

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10565 of 2020-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-COMMR-02-10-2019-20 dated 09.12.2019 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II]

SKF Technologies (I) Pvt. Limited

.... Appellant

Mile Stone Kandla 333, Village Kerala, Taluka- Bavla,
Ahmedabad- Rajkot Highway Bavla, Ahmedabad
Gujarat -382220

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii Respondent

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat -380009

WITH

(i) EXCISE Appeal No. 10566 of 2020-DB (SKF Technologies I Pvt. Limited)

(ii) EXCISE Appeal No. 10567 of 2020-DB (SKF Technologies I Pvt. Limited)

(iii) EXCISE Appeal No. 10568 of 2020-DB (SKF Technologies I Pvt. Limited)

(iv) EXCISE Appeal No. 10569 of 2020-DB (SKF Technologies I Pvt. Limited)

(v) EXCISE Appeal No. 10570 of 2020-DB (SKF Technologies I Pvt. Limited)

(vi) EXCISE Appeal No. 10571 of 2020-DB (SKF Technologies I Pvt. Limited)

(vii) EXCISE Appeal No. 10572 of 2020-DB (SKF Technologies I Pvt. Limited)

(viii) EXCISE Appeal No. 10573 of 2020-DB (SKF Technologies I Pvt. Limited)

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-COMMR-02-10-2019-20 dated 09.12.2019 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-II]

APPEARANCE :

Shri Archit Agarwal, Advocate for the Appellants
Shri Rajesh K Agarwal, Superintendent (AR), for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 18.09.2024

DATE OF DECISION : 11.12.2024

FINAL ORDER NO. 13132-13140/2024

C.L. MAHAR :

Present nine appeals have been filed against the impugned combined Order-in-Original dated 09.12.2019 arising out of nine show cause notices pertaining to the period April 2008 to September 2013. The demands have been confirmed on various counts and the amount of demand confirmed against each count cumulatively is as below:

- (a) Credit on Business Support Service - Rs. 1,63.49,705/-
- (b) Credit on Management Consultancy Service -Rs. 91,43,339/-
- (c) Credit claimed on photocopy of invoices and invoices issued on Bangalore address, but credit claimed at Ahmedabad - Rs. 47,85,079/-
- (d) Credit availed without valid documents - Rs. 5,41,188/-
- (e) Credit on Guest House Service - Rs. 2,30,757/-
- (f) Credit on Event Management Service - Rs. 1,97,306/-
- (g) Credit availed on invoices with different address - Rs. 1,01,671/-
- (h) Credit on Outdoor Catering Service - Rs.58,278
- (i) Credit on Commercial or Industrial construction Service -Rs. 22 590/-.
- (j) Credit on Real estate Service - Rs. 2,673/-

2. At the outset Shri Archit Agarwal, Learned Advocate appearing on behalf of the appellant has raised a preliminary objection that allegation in the Show Cause Notices are that the credit does not have any nexus with output services. However, the order has confirmed demand on other grounds including credit taken on ineligible documents like not in the name of the appellant or on photocopies. Hence, order is beyond the scope of Show Cause Notice. However, we are not inclined to accept this ground as the show cause

notice has clearly alleged that the impugned service does not fall in the definition of "input service" and accordingly, to prove the eligibility, the onus lies upon the assessee to show that not only the impugned services were eligible for Cenvat credit but the credit has been taken on valid documents which are eligible for taking Cenvat credit. Therefore, the preliminary objection raised by the appellant is not accepted. Now we examine the eligibility of credit against each of the above counts separately.

(a) Credit on Business Support Service — Rs. 1.63.49.705/-

The Appellant & M/S SKF India are both subsidiaries of AB SKF Sweden. The Appellant & SKF India have agreed to pool & combine their respective manpower & other resources for the purpose of achieving maximum synergetic benefits. Some of the services which were decided to be shared include corporate marketing, business development, taxation etc. The Appellant has entered into an agreement with M/s SKF India in this regard. M/s SKF India raises an invoice on the Appellant towards such sharing of cost along with service tax. The Appellant had entered into an agreement with M/s. SKF India to pool and combine their respective manpower and other resources for achieving maximum synergetic benefits.

