IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

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Appeal No.E/1933/2010

Arising out of: OIA No.354/2010(Ahd-I)CE/MM/Commr(A)/Ahd, dt.26.10.10

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

For approval and signature:
Mr. B.S.V. Murthy, Hon↕ble Member (Technical)

1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? .

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:
M/s Sujal Dye Chem Industries

Respondent:
CCE Ahmedabad

Represented by:
Shri V.R. Mori, Consultant: for Assessee.
Shri S.K. Mall, A.R.: for the Revenue.

CORAM:
MR. B.S.V. MURTHY, HON↕BLE MEMBER (TECHNICAL)

Date of Hearing/Decision:11.05.12

ORDER No. /WZB/AHD/2012, dt.11.05.12

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

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1. The appellant is engaged in the manufacture of Dye Intermediate, falling under Chapter 29 of Schedule of Customs Excise Tariff Act, 1985. The appellant availed CENVAT Credit of Rs. 1,06,296/- being Service Tax charged by M/s Deloitte Tomsche Tohmatsu India Pvt. Ltd., New Delhi as professional fees for conducting audit of the appellant's project and preparation of report which was scrutinized by GTZ auditors. The purpose was to receive the grant of a sum of USD 2,47,500 as a part of CTC National Phase Out Plan. The National CTC Phase Out Plan came into being because of Ozone Depleting Substances (Regulation & Control) Rules, 2000 and it was required to be followed by any person producing or causing to produce any Ozone Depleting Substance. Based on the audit report, the appellant was required to modify the production process to phase out the CTC usage (by changing the raw material). Revenue entertained a view that the CENVAT Credit of Service Tax paid by the appellant is not admissible since it cannot be said to have been used in or in relation to manufacture. Accordingly, the benefit has been denied and further the amount taken as credit has been demanded with interest and penalty equal to the CENVAT Credit availed has been imposed as penalty. Hence the appeal.

2. Heard both the sides. I find that the stand taken by the Revenue is on the ground that the service received has no nexus with the manufacture at all Definition of input service in the CENVAT Credit Rules, 2004 is as under:

"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 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 services 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 requirement and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal."

3. It has been held by the lower authorities that unless an assessee is able to show that the input service has nexus with the manufacture of final product, the inclusive part would not be of any help. In this case, I find that the services have been obtained for the purpose of conducting audit of the process and change of raw material suitably and the same have been presented to GTZ to receive the grant so that the company

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can phase out the process, which cause depletion of ozone in the atmosphere. This was done for the purpose of implementation of provisions of relevant rules and as a part of National Plan. What emerges from the facts and circumstances of the case is that the activity undertaken by the appellant was to implement the national plan and ensure that the appellant follow the provisions of Ozone Depleting Substances (Regulation & Control) Rules, 2000. Even though the Service Tax has been paid for the purpose of obtaining services of the firm for preparation of the report and to receive the amount, the whole activity has a direct nexus with the manufacture and manufacturing process and is with the objective of reduction of emission of Ozone Depleting Substances.

4. Under these circumstances, I find that the stand taken by the Revenue that the service has nothing to do with the manufacturing process, is not correct. In view of the above, I find that the impugned order cannot be sustained. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

(Pronounced in Court)

(B.S.V. Murthy)

Member (Technical)

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