

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Neutral Citation No. 2024:PHHC:022965-DB

(105)

CEA-16-2022

Decided on : 01.02.2024

Commissioner of Central Excise, Delhi-III

.....Appellant

Versus

Suzuki Powertrain India Ltd.

.....Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr. Sourabh Goel, Sr. Standing Counsel
for the appellant.

Mr. Amrinder Singh, Advocate for the respondent.

G.S. Sandhawalia, J.

The present appeal filed under Section 35 (G) of the Central Excise Act, 1944 (for short 'the Act') is directed against the order of the Customs, Excise & Service Tax Appellate Tribunal dated 20.03.2018 (Annexure A-3) wherein the appeal filed by the assessee was allowed. Vide the said order, the Tribunal granted the benefit of Cenvat credit on Air Travel Agent Service, Catering Service, CHA Service (Export), Courier Service, Event Management Service, Group Term Insurance Service, Hotel Service, Rent a Cab/Car Service, Repair and Maintenance Service (Car), Tour and Travel Service and Construction Service, which had been denied by the authorities below.

2. The reasoning which weighed with the Tribunal was that the judgment in **Commissioner of Central Excise Vs. Ultratech Cement Ltd., 2010 (260) ELT 369 (Bombay)** had held that if any service is availed by the assessee in the course of their business of manufacturing,

the entitlement would be there to avail the benefit of Cenvat credit. The

only exception which was granted regarding catering service and rent a cab service was that it is for the adjudicating authority to ascertain whether any amount towards the service had been recovered from the employees or not. In case it had been done so, then the Cenvat credit would not be admissible and for that purpose the matter had been remanded to the adjudicating authority to ascertain only on the limited aspect.

3. Mr. Goel has vehemently submitted that the said judgment passed in **Ultratech Cement Ltd. (supra)** was not interfered on account of the fact that the tax effect was nominal. Therefore, he seeks to distinguish the reasoning which has been recorded by the Tribunal, by taking us through the chart which has been reproduced in the show cause notice. Primarily focus is on the fact that out of Rs.1,77,04,194/- amount which was sought to be recovered as Cenvat credit, out of that for construction service a sum of Rs.1,33,14,936/- was an issue, which he had sought to argue and contended that the construction service could not be used directly or indirectly in relation to the manufacture of the final products.

4. Counsel for the respondent on the other hand relies upon the judgment passed in Commissioner of **Central Excise Vs. Bellsonica Auto Components India P. Ltd., 2015 (4) STR 41**, rendered by a Division Bench of this Court, in which one of us i.e. G.S. Sandhawalia, J, was a member. It is, accordingly, contended that the issue had been gone into in detail and in similar circumstances a factory had been constructed for manufacturing of the final products, namely, metal sheets. He, accordingly, contended that the means part is to be kept in mind, while referring to Rule 2 (1) of the Cenvat Credit Rules, 2004 (for short '2004 Rules'). Counsel has also placed reliance upon the judgment of

Commissioner of **Central Excise Vs. Maruti Suzuki India Ltd., 2017 (49) STR 261**, another Division Bench judgment of this Court. The issue in the said case regarding Cenvat credit was on account of service tax paid on Mandap Keeping Service and Rent a Cab Services was subject matter of consideration, wherein principles laid down in **Ultratech Cement Ltd. (supra)** had been kept in mind.

5 Counsel for the respondent has also taken us to the reasoning of the Commissioner, who denied the said relief wherein it was held that services would not mean to cover services remotely or in a roundabout way to contribute to the manufacturing of final products, though the definition may be wide. Accordingly, vide its order dated 23.02.2011 (Annexure A-2) while dealing with the issue which pertained to the year 2005 to 2008, it was held that however remote and indirect it may be is not what is contemplated by the definition and a line has to be drawn to avoid undue extension of the term directly or indirectly or in relation to by adopting a common sense approach. Reliance has placed upon the judgment passed in **Bellsonica Auto Components (supra)** to point out that a similar approach had been done by the Commissioner in that case which had been noticed by this Court while rejecting the appeal of the revenue and upholding the order of the Tribunal, which had granted the benefit Cenvat credit.

6. Section 2(1) of the unamended 2004 Rules reads as under:-

“2(1) “input service” means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and [clearance of final products, upto the place of removal]”

7. It is not disputed that the M/s Maruti Suzuki is one of the biggest car manufacturer in India and in collaboration with its Japanese parent company is engaged in the distribution and sale and supply of the vehicles and construction had been raised by the respondent-company, which is inextricably linked with the present company, on the basis of which they want to take benefit of Cenvat credit was sought to be denied on the ground that the same was not used directly or indirectly by the manufacturer of the final products as industrial construction service or works contract service. It is, accordingly, the case of the revenue that construction service is not a result of input service which was used for immovable property directly or indirectly in relation to the final products.

8. In **Bellsonica Auto Components (supra)** it was held that service tax paid on the civil work and on lease rentals was admissible once the land which was taken on lease to construct the factory was being used by the manufacturer even indirectly by the manufacturer of the final products namely metal sheets and the benefit could not be denied.

Relevant portion of the said judgment reads as under:-

“6. The department contended that the said services were not eligible for Cenvat Credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of “input service” is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of “input service” and that a line has to be drawn somewhere to avoid undue extension of the phrases ‘directly or indirectly’ and ‘in or in relation to’ by adopting a common sense approach. Immovable property

is neither service nor goods and, therefore, input credit cannot be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to service tax. In this regard, the Commissioner referred to a CBEC Circular dated 04.01.2008. The Commissioner also held that the service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. metal-sheet.

7. We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat Credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(1) by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.

8. The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly

in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(l) aptly referred to by Mr. Amrinder Singh as the "means part".

9. The respondents' case also falls within the second part of Rule 2(l) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(l)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(l)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product."

9. In such circumstances, the findings of the Tribunal denying the said benefit had been set aside in the said case, which would be directly applicable to the present case, which was also for the period from 2007 to 2010. It was also noticed the amendment made in the year 2011 to Rule 2(l) of the 2004 Rules went on to show that services were excluded from the definition of 'input service' thereafter and if the services were not covered by the said rule, it would not have been necessary to introduce the amendment. Therefore, it was held that the setting up of a factory premises providing for output services would fall into the definition of 'input service' and the amendment was not retrospective and not applicable.

10. In **Central Excise Vs. Maruti Suzuki India Ltd (supra)**, the Division Bench granted the benefit under Mandap Keeping Service and Rent a Cab Service and while relying upon the judgment passed in **Coca Cola India Pvt. Ltd. vs. Commissioner of Central Excise, 2009 (15) STR 657** and definition of ‘input service’ as such was considered by holding that same should be ordinary allowed as long as a connection would be there between input stage goods and service and the interpretation of the revenue would be against the Cenvat credit scheme. In similar circumstances in **Commissioner of Central Excise, Delhi-III Vs. Maruti Suzuki India Ltd., 2023 (11) TMI 724**, considering all the judgments and noting the fact that the Coordinate Bench has already examined the aspect keeping in mind the expansive view, the appeal filed against the order of the Tribunal was dismissed.

11. Resultantly, keeping in view the above, we are of the considered opinion that no substantial question of law arises as contended by counsel for the appellant. The appeal stands dismissed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

01.02.2024
Naveen

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No