

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

CEA No.9 of 2016 (O&M)
Date of decision: October 21, 2016

Commissioner of Central Excise Delhi-III -----Appellant

Versus

M/s Maruti Suzuki India Ltd. -----Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Ish Puneet Singh and
Mr.Tajender K. Joshi, Advocate
for the appellant-revenue.

Mr.Amrinder Singh Advocate
for the respondent.

HARINDER SINGH SIDHU, J.

This order shall dispose of above mentioned two appeals bearing Nos.CEA 9 of 2016 and CEA 73 of 2015 as identical issues of fact and law are involved therein. However, the facts are being taken from CEA No.9 of 2016.

2. The appeal was admitted for consideration of the following substantial questions of law arising out of the order dated 14.05.2015 passed by the Customs Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for the short 'the Tribunal') in Excise Appeal Nos.3614-3615 of 2012 pertaining to the assessment years 2009-10 and 2010-11.

“(i) Whether the respondent can avail CENVAT credit on account of Service Tax paid on Mandap Keeping Services and Rent-a-Cab Services by treating the same as input services?

- (ii) Whether the respondent has contravened the provisions of sub-Rule (1) of Rule 3 CENVAT Credit Rules, 2004?
- (iii) Whether the CENVAT credit availed by the respondent is liable to be recovered from them under Rule 14 of the CCR-2004 read with proviso to Section 11A (1) & Section 11AB of the Central Excise Act, 1944?
- (iv) Whether the respondent has rendered themselves liable to penalty under Rule 15(2) of the CENVAT Credit Rule, 2004 read with Section 11AC of the Central Excise Act, 1944?
- (v) Whether Interest leviable at the appropriate rate is also recoverable from them on the inadmissible CENVAT credit under Rule 14 of the CENVAT credit, 2004 read with section 11AA of the Central Excise Act, 1944?"

3 The facts relevant for the present appeals are that the respondent - assessee is engaged in the manufacture of motor vehicles and parts thereof falling under Chapter Heading 87 of Central Excise Tariff Act, 1985. It is also availing CENVAT credit of the duty paid on inputs, input services and capital goods used in the manufacture of motor vehicles under CENVAT Credit Rules, 2004 (for short "the 2004 Rules").

The case of the Revenue is that during the course of local audit conducted by the office of Accountant General, Haryana Chandigarh from 18.12.2008 to 05.01.2009, it was noticed that the respondent- assessee had paid service tax of ₹22,84,560/- on account of Mandap Keeper Service during 2007-08 and availed CENVAT credit for the same. It was also noticed that the respondent assessee had paid service tax of ₹6,07,104/- on account of Rent-a-Cab service during the period 2007-08 and availed CENVAT credit for the same. In total the respondent had availed CENVAT credit amounting to ₹82,86,163/- on both the aforementioned services during the period December, 2004 to March, 2009 which was not admissible to

them as these services were not 'input services' in relation to the manufacture of the final product. Accordingly, periodical demands were issued to the respondent M/s MSIL for each financial year.

5. In the financial years 2009-10 and 2010-11, to which the present appeals pertain, respondent- assessee had availed CENVAT credit amounting to ₹15,40,628/- (₹4,82,197.83 + ₹10,58,430.19) & ₹41,49,437/- (₹33,82,845/- + ₹7,66,592/-) on Mandap Keeper Service and Rent-a-Cab Service for its Gurgaon and Manesar Plants. The Commissioner, Central Excise, Delhi-III was of the opinion that the Mandap Keeper Service used by the assessee to organize meetings and events for promotion of their product such as launch of new vehicles, business needs, conferences, etc. had no nexus with the manufacture of final product and accordingly, it was not 'input service'. Similarly, the Rent-a-Cab service used for the purpose of travelling required for business meetings, visit to dealers, vender sites, dealers' meets, business promotion activities etc. had no nexus with the manufacture of the final product. It was accordingly held vide Order- in-Original dated 16.08.2012 (Annexure A-3) that the credit of service tax in respect of Mandap Keeper Service and Rent-a-Cab service was not admissible to the assessee. Additionally, the assessee was also ordered to pay interest and penalty. The respondent filed appeal before CESTAT and the Learned the Tribunal vide final order dated 14.05.2016 (Annexure A-4) set aside the orders and allowed the appeals.