The relevant para of the said agreement is reproduced below:

"The Parties are desirous of pooling and combining their respective manpower and other recourses for the purpose and with an objection to achieve maximum synergistic benefits, cost saving so as to avoid duplication of cost which will in tum assist the Parties in sharing and allocation of cost in equal proportion for costs incurred towards inter alia manpower, managerial resources and all other resources of the parties which are otherwise being incurred independently:

g) SKF Tech has approached SKF India to avail various types of semces from SKF India through its resource as described in annexure in order to reduce cost and achieve maximum synergic benefit,

2.3 The common personnel shall at all times remain the employees of the respective parties, The Party employing the manpower and /or the managerial personnel, shall have the sole liability, statutory or otherwise towards such personnel for the purpose including but not limited to payments of salary, perquisites, benefits, amenities or other

compensation or otherwise and the other Party shall not be liable in any manner whatsoever.

3.1 The fee payable by each party for services received shall be the as follows:

c) Each party will bear the expenses, charges and all other related cost incurred by other party against the service received which shall be determined in accordance with generally accepted accounting principles. These charges shall also include cost of resources, salary costs and travel expenses of the personnel engaged in the performance of the work described in the Agreement.

d) The fees payable by each party will be determined on pro rata basis according to allocation key as a portion of the total actual service costs incurred by respective parties. The allocation Key will be based on a weight average method using combination of parameter for each different type of service rendered."

The demand has been confirmed in the impugned order holding that there needs to be a service provider and a service receiver providing services as described in the definition of Business Support Service, in return of a consideration. From the agreement, it only appears that M/S. SKF India and the Appellant simply agreed to share some common expenditures. The mere fact that service tax has been paid on the amount transferred from one unit to another does not make any transaction an input service. As discussed in the foregoing paragraph, to qualify as an input service, the activity must have nexus with the business of the Appellant. The nearest conclusion that can be construed from the activities is that "Salary" and other reimbursements have been made to the employees, which even otherwise, ought to have been paid by either of the two parties. There is no evidence of provision of any service, in as much as no invoices have been raised by the "Service provider". M/S. SKF India is the Head Office, and it cannot be said that the Head office is providing taxable services to its sister unit by sending employees to work for the Appellant. This applies to Pune unit also. The Appellant has not adduced any evidence to prove that they had availed any service in relation to their manufacturing activity. It has been held that the agreement is only of cost sharing and there is no provision of service; that mere fact that service tax has been paid on the amount transferred from one unit to another does not

make any transaction an input service. Accordingly, the Cenvat Credit availed on Business Support Service. for the period from April 2008 to June 2017, was disallowed.

2.1 It was argued by the Learned Counsel that Tax was rightly charged. M/S SKF India Ltd. is a separate company (not a HO of the appellant) and the observation made in the impugned order are incorrect. Even if tax was not payable, credit cannot be denied once tax is paid on services given by the supplier and Tax payment accepted at service provider's end. Subsequently, assessment cannot be challenged at the recipient's end. The Appellant relied upon the following judgements —

- (i) M/s. Amara Raja Electronics Limited - 2016 (43) STR 601
- (ii) M/s. Nahar Granities Limited 2014-TIOL-582-HC-AHM-CX
- (iii) M/s. Creative Enterprises - 2009 (243) E.L.T. A120 (S.C.)
- (iv) M/s. Manikgarh Cement - 2011 (22) S.T.R. 471 (Tri. - Mum.)
- (v) M/s. Hindustan Coca Cola Beverages Pvt. Limited - 2010 (19) S.T.R. 280 (Tri. - Del.)

2.2 On the contrary the Ld. Authorized Representative appearing for the Revenue has re-iterated the findings of the Impugned Order.

