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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 168 OF 2017**

**The Commissioner, Service Tax,
Mumbai - II**
4th Floor, New Central Excise Building,
115, M.K. Road, Churchgate, Mumbai –
400 020.

...Appellant

Versus

**M/s. Willis Processing Services (India)
Pvt. Ltd. (formerly known as M/s.
Tgrinity Computer Processing (India)
Pvt. Ltd.**
Plant No.6, Godrej & Boyce Mfg. Co.
Compound, Pirojshanagar, LBS, Marg,
Vikhroli (W), Mumbai 400 079.

...Respondent

Mr. Swapnil Bengur, with Sham Walve for Appellant.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATED: 13th September 2017

ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)

1. The Appellant by the present Appeal has challenged the order dated 13th January 2014 passed by the Customs,

Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (for short “**Appellate Tribunal**”) allowing the Appeal of the Respondent.

2. The Respondent is a service provider and most of the services are exported. The refund was sought by the Respondent in respect of the input service credit lying under unutilized in the account of the Respondent. The Adjudicating Authority allowed the refund claim of Rs.1,78,00,007/- and rejected the claim of refund to the extend of Rs.44,80,757/-. The rejection was on account of these services not having any nexus with the output service of Business Auxiliary Service which have been exported by the Respondent. The Respondent being aggrieved by the order preferred an Appeal before the Commissioner (Appeals). By order dated 7th June 2010, the Commissioner (Appeals) allowed the refund claim of the Respondent to the tune of Rs.1,92,308/- and rejected the rest of the refund claim of Rs.42,88,429/-. Being aggrieved by the said order the Respondent filed an Appeal before the Appellate Tribunal. By order dated 13th January 2014, the Appellate Tribunal

allowed the Appeal of the Respondent. The Appellant has filed the present Appeal.

3. The learned counsel for the Appellant has contended that the Respondent is not entitled to avail CENVAT credit on “input services” which have no nexus with the output service of Business Auxiliary Service which have been exported by the Respondent.

4. The learned counsel for the Respondent had supported the impugned order.

5. Upon considering the arguments, we are of the view that the issue of the assessee being entitled to avail CENVAT Credit in respect of input services being availed in the course of business of providing outward services is no longer *res integra*. In the judgment of this Court at Nagpur Bench in the case of **Commissioner of C.Ex. Nagpur Versus Ultratech Cement Ltd.**¹, paragraph 27 reads thus:-

¹ 2010 (260) E.L.T. 369 (Bom.)

27. The definition of “input service” as per Rule 2(1) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products up to the place of removal. The third category, includes services namely;

(a) Services used in relation to setting up, modernization, renovation of repairs of a factory,

(b) Services used in an office relating to such factory,

(c) Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of 'input service' not only covers services, which fall in the substantial part , but also covers services, which are covered under the inclusive part of the definition.”

6. In the said decision, the Court answered the above issue in favour of the Assessee and against the Revenue and held that the cost of any input service that forms a part of the cost of the final product, then Credit of Service Tax paid on such input services would be allowable. We are of the view that the said decision squarely covers the present case. We are of the view that the Appellate Tribunal has correctly followed the said decision of this Court in ***Ultratech Cement (Supra)*** and held that the input services have been availed of by the Respondent herein in the course of its business of providing outward services and hence, the Respondent is to refund claim of CENVAT Credit lying in its account due to export of service. We find no infirmity in the impugned order of the Appellate Tribunal.

7. In the circumstances, we dismiss the present Appeal. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)