6 Learned counsel for the appellant has argued that Ld. the Tribunal has failed to appreciate that the very nature of Mandap Keeper and Rent-a-Cab services reveals that these services have been utilized after

clearance of the goods upto the place of removal. These services have not been used by the respondents, whether directly or indirectly, in or in relation to manufacture of final product, and clearance of final product upto the place of removal. Hence, these services cannot be termed as 'input services' by the respondent for manufacture of final product. He has argued that the benefit is admissible only if an integral connection could be shown between the service and the business of manufacturing of motor vehicle. He has further argued that neither the activities of Mandap Keeper or Rent-a-Cab service is mentioned in the list of activities enumerated in the definition of 'input service'.

7. Learned counsel for the respondent on the other hand contended that it had availed the Mandap Keeper Services to organize meetings and events for promotion of their products such as a new vehicle launches, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. These services are important for the respondent to promote the sale of vehicles and therefore, are integrally connected to the business of manufacture of the respondent.

8 It was further submitted that the 'Rent-a-Cab' service was used for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launches, conferences etc. Therefore, it is clear that expenditure incurred on Rent-a-Cab service is a business expenditure incurred by the respondent in order to promote the sales and for efficient running of the business. The Karnataka High Court in the case of CCE Vs. Stanzen Toyotetsu India (P) Ltd. 2011 (23) STR 444 (Kar.) held that the manufacturer is eligible to take credit on Rent-a-Cab

services used for transporting employees and the said services is integrally connected with the business of the manufacturer.

9. He further argued that the cost of services of Rent-a-Cab and Mandap Keeper received, become a part of the assessable value of the final product, on which excise duty is paid, therefore, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services. He argued that this ground was specifically pleaded before the Tribunal and there is no rebuttal thereof by the appellant.

10. With respect to Rent-a-Cab service, it was additionally argued that it was only in the definition of 'input service' as incorporated by the CENVAT Credit (Amendment) Rules, 2011 which came into force w.e.f. 01.04.2011 that a Rent-a-Cab service was specifically excluded from the definition of 'input service'. He accordingly contended, that the necessary implication is that before this amendment, CENVAT credit was admissible in respect of Rent-a-Cab service. In this regard, he pointedly made a reference to circular dated 29.04.2011 issued by the Government of India to clarify certain issues relating to CENVAT Credit Rules. At Sr.No.12 of the said Circular, the question for clarification was : 'Is the credit available on services received before 01.04.2011 on which credit is not allowed now, example, Rent-a-Cab service?'. It was clarified that: 'The credit on such service shall be available if its provision had been completed before 01.04.2011'. Ld. Counsel further referred to a decision of this Court in **Commr. Of C.Ex., Delhi-III vs. Bellsonica Auto Components India P. Ltd., 2015(40) S.T.R.41 (P&H)**, wherein, construing the same amendment of 2011 to Rule 2(1), whereby, the construction services were also excluded

from the definition of 'input service', it was held that this implied that prior to this amendment, the said activity was covered by Rule 2(l). This Court had observed that if the said service was not covered by Rule 2(l), it would not have been necessary to introduce the amendment. It was also observed that the amendment not being retrospective, would not retrospectively exclude this activity from the said definition. For the same reasons, it has been contended that Rent-a-Cab service fell within the definition of 'input services' before its specific exclusion vide amendment of the 2011 w.e.f. 01.04.2011.

11. We have heard Learned counsel for the parties and gone through the paper-book.

Relevant Rules and statutory provisions

12. The relevant Rule 2(l) of the CENVAT Credit Rules, 2004 (as amended by CENVAT Credit (Amendment) Rules, 2008), which defines the term 'input service' is as under:-

*"2(l) "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, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

13. Vide the CENVAT Credit (Amendment) Rules, 2008, which came into effect on 01.04.2008, Clause (l) of Rule 2 was amended, whereby,

for the words 'clearance of final product from the place of removal' the words 'clearance of final product upto the place of removal' were substituted.)

14. By the CENVAT Credit (Amendment) Rules, 2011, which came into effect from 01.04.2011, the CENVAT Credit Rules, 2004 were again amended. Thereafter, the definition of 'input service' reads as under:-

*“(l) “input service” means any service, -
(i) used by a provider of taxable service for providing an output service; or
(ii) used by a 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,
and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-
(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-
(a) construction of a building or a civil structure or a part thereof; or
(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or
(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;”*

“(105) "taxable service" means any service provided (or to be provided)-

 $x\mathcal{X}$

“The CENVAT Credit Rules, 2004 were amended along with the Budget 2011 announcements vide Notification 3/2011-C.E. (N.T.) dt. 1-3-2011. A few changes were further effected vide Notification 13/2011-C.E.- (N.T.), dt. 31-3-2011. On a few issues trade has requested for clarity. Accordingly the following clarifications are presented issue wise in a tabular format.