2.3 We find that the issue is not res-integra in as much as the Tribunal in the case law relied upon by the appellant in the matter of AMARA RAJA ELECTRONICS LTD. v. COMMISSIONER OF C. EX., TIRUPATHI - 2016 (43) S.T.R. 601 (Tri. - Hyd.) has decided in the favour of the assessee and held as under :-

“5. I have heard the rival submissions and perused the appeal records. The main allegation for denying credit is that there is no service rendered by ARBL and MPPL to the appellants. That the arrangement is merely sharing of common expenses. Undisputedly, the department was collecting service tax for all these years, from ARBL and MPPL who are registered with the Service Tax Department. The department was very well aware of the impugned activity of ARBL and MPPL while paying service tax under BAS, BSS and other category of services. They were filing ST-3 returns in this regard and no objection has been raised by the department against such payment of service tax. Without raising any objection at the end of service provider, and after having accepted the tax, as well as the returns, the allegation is now raised at the end of the service recipient that credit cannot be taken since there is no rendering of services at all. In this regard it would be

appropriate to mention the observations made by the Tribunal while considering the Stay Application vide Order dated 7-2-2014. The same is reproduced as under :

“.. Even though it is a sharing of expenses of the branch offices, the fact remains that the branch office belongs to one of the group companies and the owner of the branch among the group companies provides the services to the appellant for which the service tax is paid and charged to the appellant. On going through the records and submissions, we find that the services have a nexus to the appellant's activities and therefore have to be considered as 'input services'. The department proposes to deny the credit only on the ground that the arrangement is of expense sharing. In our opinion, this cannot be the ground for denying the credit. The ground should be the one that neither service has not been provided or services received are not input services. Therefore, we find that appellant has been able to make a *prima facie* case on merits for waiver of pre-deposit and stay against recovery during the pendency of appeal. Accordingly the requirement of pre-deposit of adjudged dues is waived and stay against recovery granted during the pendency of appeals.”

6. Further this Tribunal vide Order dated 17-12-2015 in Appeal Nos. E/22611/and 22613 of 2014 has answered the issue in favour of the appellants. When the department has accepted the tax on the services provided by sister concern to appellants, then they cannot deny credit alleging that no services were rendered. It is submitted by the learned Counsel that ARBL and MPPL are separate legal entities incorporated under the Companies Act, 1956 and they are separately assessed to Income Tax. M/s. ARBL and M/s. MPPL being independent legal entities, such money collected from appellants for the services provided to them and also expenses recovered to compensate the cost of sourcing the services, would be taxable under BSS/BAS. There is no evidence to establish that there is no intention to provide service and it was mere understanding with the sister companies for sharing of common expenses. In *CCE, Bangalore v. Stanzen Toyotetsu India (P) Ltd.* - [2011 \(23\) S.T.R. 444](#) (Kar.) the Hon'ble High Court while considering the eligibility of credit on input service observed as under :

“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 utilised by assessee/manufacture 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 utilised 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 the 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 services”.

7. When ARBL and MPPL have paid service tax under the category of BAS/BSS, the strong inference that can be drawn is that they have provided services as per the invoices raised by them. Revenue has not been able to adduce any evidence that there is no service rendered. The said issue, whether the transactions are services or not, should be agitated by the department against service providers viz. ARBL and MPPL, from whom the service tax has been collected. Credit cannot be denied at the service recipient's end, alleging that no service has been provided.

8. From the foregoing discussions, I am of the view that the denial of credit is unjustified. In the result, the impugned orders are set aside and the appeals are allowed with consequential reliefs, if any.”

2.4 We have heard the rival submissions and perused the appeal records. The main allegation for denying credit is that there is no service rendered by ARBL and MPPL to the appellants. That the arrangement is merely sharing of common expenses. Undisputedly, the department was collecting service tax for all these years, from ARBL and MPPL who are registered with the Service Tax Department. The department was very well aware of the impugned activity of ARBL and MPPL while paying service tax under BAS, BSS and other category of services. They were filing ST-3 returns in this regard and no objection has been raised by the department against such payment of service tax. Without raising any objection at the end of service provider, and after having accepted the tax, as well as the returns, the allegation is now raised at the end of the service recipient that credit cannot be taken since there is no rendering of services at all. In this regard it would be appropriate to mention the observations made by the Tribunal while considering the Stay Application vide Order dated 07.02.014. The same is reproduced as under :

