

**GIB/MH/ESSEL PROPACK/25.03.2021/HC-239**

**High Court Category :** CENVAT CREDIT

**State :** Maharashtra

**Order No.:** GIB/MH/ESSEL PROPACK/25.03.2021/HC-239

**Name of Entry :**  
ESSEL PROPACK LIMITED

**Date :** 25-03-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

In this case the petitioner, Essel Propack Limited is engaged in the business of manufacturing multi-layered plastic flexible laminated collapsible tubes and multi-layered plastic flexible laminated web classifiable under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985.

In the course of excise audit of the petitioner's record carried out during February, 2013 for the period from October, 2010 to September, 2012, the auditors took the view that petitioner had availed ineligible credit of service tax paid on certain input services on the strength of documents not covered under Rule 9(2) of the CENVAT Credit Rules, 2004. This led to issuance of show cause-cum-demand notice dated 23.12.2015 by the Joint Commissioner of Central Excise, Thane-1 Commissionerate. Amongst other allegations made it was alleged that petitioner had availed wrongful credit of service tax amounting to Rs.36,224.00 for the period from October, 2011 to July, 2012 in respect of labour services used for civil work, shifting of machinery, etc.

It was alleged that as the services for which CENVAT credit was availed of was not connected with manufacturing activities of the petitioner, the same could not be termed as input service and hence not admissible. The Petitioner replied to the show cause-cum-demand notice. In so far the above allegation was concerned, petitioner contended that the credit taken by the petitioner on the disputed labour charges was correctly availed of by the petitioner. A personal hearing was also granted to the petitioner.

**Decision of Advance Ruling Authority :**

**DECISION:**

The fraud has serious civil as well as criminal consequences. To constitute the offence of fraud there must be intent to deceive. That apart, a finding of fraud is a stigma which is a

reflection on the integrity of a person or of a corporate entity.

The basic allegation against the petitioner pertaining to availing of CENVAT credit on account of labour services as could be discerned from the notice to show cause-cum-demand dated 23.12.2015 was that the services for which the CENVAT credit was availed of was not connected with the manufacturing activities of the petitioner. Therefore, such claim was held to be inadmissible - petitioner's availment of CENVAT credit was being denied by the adjudicating authority on merit and not on the ground that the invoices were manufactured or manipulated.

Since the tax dues of the petitioner have been settled under the amnesty scheme, the court would refrain from examining the ultimate decision of CESTAT in rejecting the appeal. The examination would be confined to the finding recorded by CESTAT that the petitioner had played fraud and the consequential rejection of the rectification application on this point. "Fraud cannot be said to have been proved; it was merely alleged and an inference of fraud was drawn. Therefore, CESTAT was not justified in rejecting the application filed by the petitioner for recalling the finding of fraud and additionally in imposing cost," the court while quashing the CESTAT order said.

Petition allowed.