<i>1 to 11</i>	<i>Xxx</i>	<i>Xxx</i>
<i>12.</i>	<i>Is the credit available on services received before 1-4-2011 on which credit is not allowed now? e.g. Rent-a-service?</i>	<i>The credit on such service shall be available if its provision has been completed before 1-4-2011</i>

The appellants therein manufactured non-alcoholic beverage bases also known as concentrates. These concentrates were sold under the respective

brand names such as Coca Cola, Fanta etc. The concentrate was sold by the appellants to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors who in turn sold it to retailers for ultimate sale to the customers. The question for consideration was whether the Appellants therein, were eligible to avail credit of the service tax paid on advertising services, sales promotion, market research and the like availed by them and utilize such credit towards payment of excise duty on the concentrate. Credit had been denied on the ground that the advertisements did not relate to concentrates manufactured by the Appellants. The Court held that from the use of the expression 'means' and 'includes' in Rule 2(1) it is clear that the definition is meant to be exhaustive. By the word 'includes' services which may otherwise not come within the ambit of the definition clause are included and by the word 'means' these are made exhaustive.

18. Analysing the definition of 'input service' the Court held that it could be effectively divided into the following five categories, in so far as a manufacturer is concerned:

- “(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products*
- (ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal*
- (iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory.*
- (iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,*
- (v) Services used in relation to activities relating to business and outward transportation upto the place of removal.”*

19. The Court held that the expression business being an

integrated/continuous activity, it could not be merely restricted to the manufacture of the product. In the absence of any qualifying words before the term 'activities in relation to business', it had to be construed widely and would cover all activities which were related to the functioning of the business.

“25. The expression Business is an integrated/continuous activity and is not confined restricted to mere manufacture of the product. Therefore, activities in relation to business can cover all the activities that are related to the functioning of a business. The term business therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In a case like the present, business of assessee being an integrated activity comprising of manufacture of concentrate, entering into franchise agreement with bottlers permitting use of brand name by bottlers promotion of brand name, etc. the expression will have to be seen in that context See (i) Pepsi Foods Ltd. v. Collector, 1996 (82) E.L.T. 33, (ii) Pepsi Foods Ltd. v. Collector, 2003 (158) E.L.T. 552 (S.C.).

27. Similarly, the use of the word activities in the phrase activities relating to business further signifies the wide import of the phrase “activities relating to business. The Rule making authority has not employed any qualifying words before the word activities, like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase “activities relating to business” are words of wide import.”

20. Further, in view of the fact that the advertisement and sales promotion expenses of the bottled product formed part of the sales price of the concentrate on which duty was charged and paid it was held the Revenue could not contend that availing credit of service tax was not allowable. The Court emphasized that where any input service forms a part of the value of the final product, it should, both conceptually and as a matter of policy, be eligible for the benefit of Cenvat Credit.

“34. It is therefore, clear that the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. manufacturer or service provider. In order to avoid the cascading effect, the benefit of cenvat credit on input stage goods and services must be ordinarily allowed as long as a connection between the input stage goods and services is established. Conceptually, as well as a matter of policy, any input service that forms a part of the value of the final product should be eligible for the benefit of Cenvat Credit.”

38. Service tax therefore, paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. In other words, credit of input service must be allowed on expenditure incurred by the assessee which form a part of the assessable value of the final product. If the above is not done, as sought to be done by the department in the present case, it will defeat the very basis and genesis Cenvat i.e. value added tax.”

21. The Court held that it was not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising. As long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product, the manufacturer could avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. It was held that these tests would also apply in the case of sales promotion.

22. This judgment was followed in Commissioner of C. Ex. Nagpur v. Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Bom.) where the question was whether outdoor catering services are covered under the inclusive part of the definition of “input service”. Answering in the affirmative it was held definition of “input service” is very wide and covers

not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, whether, prior to the manufacture of final products or after the manufacture of final products.

It was observed as under:

“28. In the present case the question is whether outdoor catering services are covered under the inclusive part of the definition of “input service” The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing etc. Thus, the substantive part of the definition “input service” covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of “input service” covers various services used in relation to the business of manufacturing the final products. In other words, the definition of “input service” is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.”

34. Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.

