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Dear Professional Colleague,

Services for installation of storage tank for storage of inputs outside factory are input services

We are sharing with you an important judgement of Hon'ble Mumbai High Court in the case of **M/s Deepak Fertilizers and Petrochemicals Corpn. Ltd. Versus Commissioner of Central Excise [(2013) 32 taxmann.com 135 (Bombay)]** on following issue:

Issue:

Whether Services in relation to erection, commissioning and installation of storage tank for storage of imported inputs/ammonia outside factory are eligible as input services?

Facts:

In the instant case, M/s Deepak Fertilizers and Petrochemicals Corpn. Ltd. ("**the Company**") was engaged in the manufacture of excisable goods and provision of output services. The Company installed ammonia storage tank facility at its premises in Raigad for storage of imported ammonia, which was raw material meant for manufacturing of final product at its factory. The Company availed Cenvat credit of service tax paid on input services used in relation to erection, commissioning and installation of said storage tank. The Department denied credit arguing that services received in connection with the activity of installation of storage tank which was immovable property and outside factory premises were not input services.

Held:

The Mumbai High Court held in favour of the assessee that the Company was eligible to avail Cenvat credit of service tax paid on input services.

The Hon'ble High Court placed reliance on Rule 3(1) of Cenvat Credit Rules, 2004 ("**the Credit Rules**"). Rule 3(1) allows a manufacturer of final products to take credit inter alia of duty/service tax which is paid on:

- i. any input or capital goods received in the factory of manufacturer of the final product; and
- ii. any input service received by the manufacturer of the final product.

Hence, it may be observed that Rule 3(1) makes a distinction between inputs or capital goods on one hand and input services on the other. Clause (i) of Rule 3(1) provides that a manufacturer can take credit of duty paid on any input or capital goods received in the factory of manufacture of the final product. However, such restriction is not imposed in

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regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product.

Further, it was concluded that definition of the expression 'input service' under Rule 2(l) of the Credit Rules covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are of wide connotation. The first part of Rule 2(l) *inter alia* covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. The Hon'ble High Court rejected the contention of the Tribunal that only two categories of services in relation to inputs *viz.* for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l).

Therefore, it was concluded that the input services in the present case were used by the Company whether directly or indirectly, in or in relation to the manufacture of final products. The Company was manufacturing dutiable final products and the storage & use of ammonia is an intrinsic part of that process. Hence, the Company was entitled to avail credit of input services used in relation to erection, commissioning and installation of storage tank facility for storage of imported inputs/ammonia outside factory.

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards.

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