

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76541 of 2018

(Arising out of Order-in-Appeal No.12/Kol-III/2018 dated 29.01.2018 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s TDK India Private Limited

Kulia Kanchanpara Road,P.O.-Netaji Subhas Sanatorium, Kalyani,Nadia-741251

Appellant

VERSUS

Commissioner of CGST & Excise, Kolkata North

180 Rajdanga Main Road, Shantipally, Kolkata-700107

Respondent

Appearance:

Shri S.P.Majumdar, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

FINAL ORDER NO.75570/2022

DATE OF HEARING : 18.11.2022

DATE OF DECISION : 18.11.2022

PER P.K.CHOUDHARY :

The Appellant is engaged in the manufacture of soft ferrite parts/components falling under Tariff Heading No.85051110 of the First Schedule to the Central Excise Tariff Act, 1985. Show-cause notice dated was issued to the Appellant alleging wrong availment and utilization of cenvat credit on Air Travel Agency Service, Works Contract Service and Construction Service etc. The Adjudicating Authority has confirmed the demand as proposed in the Show-cause notice and appropriated a sum of Rs.35,536/-, which was paid/reversed by the Appellant. An amount of Rs.6090/- was also paid towards the interest liability. On appeal, the Id.Commissioner (Appeals) rejected the appeal before him and upheld the adjudication order. Hence, the present appeal before the Tribunal.

2. Heard both sides and perused the appeal records.

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3.1 The details in respect of the services for which Cenvat Credit was disallowed, are as under :

Sl. No.	Services	Credit confirmed in OIO (Rs.)	Credit reversed appropriated in OIO	Interest paid (Rs)	Credit disputed
1.	Air Travel Agency	14102	Nil	Nil	14,102
2.	Works Contract Service	3,80,599	24,296	4831	3,56303
3.	Construction Service	82,634	11,240	1,259	71,394
	Total	4,77,335	35,536	6090	4,41,799

I find that regarding Air Travel Agent/Rail Travel Agent Services, the Id. Commissioner (Appeals) observed that there is nothing on records to the effect that the said services have not been used primarily for personal purpose or for consumption of the employee. In this regard, it is my considered view that if the Travels were for personal purpose or consumption of an employee, it would not be provided by the Appellant Company and will not be debited to their Books of Accounts. Unless and until, the Travel is for business exigencies, the Company would not include the expenditure and debit the same in the Books of Accounts. The entire order of the Adjudicating Authority is very cryptic and there is no discussion to justify the conclusion drawn in the adjudication order. He has simply proceeded to confirm the demand as proposed in the show-cause notice.

3.2 Regarding "Works Contract Service", it has been observed in the impugned order that w.e.f 01.07.2012, vide Notification No.30/2012-ST, the reverse charge mechanism for Works Contract Service was introduced. I find that this Notification is applicable to individual/partnership firm and Hindu Undivided Family (HUF). It is not applicable to corporate assessee. The Appellant herein is a Private Limited Company and the services are supplied by Private Limited Company. Accordingly, this Notification is not applicable to the present case. Further, the Id. Commissioner (Appeals) has also referred to Notification No.26/2012-ST dated 01.07.2012 for valuation of service and abatement. This Notification is also not applicable to the facts of

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the present case. Therefore, the credit disallowed under the "Works Contract Service" cannot be sustained and the same is set aside.

3.3 Regarding, commercial and construction service, in this regard, the Ld.Commissioner (Appeals) has observed that the service recipient is required to make payment of the service value on service along with the service tax within three months from the date of issuance of invoice. It is the submission of the Ld.Advocate for the Appellant that this aspect was never raised either in the show-cause notice or in the Order-in-Original and the Ld.Commissioner (Appeals) has travelled beyond the scope of the Show-cause notice and this issue has been raised for the first time. He further submits that the payments were made within the normal period and therefore, the credit is rightly availed. Accordingly, the disallowance on this count is set aside.

3.4 Regarding Air Travel Service, it is submitted that when it is not in dispute that the said services were used only for the Company's Executives to travel to achieve the business objective and has not been used for employees' personal necessity, the credit of service tax paid on such services, cannot be denied in view of the decisions in the cases of Arkema Paroxides India Pvt. Ltd. Vs. CCEx., Pondicherry : 2016-TIOL-1353-CESTAT-MAD, Goodluck Steel Tubes Ltd. Vs. Commissioner of Central Excise, Noida : 2013 (32) STR 123 (Tri.-Del.) and Innovasynth Technologies (I) Ltd. Vs. CCE, Raigad : 2015 (38) STR 1232 (Tri.-Mum.).

4. In view of the above discussions, the impugned order cannot be sustained and accordingly, the same is set aside.

5. The Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

Dictated and pronounced in the open Court.

Sd/
(P.K.Choudhary)
Member (Judicial)

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