35. The argument of the Revenue, that the expression “such as” in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of “input

service” as well as the inclusive part of the definition of “input service” putport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing.... etc. Thus, the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression ‘such as’ in the definition of ‘input service’ do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is, nothing in the definition of ‘input service’ to suggest that the Legislature intended to define that expression restrictively.

Therefore, in the absence of any intention of the Legislature to restrict the definition of ‘input service’ to any particular class or category of services used in the business, it would be reasonable to construe that the expression ‘such as’ in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.

36. The argument of the Revenue that the expression ‘such as’ in Rule 2(l) of 2004 Rules is restricted to the categories specified therein, runs counter to the C.B.E.C. Circular No.97 dated 23rd August, 2007. In that circular, the C.B.E.C. (vide para 8.3) has held that the credit of service tax paid in respect of mobile phone service is admissible provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods. Mobile phone service is neither used in the manufacture of final product nor it is specifically included in the definition of input service. Even then, the C.B.E.C. has construed the definition of input service widely so as to cover not only the services specifically enumerated in the definition of ‘input service’ but also cover all services which are used in relation to the business of manufacturing the final products. Therefore, the argument of the revenue which runs counter to stand taken by the C.B.E.C. cannot be accepted.”

23. In view of the aforesaid wide and expansive interpretation of the term 'input service' we find the Mandap Keeper Services used to organize meetings and events for promotion of their products such as a new vehicle launch, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. which activities being important

for the respondent to promote the sale of vehicles are connected to the business of manufacture of the respondent for which they are entitled to avail CENVAT credit, especially when the expense so mentioned is part of cost on which excise duty is paid.

24. Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conferences etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the sales and for efficient running of the business for which they are entitled to avail CENVAT credit.

25. Further, as argued by the Ld. Counsel for the respondent, as the cost of services of Rent-a-Cab and Mandap Keeper received, were included in the assessable value of the final product, on which excise duty is paid, which fact has not been disputed by the appellants, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services on the ratio of the decision in **Coca Cola India**(supra).

26. The aforesaid view is further supported by decisions of different High Courts as also by different Benches of the Tribunal on these specific services.

Rent-a-Cab :

27. In **Commr of C.Ex., Chandigarh-II vs. Federal Mogul Goetze (India) Ltd., 2015(39) S.T.R. 735 (P&H)**, the question was whether the CESTAT was correct in holding that the service of transportation of employees of the factory to the factory was an input service within the

definition of input service in Rule 2(l) of the 2004 Rules. This Court affirmed the finding of the Tribunal that the transportation of the employees from their residence to the factory premises is related to their manufacturing activities and without coming to the factory, the production cannot be started. The provision of transportation facilities increases efficiency and increases the production capacity of the manufacturing unit itself.

28. In Commr. of C. Ex., Bangalore-III vs. Stanzen Toyotetsu India (P) Ltd., 2011(23) S.T.R. 444 (Kar.), the Karnataka High Court held that Rent-a-Cab service provided by the assessee to the workers to reach the factory premises constituted input service for availing CENVAT Credit. It observed:-

“10. As is clear from the definition any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products constitutes input service. Various services are set out in the definition expressly, as constituting input service. It also includes transportation of inputs or capital goods and outward transportation upto the place of removal. Therefore, the test is whether the service utilized by the assessee is for the manufacture of final product. Such service may be utilized directly or indirectly. Such may be in the nature of transportation of inputs or capital goods, upto the factory premises or if the final product is removed from the factory premises for outwards transportation upto the place of removal. It is an inclusive definition. The services mentioned in the Section are only illustrative and it is not exhaustive. Therefore, when a particular service not mentioned in the definition clause is utilized by the assessee/ manufacturer and service tax paid on such service is claimed as Cenvat Credit, the question is what are the ingredients that are to be satisfied for availing such credit. If the credit is availed by the manufacturer, then the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacture of final products or used in relation to activities relating to business. If any one of these two tests is satisfied, then such a service falls within the definition of “input service” and the manufacturer is eligible to avail Cenvat credit of the service tax paid on such service.

13. Rent-a-Cab service is provided by the assessee to these workers to reach the factory premises in time which has a direct bearing on the manufacturing activity. In fact, the

employee is also entitled to conveyance allowance. It also would form part of a condition of service and the amounts spent on the conveyance of the employees is also a factory which will be taken into consideration by the employees in fixing the price of the final product. By no stretch of imagination can it be construed as a welfare measure. It is a basic necessity. To ensure that the work force comes on time at the work place, the employers have taken this measure which has a direct bearing on the manufacturing activity. At any rate it is an activity relating to business.”

