

**IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI**

**Appeal No. E/85322/2018**

(Arising out Order-in-Appeal No. PK/59/Appeal thane /Bhiwandi/2017-18 dated 12.10.2017 passed by the Commissioner of CGST & Central Excise, Bhiwandi)

Essel Propack Ltd.

Appellant

Vs.

Commissioner of CGST, Bhiwandi

Respondent

Appearance:

Shri Prasad Paranjape, Advocate for the appellant  
Shri D.S. Chavan, Supdt. (AR) for the respondent

CORAM:

**Hon'ble Dr. Suwendu Kumar Pati, Member (Judicial)**

Date of hearing : 30.05.2018

Date of decision : 31.08.2018

O R D E R No: **A/87216 / 2018**

Denial of cenvat credit to the appellant against payment made to a third agency i.e. M/s. Shree Kalamadevi Charitable Trust for imparting training to students of under-privileged section of society in discharge of corporate social responsibility is challenged before this Tribunal.

2. Facts given arise to this appeal is that appellant M/s. Essel Propack Ltd. situated in village Vadavali at Thane District manufactures multi layer plastic laminates falling

under chapter heading 39201012 & 39201012 of the Central Excise Tariff Act, 1985 and it has been availing cenvat credit facility under the Cenvat Credit Rules 2004. Audit was conducted in the factory and it was detected that between the period October 2009 and November 2010 cenvat credit of service tax amounting to ₹12,12,772/- was availed towards such company's commitment to corporate social responsibility (CSR) and audit pointed out the same to be inadmissible. Appellant was put to notice on the ground that such input service did not fall under the definition of input services given in Rule 2(I) of Cenvat Credit Rules 2004 for manufacture of appellant's final product. Upon reply, matter was adjudicated upon and holding the same to be inadmissible, Adjudicating Authority also had imposed interest and penalty on the appellant that was confirmed by the Commissioner (Appeals) GST & CE, Bhiwandi.

3. In his memo of appeal and during the course of hearing of appeal, Id. Counsel for the appellant submitted that the said expenditure was incurred by the company which was covered under the activities relating to business as provided under the definition of input services given in Rule 2(I) of the Cenvat Credit Rules 2004 and the services of students were utilised in relation to manufacturing business of the appellant since they were assigned duties to prepare data sheet, maintain production log book, support

preventive maintenance of machines, and assist production operators and in the process, they learn the nature of job that made them eligible to become future workers in factories.

4. Ld. Counsel for the appellant Shri Prasad Paranjape also pointed out with reference to judicial decision that the concept of business is not static and over the period of time, the expression involves complete care and concern for the society at large and the people of the locality in which business is located in particular for which the term activities relating to business is of wider ramification and corporate social responsibility is within its ambit that would cover rule 2(1) of the Cenvat Credit Rules for which he prays for purposive interpretation to be imported to the Rule governing cenvat credit.

5. In response, the Id. AR for the department submitted that there was no nexus of input services with the business activity of the appellant since CSR activities are welfare activities and not related to business/ production related activities. He further submitted that the service of imparting training have been provided by the trust M/s. Shree Kalamadevi Charitable Trust to the students of the weaker section of society and not by the appellant company itself and therefore there was no service provided by the

Trust against which cenvat credit is claimed by the appellant. Further, the appellant bifurcated the service input in three parts namely i) Canteen service ii) Supervision of students iii) Consultation and overall development of students and those services were received by the M/s. Shree Kalamadevi Charitable Trust from various tenders against which reimbursement of expenses were claimed by the trust and the same was reimbursed that would not fulfil the requirement of input service availed by the appellant. Ld. AR of the department also pointed out that Section 135 of the Companies Act effective from 01.04.2014 on mandatory CSR activities to be discharged by the company pertains to the period not covered under the period of dispute which was between October 2009 and November 2010 and therefore the contention of the Id. Advocate for the appellant that such obligation of CSR activity was discharged in compliance to statutory obligation is not to be accepted. In citing judicial decisions on these issues and highlighting the judgment reported in 2012 (26) STR 514 (Kar) in the case of Millipore India Pvt. Ltd. and 2010 (20) STR 456 in the case of Manikgarh Cement, Id. AR submitted that credit of service tax paid on input services for CSR were not covered under Cenvat Credit Rules for which the order passed by the Commissioner (Appeals) needs no interference by the

Tribunal since input services cannot be stretched to such an extent that it becomes practically illogical that would cover all activities of the appellant whether or not related to his business.

