2018-19 dated 12.12.2018 was issued to them for recovery of wrongly availed Cenvat credit amount of Rs. 2,80,000/- along with interest under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and proposing imposition of penalty under Rule 15 read with Section 11AC of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 2,80,000/- and ordered for its recovery along with interest, under Rule 14 of CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and imposed penalty of Rs. 2,80,000/- under Rule 15 of CCR, 2004 read with Section 11AC of the Act.

3. Being aggrieved, the appellant preferred the present appeal on the following grounds, *inter alia*, contending that,

- (i) The adjudicating authority has erred in not appreciating that the service in question availed by the appellant was pre-requisite for carrying



out manufacturing and clearance of the goods to their buyers to whom the goods were cleared. In order to manufacture and supply goods to the said buyers, the appellant is obligated to cover its product from product recall/liability insurance. The services were therefore integral to the manufacturing of final products manufactured and cleared by the appellant and hence qualify as input service. It is submitted that services availed by the appellant being integral for manufacturing the said final products as without said services appellant could not have secured the contract/purchase orders for manufacture and supply and hence manufacturing the final product was directly connected with such services. The said service is therefore covered under the expression "directly or indirectly in or in relation to the manufacture of final products" under first limb of the definition of input services under Section 2(1) (ii) of the Cenvat Credit Rules, 2004.

(ii) The adjudicating authority erred in not appreciating that the services in question pertained to insurance against the financial liabilities that may arise out of recall actions initiated or injury/damage caused due to defects or related issues in the products manufactured and supplied by the appellant to their buyers. The services are thus availed for the purpose of manufacturing quality products and for carrying out manufacturing activity in a risk free manner. It must therefore follow that the services are integral to the manufacturing activity of the appellant. The service in question is thus apart from falling within the expression "directly or indirectly in or in relation to the manufacture of final products" is covered under the expression "includes" appearing in the second limb of the definition and relied upon the judgement of Larger Bench of Hon'ble Supreme Court of India in the case of Ramala Sahakari Chini Mills Ltd. -2016-TIOL-20-SC-CX-LB in which it has been ruled that the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. In view of the said Judgement it must follow that the services in question qualify as input service in terms of Rule 2 (l) of the CCR, 2004.

(iii) The adjudicating authority has erred in not appreciating that entire demand of duty is barred by limitation prescribed under proviso to Section 11A(1) of the Act. The appellant is registered with central excise department and have been regularly filing ER 1 returns in which availment of Cenvat credit is duly reflected. When the appellant has reflected the



[Handwritten signature]

amount of credit availed in its monthly ER 1 returns, it cannot be said that there was any positive act of suppression or mis-statement on the part of appellant and hence demand of duty invoking extended period of limitation is not sustainable in law.

(iv) The adjudicating authority has erred in imposing penalty. The issue is one of interpretation of the definition of the term 'input service'. The Appellant has taken the credit based on the interpretation it bona fide held, relying on the decisions of the Tribunal and that such interpretation if incorrect cannot be a ground for imposition of penalty and relied upon case law of Paswara Papers Ltd. v CCE – 2004 (178) ELT 317 and Whiteline Chemicals v CCE – 2008 (229) ELT 95.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 23.4.2021. Shri Rahul Gajera, Advocate, appeared on behalf of the Appellant. He reiterated the grounds of appeal memorandum.

4.1 The Appellant submitted additional submission vide letter dated 13.4.2021 wherein copies of following case laws submitted :

- (a) Bhavani Industries - 2018 (10) TMI 626- CESTAT Ahmedabad
- (b) CCL Products India Ltd - 2019 (369) STR 780 (Tri. Hyd.)
- (c) Neo Foods Pvt Ltd - 2017(1) TMI 151 - CESTAT Banglore

5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal memorandum. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Cenvat credit of service tax paid on Product Liability and Product Recall Insurance Policy is correct, legal and proper or not.

6. I find that the Appellant had availed Cenvat credit of service tax paid on Product Liability and Product Recall Insurance Policy during the period from December, 2016 to June, 2017. The adjudicating authority disallowed said Cenvat credit of service tax on the ground that said service was availed after clearance of goods from factory and hence, it was not covered under the definition of 'input service' in terms of Rule 2(l) of CCR, 2004.