“.. Even though it is a sharing of expenses of the branch offices, the fact remains that the branch office belongs to one of the group companies and the owner of the branch among the group companies provides the services to the appellant for which the service tax is paid and charged to the appellant. On going through the records and submissions, we find that the services have a nexus to the appellant's activities and therefore have to be considered as 'input services'. The department proposes to deny the credit only on the ground that the arrangement is of expense sharing. In our opinion, this cannot be the ground for denying the credit. The ground should be the one that neither service has not been provided or services received are not input services. Therefore, we find that appellant has been able to make a *prima facie* case on merits for waiver of pre-deposit and stay against recovery during the pendency of appeal. Accordingly, the requirement of pre-deposit of adjudged dues is waived and stay against recovery granted during the pendency of appeals.”

2.5. Further this Tribunal vide Order dated 17.12.2015 in Appeal Nos. E/22611 and 22613 of 2014 has answered the issue in favour of the appellants. When the department has accepted the tax on the services provided by sister concern to appellants, then they cannot deny credit alleging that no services were rendered. It is submitted by the learned Counsel that ARBL and MPPL are separate legal entities incorporated under the Companies Act, 1956 and they are separately assessed to Income Tax. M/s. ARBL and M/s. MPPL being independent legal entities, such money collected from appellants for the services provided to them and also expenses recovered to compensate the cost of sourcing the services, would be taxable under BSS/BAS. There is no evidence to establish that there is no intention to

provide service and it was mere understanding with the sister companies for sharing of common expenses. In *CCE, Bangalore v. Stanzen Toyotetsu India (P) Ltd.* - [2011 \(23\) S.T.R. 444](#) (Kar.) the Hon'ble High Court while considering the eligibility of credit on input service observed as under :

“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 utilised by 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 utilised 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 the 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 services”.

2.6. When ARBL and MPPL have paid service tax under the category of BAS/BSS, the strong inference that can be drawn is that they have provided services as per the invoices raised by them. Revenue has not been able to adduce any evidence that there is no service rendered. The said issue, whether the transactions are services or not, should be agitated by the department against service providers viz. ARBL and MPPL, from whom the service tax has been collected. Credit cannot be denied at the service recipient's end, alleging that no service has been provided.

2.7 We are of the considered view that it is now settled law irrespective of the fact whether or not the impugned service was eligible to Cenvat Credit in any matter where the question involved is whether or not the impugned service/ inputs were liable to tax, if the tax paid by the service provider/ supplier of inputs is not questioned at the end of service provider/ supplier of inputs, the same cannot be challenged at the recipient's end. Similar findings were given by the Hon'ble High Court of Gujarat in the matter reported at 2009 (235) E.L.T. 785 (Guj.) (Commissioner v. Creative Enterprises) which was upheld by the Hon'ble Supreme court (M/S Creative Enterprises - 2009 (243) E.L.T. A120 (S.C.)).

Accordingly, we allow the Cenvat Credit amounting to Rs. 1,63,49,705/- and the impugned order is set aside on this issue.

