

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

COURT-II

Application No.E/S/790/12

Appeal No.E/526/12

Arising out of OIA No.CS/248/DMN/Vapi-I/2011-12, dt.22.03.12

Passed by Commissioner of Central Excise & Customs (Appeals),
Daman

For approval and signature :

Hon'ble Mr. B.S.V. Murthy, Member (Technical)

1

Whether Press Reporter may be allowed to see the Order for publication
as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

No

2

Whether it should be released under Rule 27 of CESTAT (Procedure)
Rules, 1982 for publication in any authoritative report or not?

Yes

3

Whether their Lordships wish to see the fair copy of the Order?

Seen

4

Whether Order is to be circulated to the Departmental authorities?

Yes

Appellant (s) : M/s. Craft Corner Paper Mills Ltd.

Represented by : Shri Rahul Gajera, Adv

Respondent (s) : CCE Daman

Represented by : Shri B.V. Joshi, A.R.

CORAM :

Hon'ble Mr. B.S.V. Murthy, Member (Technical)

Date of Hearing /Decision:24.08.12

ORDER No. _____ /WZB/AHD/2012

Per : Mr. B.S.V. Murthy;

1. Cenvat credit of service tax paid on clearing and forwarding services and some other services has been denied to the appellant on the ground that the invoices are not in the name of the appellant; in some invoices there is overwriting and there is no nexus between the input services and the final product manufactured by the appellant. After hearing both sides, I have reached the conclusion that the matter is required to be remanded for the reasons explained below and therefore with the consent of both the sides, the requirement of pre- deposit is waived and the appeal itself is taken up for final decision.

2. In this case appellant is engaged in the manufacture of MG craft paper and they import waste paper and use the same in the manufacture of final product. The services received are in relation to the importation of waste paper such as container charges, handling charges incurred in the port etc. When services have been rendered in respect of raw materials importation, it cannot be said that there is no nexus with the final product. Therefore the conclusion of the lower authorities that there is no nexus between input services and the final products cannot be accepted.

3. As regards the name of the appellant not being there in the invoices, the appellant had submitted before the lower authorities that they had received the input services and utilized the same in relation to manufacture of final products and therefore were entitled to the benefit of proviso to Rule 9(2) of Cenvat Credit Rules, 2004. According to this proviso if invoice does not contain all the particulars but contains the details of service tax payable, description of the service, assessable value, registration number of the service provider, details of the manufacture/first stage dealer/second stage dealer or provider of taxable service, the Assistant Commissioner if he is satisfied that services have been received and accounted for can allow the credit. This request in my opinion has not been considered in the spirit in which it has been introduced in the statute. The rule requires the Assistant Commissioner to verify whether the documents contain all the particulars which are required as per the proviso and whether conditions will have been fulfilled before denying the credit admissible to the appellant. If no such verification is done and if no credit is allowed without verifying what is mentioned in the proviso, the existence of the proviso will be of no use to any assessee. In this view of the matter, it is required that the lower authorities who have simply

denied this claim on the ground that the appellant's name was not found in some of the invoices are required to re-examine the issue and allow the credit if the appellant is able to fulfill the requirement of the proviso. It has also been observed by the lower authorities that since the appellant's name is not there in the invoice it is very difficult to prove that services have been used in the manufacture of dutiable final product by the notice. For this, I find that the submission made by the ld. counsel that in the invoices container numbers have been mentioned and bills of entry number have been given in attached which would facilitate verification as to whether the services were provided in respect of the raw materials imported by the appellant or not is appropriate. In any case, appellant may have to show that the persons whose names appear in the invoices have not availed cenvat credit so that availment of credit by more than one person can be avoided. Ld. counsel fairly admits that he would fulfill this obligation. Further, the Commissioner (Appeals) has distinguished the decision of the Tribunal in the case of M/s. Ajanta Textiles Ltd. on the ground that the present case deals with service provided to CHA who is a person other than the appellant and documents are not in the name of the appellant. This observation would not be appropriate in the case of invoices where the appellant's name also is incorporated and this was precisely the ratio of the decision in the case of *CCE v. Chamundi Textiles (Silk Mills) Ltd.* 2010 (258) ELT 141 (Trib. - Bang.).

4. The matter is remanded to the original adjudicating authority who shall adjudicate the matter afresh in the light of discussions above and further giving reasonable opportunity to the appellants to present their case. In the result, the impugned order is set aside and the matter is remanded to the original adjudicating authority.

(Dictated and Pronounced in the Court)

(B.S.V. Murthy)
Member (Technical)

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