7. I find that the issue involved in the present case stand decided by the Hon'ble CESTAT, Ahmedabad in appellant's own case for previous period vide Order No A/11917-11918/2018 dated 27.8.2018 reported as 2018 (10) TMI 626. The Hon'ble Tribunal has held that,



On careful consideration of the submission made by both the sides

and perusal of records, I find that the issue lie in narrow compass that whether the appellant is eligible to Cenvat credit in respect of service tax paid by Product Recall Insurance Policy. As per the facts of the case, the Product Recall Insurance Policy is taken by the appellant, as per condition of sale of the goods, without the said condition the goods cannot be sold to customer the Product Recall Policy is pre-decided before supply of the goods. Therefore. it cannot be said that the Product Recall Policy expenses is a post removal of expenses, once it is pre-determined the goods can be supplied only after the Product Recall Policy is taken then it becomes part of cost of the final product, during the manufacturing of the same. I also perused the order of the Commissioner (Appeals) in case of different assessee case i.e. in Orbit Bearing India India Pvt. Ltd (Supra). The Commissioner (Appeals) after detailed finding by interpreting the definition of the inputs service came to the conclusion that credit cannot be denied in respect of Product Recall Policy. The Ld. Commissioner (Appeals), in the impugned order though referred this order but discarded the same on the ground that it is not binding on him, without appreciating the views on merit taken.

5. In my considered view, unless until there is serious infirmity in order of the Commissioner (Appeals), in order to follows the principle of judicial discipline, the Ld. Commissioner (Appeals) should have given regard to that order of the other Commissioner (Appeals) who gone through the definition of the inputs service prevailing wherein the inclusive Clause of the services mentioned is 'security'. In the present case the Product Recall Policy expenses is born for the purpose of security of the goods. Therefore, for this reason also the service falls under the definition of input services.

6. As per my above discussion, I am of the considered view that the Service Tax paid in respect of product recall policy for sale of the finished goods is eligible for Cenvat Credit. Hence, impugned orders are set aside. The appeals are allowed."

8. I have also examined the relied upon case of CCL Products India Ltd. reported as 2019 (369) E.L.T. 780 (Tri. - Hyd.), wherein the Hon'ble Tribunal has held that,

"6. I find that the issue that arises for consideration is whether the appellant is eligible for credit of the service tax paid on "product liability insurance" and "product recall liability insurance". The department has denied the same on the ground that it is a post manufacturing activity and the liability arose only after goods were handed over to the buyers. As per the explanation



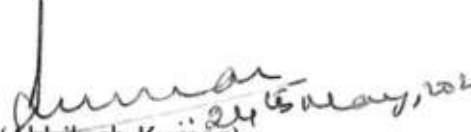
given by the appellant, it can be seen that the risk covers the defects with the products. In such cases, when there are defects in the products, the appellant/manufacture will have to recall the product and thereby incur huge financial loss. The insurance is for covering financial loss of the appellant/manufacture and it cannot be considered as a post manufacturing activity. The finance or raising of capital or adjustment of finances by way of taking insurance etc., falls within the inclusive part of the definition. This cannot be said to be opposed to manufacturing activity for the reason that said insurance policies addresses the financial risks of the manufacturer. It is not in dispute that the appellant's contention to use the insurance policies taken by them was in respect of their product and business activities. The lower authorities have summarily disposed of the contention recording that these insurance policies were not for manufacture of finished products. I find that this Tribunal in the case of *New Foods Pvt. Ltd. v. CCE & ST, Bangalore-II* as reported in 2017 (1) TMI 151 considered an identical issue and held in favour of the assessee holding that Cenvat credit is eligible and refund claim was sanctioned. I find that the disallowance of credit of this input service is unjustified and requires to be set aside, which I hereby do."

9. By following the above Orders of the Hon'ble Tribunal, I hold that the Appellant is eligible to avail Cenvat credit of service tax paid on Product Liability and Product Recall Insurance Policy. I, therefore, set aside the confirmation of demand of Rs. 2,80,000/- vide the impugned order. Since, the demand is set aside, recovery of interest and imposition of penalty of Rs. 2,80,000/- are also required to be set aside and I order accordingly.

10. In view of above, I set aside the impugned order and allow the appeal.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant is disposed off as above.


(Akritesh Kumar)
Commissioner (Appeals)

Attested

(V.T.SHAH)
Superintendent (Appeals)



By RPAD

To, M/s Bhavani Industries, Behind PTD Ground, Ganjiwada Road, Rajkot.	सेवा में, मेसर्स भवानी इंडस्ट्रीज़, पीटीडी मैदान के पीछे, गंजीवाड़ा रोड, राजकोट ।
--	--

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-1 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

