IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77595 of 2018

(Arising out of Order-in-Appeal No.61/CE/RKL-GST/2018 dated27.03.2018 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.)

M/s.Larsen & Toubro Limited
(Machinery & Industrial Production Division,
Kansbahal Works, Kansbahal, Dist.-Sundergarh, Odisha-770034.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate

.....Respondent

(Central Revenue Building, Rajaswa Vihar, Bhubaneswar-7)

APPEARANCE

Shri Avra Majumdar & Binayau Gupta, both Advocates for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75558/2022

DATE OF HEARING : 19 October 2022
DATE OF DECISION : 28 October 2022

P.K.CHOUDHARY :

M/s. Larsen & Toubro Limited (hereinafter referred to as the Appellant) had provided taxable services under the category of 'Consulting Engineering Services" and "Supply of Tangible Goods Services" during the period from October 2011 to March 2012 for a total value of Rs.2,22,75,660/- and discharged Service Tax of Rs.26,68,059/- by utilizing CENVAT Credit on inputs, capital goods and input services, which was available to them as a manufacturer of those goods under the Central Excise Act, 1944. Show Cause Notice dated 14.07.2015 was issued alleging wrong utilization of CENVAT Credit towards payment of Service Tax on output services. A detailed reply dated 14.08.2015 was filed by the Appellant denying the allegations

leveled in the Show Cause Notice. However, the Assistant Commissioner of Central Excise, Customs & Service Tax, Rourkela-II Division disallowed the CENVAT Credit of Rs.26,68,059/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 and ordered for recovery along with appropriate interest. Penalty of equal amount was also imposed under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On Appeal, the Ld.Commissioner(Appeals) upheld the Adjudication Order and rejected the Appeal before him on the ground that the CENVAT Credit which has been utilized for payment of Service Tax on output service has been availed as a manufacturer and should have been utilized for payment of duties related to manufacture of excisable goods and not for payment of Service Tax payable on output services provided by the Appellant. Hence the present appeal before the Tribunal.

2. The Ld.Advocate appearing on behalf of the Appellant submits that the Revenue has erred in appreciating the provisions of Rule 2 & 3 of CENVAT Credit Rules, 2004 which provided for inter-sectoral CENVAT Credit on goods and services. The amendment brought in CENVAT Scheme w.e.f. 10.09.2004 categorically permits cross-sectoral utilization of credit which was also stated by the Finance Minister in his speech on 8th July 2004for the Financial Year 2004-05. The Hon'ble Supreme Court in the case of K.P.Verghese [(1981) 131 ITR 594 (SC)] held that such speeches act as guidesfor interpretation of statutes to ascertain the intent of the legislature. He relies on the Tribunal's decision in the case of Tally Solutions Pvt.Ltd. Vs. Commissioner of Central Excise [2020 SCC OnLine CESTAT 149] and S.S. Engineers v. Commissioner of Central Excise [2015 (38) S.T.R. 614 (Tri.-Mum.)] affirmed by the Hon'ble Bombay High Court in 2016 (42) S.T.R. 3 (Bom.)]. The Ld.Advocate further submits that there is no statutory requirement of one to one co-relation or nexus between activities of payment of Service Tax against the CENVAT Credit availed on input, capital goods and input services.

3. The Authorized Representative for the Department reiterated the findings of the Order-in-Original and justifies the impugned order.

4. Heard both sides and perused the appeal records.

5. As submitted by the Ld.Advocate, the Finance Minister in his Budget Speech stated as follows:

> 148. There remains the service tax. I propose to take a major step towards integrating the tax on goods and services. Accordingly, I propose to extend credit of service tax and excise duty across goods and services. In order to neutralize the revenue impact of such extension, and keeping in mind the mean Cenvat rate, I propose to enhance the rate of service tax from 8 per cent to 10 per cent.

6. I find that in terms of Rule 3(1) a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of

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> (ix) The Service Tax leviable under Section 66 of the Finance Act -----
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> Paid on
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> (i)----------
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> (ii) any input service received by the manufacture of final product or by the provider of output services on or after the 10th day of September 2004.

From these provisions, I find that a manufacturer of excisable goods can take credit of CENVAT paid on input services and there is no such requirement for one to one co-relation and there is no bar on the utilization of CENVAT credit availed on input services for payment of tax on excisable goods so manufactured and cleared.

7. I also find that this issue is already settled in favour of the Appellant in various cases cited by the Appellant. I find that although the cases referred to are not identical in terms of the factual position, however, they decide the general principles that in respect of utilisation of credit there is no requirement of one to one correlation and cross utilisation of credit is permissible. C.B.E. & C. vide Letter F. No. 381/23/2010/862, dated 30-3-2010, clarified that Cenvat credit on

inputs, capital goods and input services which are used for manufacture of goods or for provision of services is available in a common pool and can be used for payment of Excise duty and/or Service Tax. Credit accumulated by the service provider or manufacturer on the input services availed as well as inputs is available for payment of Excise duty or Service Tax. Any *contra* view taken would defeat the very scheme of credit. It has been held in numbers of cases that as far as the inputs or input services are availed on payment of duty and as long as they are capable of being used in the provision of Service Tax and manufacture of excisable goods, credit cannot be denied and that there is no requirement of one-to-one correlation.

8. Further, Hon'ble High Court of Bombay, in the case of CCE, Pune-1 v. S.S.Engineers [2016 (42) STR 3 (Bom.)] observed as follows:

> *"Cenvat credit of input services-utilization thereof-cross utilization – no infirmity in Tribunal findings that the said credit can be utilized for payment of excise duty on goods manufactured by assessee and that such cross utilization is neither barred nor prohibited – accounting problems in such cases has been taken care of in CBEC circular dated 30.03.2010 – aforesaid interpretation of Cenvat Credit Rules by Tribunal being probable and possible, is not perverse – No substantive question of law, having been raised, Revenue's appeal dismissed – Rule 3 and 7 of Cenvat Credit Rules, 2004."*

In view of the above discussion, the impugned orders cannot be sustained and are therefore set aside. The Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in the open court on 28 October 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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