CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>WEST ZONAL BENCH AT AHMEDABAD</u>

<u>REGIONAL BENCH – COURT NO. 03</u>

Excise Appeal No. 12719 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-201-2018-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

M/s Banco Gaskets India Ltd **........Appellant**
Vilage-Ankhi, Jambusar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor, Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

<u>APPEARANCE</u>

Sh. Shailesh Vyas, Advocate for the Appellant
Sh. G. Jha, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. <u>A/ 11456 /2019</u>

DATE OF HEARING: 31.07.2019
DATE OF DECISION: 31.07.2019

<u>RAMESH NAIR</u>

The issue involved is that whether the appellant is entitled for the cenvat credit in respect of Commercial and Industrial Construction Services for the period December 2015 to June 2017. The cenvat credit was denied by the lower authority on the ground that as per the nature of service, it does not appear to be repair and maintenance, accordingly, the construction service is excluded from the definition of input service w.e.f. 01.04.2011.

2. Sh. Shailesh Vyas Ld. Counsel appearing for the appellant submits that the appellant have submitted all the invoices of the services which clearly shows that the services provided by the service provider are in the nature of repair and maintenance of existing factory, no new construction has taken place. He submits that the repair and maintenance is regularly carried out by the service provider and for the earlier period, this Tribunal has already considered the issue and

allowed the cenvat credit vide Final Order No. A/10221-10222/2018 dated 31.01.2018. He also placed reliance in the case of ION Exchange Ltd. 2018 (12) GSTL 302 (Tri.- Ahmd.)

3. Sh. G. Jha Ld. Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order. He submits that the appellant have not submitted contract documents, therefore, it cannot be ascertained that whether the service is in the nature of repair and maintenance for the new construction, therefore, the lower authority has rightly disallowed the cenvat credit.

4. Heard both the sides and perused the records. On perusal of the invoices, I found that the service is of small repair and maintenance in the existing building and no new construction has taken place during the relevant period, therefore the service such as Mechanical Cleaning, other Renovation Work and Painting of the plant is indeed in the nature of repair and maintenance. Therefore, there is no need of any further documents. Accordingly, the cenvat credit on repair and maintenance is admissible even after exclusion of construction service w.e.f. 01.04.2011. The Identical issue in the appellant's own case has been considered by this Tribunal vide order dated 30.01.2018, wherein Tribunal has passed the following order:

> *"These two appeals are filed against OIA-VAD-EXCUS-004-APP-194-195-2017-18 dt 10/07/2017 Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I since involve a common issue are taken-up together for disposal.*
>
> *2. The short issue involved in the present appeal is whether the appellants are entitled to avail cenvat credit of Service Tax paid on "Commercial/Industrial Construction Service/Work Contract Service used in the factory in relation to repair and renovation work.*
>
> *3. The Ld Advocate, Shri S J Vyas, for the appellant submits that construction services are used in 'repair and renovation work' of the factory premises and in support he has submitted the relevant bills/input invoices.. It is his contention that since the construction services have been used in the 'repairs and renovation' of the factory premises. Therefore, cenvat credit of service tax paid on such services is admissible in view of the order of this Tribunal in the case of M/s Ion Exchange India Ltd vs CCE&ST, Surat vide Final Order No A/13513/2017 dt 8/11/2017 .*
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> *4. The Ld AR for the Revenue does not dispute that the 'construction services' had been used in 'repair and renovation services of the factory.*

> *5. I find that on similar issue this Tribunal has already held that service tax paid on 'construction and repair services' used for renovation work is admissible to credit even for the period after 1.4.2011 in the case of Ion Exchange India Ltd (supra).*
>
> *6. In the result following the same, the impugned orders are set aside and the appeals are allowed with consequence of relief, if any, as per law."*

5. From the discussion made herein above and on the basis of above Tribunal decision, I set aside the impugned order and allow the appeal.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Seema