This judgment has been followed in Commissioner of C.Ex., Bangalore-III vs. TATA Auto Comp. Systems Ltd., 2012(277) E.L.T. 315 (Kar.), Commissioner of Central Excise, Bangalore-I vs. Graphite India Ltd., 2012(27) S.T.R. 130 (Kar.) and Commissioner of Central Excise, Bangalore-I vs. Bell Ceramics Ltd., 2012(25) S.T.R. 428 (Kar.).

Significance of 2011 amendment specifically excluding rent-a-cab service from the definition of input service :

29. In the case of **Bellsonica Auto Components India** (supra), the question was whether civil construction can be defined as an input service under Rule 2(l) of the CENVAT Credit Rules, 2004, though such service had no relation to the manufacturing process or any business activity of the assessee who were manufacturers of metal sheets components for motor vehicles. They had availed CENVAT credit for service tax paid on civil work of constructing a plant/factory in the premises, namely for the manufacturing and for rental value of the immovable property leased by them on which the plant was erected. The Revenue contended that though the definition of input service was wide, it did not cover services that remotely or in a roundabout way contribute to the manufacture of the final product. It was contended that each and every connection, however remote and indirect, could not be contemplated by the definition of 'input service'

and that a line had 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, being neither service nor goods, input credit thereof could not 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.

30. The aforesaid contentions did not find favour with the Court, which, on the other hand agreed, with the submissions of the assessee that CENVAT credit taken on the tax paid in respect of the said input services could be utilized by the assessee in accordance with the CENVAT Credit Rules. It agreed with the assessee that the case would fall within both the 'means' and 'includes' part of Section 2(l) as the phraseology was wide enough to cover the said services, the same being directly or indirectly or in any event, being in relation to the manufacture to the assessee's final product. The Court held:-

“8. The land was take 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.'”

31. Taking note of the fact that by amendment to the Rule 2(l) in the year 2011, which was enforced w.e.f., 1.4.2011, whereby, construction services were excluded from the definition of 'input service', the Hon'ble Court held that if the said services were not covered by Rule (l), there was

no necessity to introduce the said amendment. This made it clear that prior to the amendment, setting up of a factory premises of a provider for input service relating to such a factory fell within the definition of 'input service'. As the amendment was not retrospective, it was held not to cover the case of the assessee, which related to the period 2007-08 to 2009-10, prior to the amendment. The question was thus answered against the revenue and availing of CENVAT credit was upheld.

32. For the same reason, as the rent-a-cab service has been excluded from the definition of 'input service' by the 2011 amendment w.e.f., 1.4.2011, it has to be held that prior to the amendment, rent-a-cab service came within the definition of input service. As the assessment years in issue in the present case are 2009-10 and 2010-11, both prior to the amendment, the respondent is entitled to CENVAT credit on this service.

33. This aspect has also been clarified by circular dated 29.04.2011 issued by the Government of India, where at Sr.No.12 the question was : 'Is the credit available on services received before 01.04.2011 on which credit is not allowed now, example, Rent-a-Cab service?'. It was clarified that 'The credit on such service shall be available if its provision had been completed before 01.04.2011'

Mandap Keeper Services :

34. In **Endurance Technologies Pvt. Ltd. Vs. Commr of C.Ex., Aurangabad, 2013(32) S.T.R. 95 (Tri. – Mumbai)** CESTAT, (Western Zonal Bench Mumbai), the Mandap keeper services availed by the assessee to celebrate the annual day function of the Company, which was attended by employees and their family members as well as their sister units were held

entitled to input service credit as the annual day function is an integral part of the business activity of the company.

35. In **Idea Cellular Ltd. Vs. Commissioner of C.Ex. Meerut-I, 2011(22) S.T.R. 450 (Tri. – Del.)** the question, whether service of Mandap Keeper availed by hiring of conference rooms, hotels for training of staff can be termed as input service, was answered in favour of assessee.

36. In **Tradex Polymers Pvt. Ltd. Vs. Commissioner of C.Ex. Ahmedabad, 2011(24) S.T.R. 82 (Tri. – Ahmd.)**, the assessee which was a registered service provider and a Del Credere Consignment agent, during the course of advertising and publicizing its product enlisted the services of a Mandap keeper which was held to be an input service.

Conclusion:

37. No substantial question of law arises, accordingly, the appeals are dismissed.

**(RAJESH BINDAL)
JUDGE**

**(HARINDER SINGH SIDHU)
JUDGE**

October 21, 2016
Atul

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