

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MRS.JUSTICE ANITA SUMANTH

C.M.A No. 2586 of 2016

Commissioner of Central Excise III
121 Nungambakkam High Road
Chennai - 600 034. Appellant

Vs.

M/s. Visteon Automotive Systems
India (P) Limited
Keelkaranai Village
Chengalpattu
Kancheepuram - 603 204.Respondent

Prayer: Appeal filed under Section 35G of Central Excise Act,
1944 to set aside the final order No.40753 of 2016 dated
09.05.2016 on the file of the respondent.

For appellant : Mr. A.P. Srinivas

For respondent : Mr.Raghavan Ramabadran

J U D G M E N T

(Judgment of the Court was made by HULUVADI G. RAMESH,J.)

This Appeal is filed by the Revenue, challenging the order passed by the Tribunal against the order of the Commissioner (Appeals) referring to the decision of the Apex Court in the case of Ramala Sahkari Chini Mills Ltd., vs. CCE Meerut [2010 (260) ELT 321 (SC)]. The Tribunal has held that no evidence is adduced by the Revenue to impeach the order of the Commissioner (Appeals) and such a decision can be taken by the Commissioner on appeal.

2. The brief facts of the case is that the assessee has availed the Cenvat Credit facility on input services of tour operators for transportation of their employees to the factory and the rent a cab service for official purpose of the company. The department issued a show cause notice and objected the same on the ground that tour operator and rent a cab services do not fall within the ambit of definition 'input services' specified under Rule 2(1) of the Cenvat Credit Rules, 2004. Holding that the services of tour operator and rent a cab, engaged by the assessee cannot be treated as input services since they were neither used in or in relation to the manufacture or clearance of final product nor it could be said to be an activity relating to business, disallowed the Cenvat credit and ordered for recovery of the same. The assessee filed an appeal, challenging the order dated 15.05.2007 issued by the adjudicating authority mainly on the grounds that the input services of tour operator was received for transportation of their own employees to the factory and the rent a cab services for the official purpose of the company. It was further stated that the employees and workers are engaged in the manufacture and clearance of final products from various places to the factory and that the tour services were availed in relation to manufacture of excisable goods. Considering the decisions relied on by the assessee, the Commissioner (Appeals) allowed the appeal on 18.07.2008. Challenging the same, the department filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal. The Tribunal by its order dated 09.05.2016 dismissed the appeal, based on the ratio laid down by the Apex Court in the case of Ramala Sahkari Chini Mills Ltd. (cited supra). Aggrieved with the same, the department has come on appeal before this Court.

3. Heard learned counsel for the appellant/ department and learned counsel for the respondent/ assessee. By consent the matter was taken up for final disposal.

4. The issue involved is whether the assessee is eligible to avail the input service credit for the tour operator service and rent a cab service. The assessee is entitled to have a proper and reasoned order by the Commissioner (Appeals). The scope of definition to the word "includes" has to be given a wider meaning and not a restricted meaning. The word "includes" denote "in relation to manufacture or clearance of final products" or "in relation to providing an output service". As claimed by the assessee all input services relating to 'activities relating to business' are eligible for service tax credit due to use of word 'such as' in the definition. As per Oxford Dictionary, the word "Business" means a commercial enterprises or establishment. According to the department neither the tour operator services nor rent a cab services have

any nexus with the manufacture of goods. It is only picking up and dropping the workmen at the factory of the assessee. The department has not stated that the assessee had not made payment on the value of input services and the service tax payable thereon. Reference of this Court is drawn to sub section (i) and (ii) of Rule 2 (1) of the Cenvat Credit Rules, 2004, wherein the 'input services' is defined elaborately. It is the finding of the Commissioner (Appeals) that picking up and dropping in the course of production of components and the services extended to the workmen shall also be treated as import services. Accordingly, the exemption is granted explaining the definition of input services including picking up and dropping of workmen.

5. Having noted, availing of such services are necessary to the manufacture and transporting the workers to and fro from the factory is included under input services, in relation to the manufacture of excisable goods. Hence the appellate authorities have held that the services availed has nexus to the manufacture of goods. As such, the extended services defines not only input services but includes picking up workmen from Chennai to Chengalpattu. It is part of the services being extended and also when it is noted that the services of the cabs are used for the official purpose of the workers to the factory, the services could be considered as input services that is used in relation to the manufacture of excisable goods.

6. As such, we do not find any fault with the order passed by the Commissioner or the Tribunal, based on the ratio laid down by the Apex Court in the case of Ramala Sahkari Chini Mills Ltd., (cited supra). This Court has already decided the same issue in favour of the assessee, in a batch of writ petitions, on 26.02.2015 in the case of Commissioner of Central Excise and Service Tax vs. M/s. Turbo Energy Ltd., in C.M.A Nos. 157, 358, 2363, 2864 and 2568 of 2010 and also through subsequent orders it is confirmed that the assessee is eligible for the service credit as input services for the tour operator service and rent a cab service. Being a settled issue, the appeal of the department is rejected.

7. In view of the above, the C.M.A is dismissed, affirming the order of the CESTAT. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

The Appellate Tribunal
(The CESTAT), South Zonal Bench
Chennai.

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No.72615

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.72483

nm(CO)

rs(09/01/2017)

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