(b). Credit on Management Consultancy Service — Rs. 91,43,339/-

3. The impugned credit pertains to tax paid under reverse charge on import of services. In the show cause notice, It has been alleged that the services are not used in or in relation to manufacture of final product or for clearance of final product. It has also been alleged that the services are also not related in relation to activity specified in inclusive part of the definition of the input service. However, the impugned order acknowledges the eligibility of the services for Cenvat Credit and grants partial relief. However, it disallows Cenvat Credit on the grounds that the appellant availed it based on photocopies of invoices addressed to their Bangalore unit and on a proportionate basis for services provided by foreign companies, M/s. AKTEIBOLAGET SKF and M/s. Mphasis Limited. The Bangalore unit did not issue invoices under Rule 4A of the Service Tax Rules, 1994, or as per Rule 9(1) of the Cenvat Credit Rules, 2004, which prescribe specific documents for availing Cenvat Credit. Service Tax was paid under the Reverse Charge Mechanism and proportionately distributed between the Bangalore and Ahmedabad units. Supporting documents, including statements and bifurcated invoices, were provided to show that Service Tax tallied with the credit availed by the Ahmedabad unit. The assessee also produced challans evidencing Service Tax payment, with payments made by the Bangalore unit under the Ahmedabad Commissionerate's name. However, some challans were issued under the Bangalore Commissionerate. The Bangalore office was not registered as an Input Service Distributor (ISD) at the relevant time and did not distribute Cenvat Credit under Rule 4A. The invoices submitted were computer-generated printouts, and Cenvat Credit was also availed based on Service Tax challans, which are not valid documents for this purpose under Rule 9(1). The assessee did not provide proof to ensure no double credit was availed at both units, given the payments were made by the Bangalore head office, which also houses a manufacturing unit. As per Rule 9(1) of the CCR 2004, Cenvat Credit is permissible only on valid invoices issued by a manufacturer, registered dealer, service provider, or ISD. For common services received at different locations, credit can only be claimed based on ISD invoices issued under Rule 4A of the Service Tax Rules, 1994. Since the Bangalore unit did not issue such invoices, the credit availed based on invoices addressed to the Bangalore unit and photocopies is ineligible.

During the course of arguments, Learned Counsel has submitted that services at Rule 2(I) of Cenvat Credit Rules, it is very clear that the level of nexus required in the case of input services is lower than that for inputs. Input

services taken for furthering business prospects also is covered though such services may not have direct nexus with manufacturing process. One of the main objections raised by Revenue is that the appellant did not follow the procedure of getting registered as 'input service distributor'. In the instant case bills received at Headquarters were transferred to one factory. There was no distribution as such. Since there have been decisions of the Tribunal that there is no serious irregularity in taking credit in one factory based on duty paying documents addressed to the main office of the company there is no sufficient reason to deny credit when proviso to Rule 9(2) of Cenvat Credit Rules also is considered. Applying the ratio of the above judgment in the present case, it is submitted that the credit shall not be denied to the appellant in absence of ISD registration obtained by Bangalore unit. Without prejudice to anything mentioned above, the original copy of invoices is now available with the appellant at their factory premises. The original copy of the invoice was not available at the time of audit as they were lying at our Bangalore factory. The copy of all these invoices was attached along with additional submissions dated 14.03.2014 during adjudication proceedings and it was requested that any Central Excise officer may be deputed to verify these original invoices. However, without verifying the same, the Learned Commissioner has observed that original invoices are not available. Further, with respect to observations of the Learned Commissioner that possibility of credit being availed at Bangalore unit cannot be ruled out. A Certificate dated 30.06.2020 from Bangalore unit has been attached certifying that they have not availed credit of Rs. 47,85,079 pertaining to services received by Ahmedabad unit. That other allegation in Show Cause Notice is that the credit does not have any nexus with output services. However, the impugned order-in-original has confirmed demand on other grounds. Hence, order is beyond the scope of Show Cause Notice and thus legally not sustainable.. That, challans are a valid document for claiming credit of tax paid under reverse charge under rule 9(1)(e) of Cenvat Credit Rules 2004. The appellant relied upon the case law in the matter of ICICI Prudential Asset Management Co. Limited - 2020 (43) GSTL 209 (Tri-Mum); Cargill India Pvt. Limited - 2016 (45) S.T.R. 124 (Tri. - Bang.); M/s Kakinada Seaports Limited - 2015 (40) S.T.R. 509 (Tri. -Bang.). It was further contended that the challan is in the name of Ahmedabad unit itself and hence the observation is factually incorrect and produced copies of the challans in support. That distribution through ISD was not required at all as the challans were in the name of Ahmedabad itself.

In support of the argument that credit cannot be denied merely on the ground that credit ought to be distributed through ISD he relied upon the case law in M/S Inox Air Products Ltd. 2015-TIOL-08-CESTAT-MUM; Parekh Plast (India) Pvt. Ltd. 2012 (25) S.T.R. 46 (Tri - Ahm.); Modern Petrofils - 2010 (20) S.T.R. 627(Tri - Ahm.). Further, credit cannot be denied merely on the basis that the same has been claimed on the basis of photocopy of invoices as held by the CESTAT in the matters of DKNV ENGINEERING PVT. LTD. (2023) 2 Centax 41 (Tri.-Ahmd); Pepsico India Holding P. Limited - 2017 (349) E.L.T. 665 (Tri. - Mum.).