6. Heard from both sides at length and perused the case records, judicial precedent placed by both the parties, statutory provisions as well as the concept of CSR found mentioned in Section 135 of the Companies Act and the reason of incorporation of such a provision into Companies Act to reach at a definite conclusion as to if such CSR can be brought into the purview of the definition given under Section 2(l) of the Cenvat Credit Rules or the same was a charitable activity before being made a statutory requirement for certain categories of Industrial units/ Companies.

6.1. As found from the Handbook on CSR published by the Confederation of Indian Industry (CII) there is no single Universal accepted definition of CSR, though roots of CSR lie in philanthropy activity of Corporations globally. The concept of CSR has evolved and now encompasses all related concept including corporate sustainability since EC defines CSR as the responsibility of enterprises arose for their impact on society who should have in place a process to

integrate social, environmental, ethical human rights and consumer consciousness into the business operation and core statute in close collaboration with their stake holders. The World Bank CST defines CSR as "the continuing commitment by business to contribute to economic development while meeting the quality of life in the work place and their family as well as of the community and society at large." Similarly, United Nations IDO also defines it as a management concept whereby companies integrate social and environmental concerns in their business operations and interaction with stakeholders (not only with share holders). Therefore, CSR is generally understood as being the way through which the company achieves a balance of economic, environmental and social imperatives (triple bottom line approach), while at the same time it addresses the expectations of stake holders and shareholders. UNIDO further elaborates it by saying that in this sense it is important to draw a distinction between CSR, which can be a strategic business management, and charity, sponsorship or philanthropy. Even though the latter can also make a valuable contribution to poverty deduction, CSR will directly enhance

reputation of a company and strengthens its brand.  
The concept of CSR clearly goes beyond charity.

- 6.2. From the above definition, it is clear that CSR is not only a holistic approach but it has integrated the core business strategy since it addresses the wellbeing of all stake holders and not just companies shareholders.
- 6.3. The handbook further emphasises the usefulness or benefit of robust CSR programme and among the important outcomes, it stresses importance on four components namely:-
- i) Community's participation provide the licence to operate companies as government licenses would not suffice such smooth operation.
  - ii) It attracts and boosts employees and encourages them to participate by enhancing employees moral that they all belong to the company.
  - iii) Companies have invested in CSR to enhance community livelihood by incorporating them in their supply chain. This has not only benefited communities and increased their in complacency but has provided the company with additional or secure supply of raw material.

iv) It enhances the reputation of company, its goodwill by creating a positive image and branding benefits that continue to exist for companies who operate CSR programmes.

6.4. The essence of the above discussion would indicate that CSR is not a charity any more since it has got a direct bearing on the manufacturing activity of the company which is largely dependent on smooth supply of raw materials even from remote location or tribal belts (that requires no resistance in the supply chain from the community) and the same also augments the credit rating of the company as well as its standing in the corporate world.

7. Now coming to the issue in hand, the appellant's contention is that it had engaged youth from the lower strata of the society in its factory to provide them on the floor exposure to the production activities of the company and it so doing, it has engaged them in preparation of data sheet, maintenance of production log book, preventive maintenance of the machine and assist in production operation as well as transfer of raw materials etc. So the same is included within the manufacturing activities besides the fact that the purpose was to discharge CSR obligations. Further it also claims that such denial of cenvat credit

cannot be done at the receivers end in view of settled position of law.

8. The refusal of such cenvat credit availed by the appellant by the department, was mainly on three scores. First, CSR is a charity which is unrelated to production. Second, no direct service was availed by the appellant from the said Kalama charitable Trust as it had made the expenditure itself and sought reimbursement from the appellant. Third, the same is not in conformity to the Rules meant for raising of invoice as contemplated under Rule 9(2) besides being outside the scope of input service defined under Rule 2(I) of the Cenvat Credit Rules 2004 for which the credit as referred above was inadmissible.

9. The stand of the department is reiteration of the order-in-original passed by the Jt. Commissioner of Central Excise, Thane I that was also affirmed by the Commissioner (Appeals) Thane on the ground that the reimbursement of expenses is nothing but financial assistance in the form of charity made to Kalama Charitable Trust. Reliance has been placed on the decision of the CESTAT Chennai bench in 2011 (268) ELT 86 (Tri-Chennai) in holding such finding by the first appellate authority and justification of invocation of extended period was made by the Commissioner (Appeals) on the basis of finding given by the Hon'ble

Supreme Court reported in 2011 (264) ELT 861 (SC) and by the Hon'ble Gujarat High Court in 2010 (256) ELT 369 (Guj).

10. Appellant argued before this Tribunal with reference to the judgment passed in the case of *Coca Cola India Pvt. Ltd.* reported in 2009 (15) STR 657 (Mum) by the Hon'ble High Court of Mumbai and the Hon'ble Supreme Court reported in 1988 (36) ELT 201 (SC), that the expression "business" as found in the definition of "input service" is not confined or restricted to mere manufacture of products and it has wide importation that would include those activities which might both have a direct as well as indirect significance and it can cover all the activities that are related to the functioning of business for which the scope of the term "activities relating to business" referred in Section 2 is very wide.

10.1. To this, the reply of the Id. AR for the department is that even if such an activity was not carried out, the appellant's activity of manufacturing and sale of excisable goods would have continued. In placing reliance on the decision reported in *Millipore India Pvt. Ltd.* (supra) and decision of the Bangalore Tribunal in *Mangalore Refinery and Petrochemicals Ltd.* case reported in 2015 (10) STR 1093 that distinguished the *Mangalore Refinery* case. He thrust his emphasis on the copy of the agreement made between the

appellant and the M/s. Shree Kalamadevi Charitable Trust about which reference is also made in the order-in-original that although the Trust and the company specifically agreed with the training being provided by the company, it was purely towards CSR initiative driven by the company (para 13 at page 57 of the appeal paper book) and therefore no separate stand can be taken by it that students were engaged in the manufacturing activity. It pertains to the dispute for the year 2009-10. Therefore in the instant case without any statutory obligation, the activities of the appellant falls in the category of charity and not manufacturing.

11. To pin point the dispute, it is now to be looked into as to if CSR can be considered as input service and be included within the definition of "activities relating to business" and if in so doing, a company's image before corporate world is enhanced so as to increase its credit rating as found from the handbook of CSR activities discussed above. The answer is in the affirmative since to win the confidence of the stake holders and shareholders including the people affected by the supply of raw material from their locality say natural resources like mines and minerals etc. the hazardous emission that may result in production activities.

11.1. It has been argued by the Id. AR that in the Rajya Sabha, the Minister of Corporate Affairs stated on 22.02.2013 that there is no provision for CSR before introduction of Companies Bill 2012 but as found from the handbook referred, there was existence of such provision (may not be in the form of statutory provision) regarding discharging of CSR activities by the companies as it says that new guidelines issued by the DPE in April 2013 would replace two existing separate guidelines on CSR and sustainable development issued in 2010 and 2011 respectively. Therefore sustainability is dependent on CSR without which companies cannot operate smoothly for a long period as they are dependent on various stake holders to conduct business in an economically, socially and environmentally sustainable manner i.e. transparent and ethical. Hence in my considered view, CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake. The relied upon case laws, which have equated CSR only with charity and not covered the other aspects of CSR namely

triple bottom-line approach (discussed above), corporate citizenship, philanthropy, (charity just being a part only), strategic philanthropy, share value, corporate sustainability and business responsibility are of no application to the case on hand. Further, CSR activity being held as input service that was maintained by the appellant through an agency(Trust), the other dispute relating to suppression etc. that would attract extended period is not required to be discussed in the appeal, nor the part acceptance of the duty liability by the appellant. Hence the order –

#### Order

The appeal is allowed and the order passed by the Commissioner (Appeals) demanding duty, interest and penalty against input service availed by the appellant company towards fulfilment of CSR activity is hereby set aside.

(Pronounced in Court on .....)

**Dr. Suvendu Kumar Pati**  
**Member (Judicial)**