3.1 The Learned AR appearing on behalf of the department reiterated the findings of the impugned order.

3.2 We find that the issue is not res-integra as the same has already been decided in the assessee's favour by coordinate bench of this Tribunal in the matters of Parekh Plast (India) Pvt. Ltd. 2012 (25) S.T.R. 46 (Tri - Ahm.); Modern Petrofils - 2010 (20) S.T.R. 627(Tri - Ahm.), that when the invoices are in the name Head Office, the credit cannot be denied to the unit where the services have been utilized. We further find from the invoices produced by the appellant that in the invoices raised by the service providers, the service provided to the appellant unit has been separately mentioned. We have also seen the challans produced by the appellant which are in the name of Ahmedabad unit only. The assessee has claimed to have produced original invoices, where only photocopies were produced to the audit party, subsequently during the adjudication proceedings, which fact has not been challenged by the Learned AR during the course of arguments. Further, it is already a settled law that the credit cannot be denied merely on the ground that the assessee had taken credit on photo-copies, where the veracity of credit itself was not disputed. Thus, we are of the considered opinion that the credit of Rs. Rs. 91,43,339/- impugned in the appeal has been correctly availed by the appellant and the impugned order is set aside on this count.

(c) Credit claimed on photocopy of invoices and invoices issued at different address- Rs. 47,85,079/-

The issue involved is that the impugned credit has been claimed on the basis of photocopy of invoices and invoices issued on HO address. The grounds are the same as at Sr. No. 2 above. It has already been held that the Cenvat

credit cannot be disallowed on these grounds. Accordingly, the demand on this count is quashed.

(d) Credit claimed without valid documents – Rs. 5,41,188/-

4. The appellant has claimed credit based on invoices which are in the name of other units of the Appellant. Accordingly, the appellant is not entitled to claim the same as the appellant has not produced any valid invoices in the name of its Ahmedabad unit and only challans have been produced.

4.1 In the impugned order, It has been held that in some cases pertaining to the Cenvat Credit on Business Support Service, the Cenvat credit is ineligible as the GAR 7 challan pertains to Bangalore unit. In another case, they have also taken the Credit of VAT paid. That the last date of audit was 05.10.2011 and even after a lapse of such a long period, the assessee failed to produce the invoices on which the credit availed.

4.2 The appellant has claimed to have submitted the documents on the basis of which credit has been claimed during the adjudication proceedings. Further, as submitted above, it is reiterated that the appellant has rightly claimed proportionate credit of common services at Ahmedabad units. He placed reliance on the judgment of M/S Greaves Cotton 2015 (37) STR 395 wherein it is held that credit of one unit can be claimed by other unit of the same company. Further, in the case of M/S Piramal Glass Pvt. Ltd. 2021 (55) GSTL 22 (Tri-Ahm), it has been held that prior to 01-04-2016, Appellant had the option to avail entire credit in one unit. Further, merely that the foreign service provider has mentioned VAT in their invoices, though the appellant has duly discharged service tax under reverse charge basis, such a small mistake cannot be ground to deny the credit.

4.3 The Ld. AR appearing on behalf of the department reiterated the findings of the impugned order.

4.4 We find that the appellant has claimed that a proportionate credit has been taken in the Ahmedabad unit. Further, we find that the coordinate bench of this unit in the matter of M/s. Piramal Glass Pvt. Limited - 2021 (55) GSTL 22 (Tri-Ahm) has already decided that the claim cannot be denied if the credit on common services has entirely been used in one unit. There is no allegation in the impugned order that the impugned services were not eligible for Cenvat

credit. We are of the considered opinion that credit cannot be denied to the appellant merely for the reason that the GAR -7 challan is in the name of Bangalore unit, which is also their head office.

(e) Credit on Guest House Service — Rs. 2,30,757/-

5. The credit has been taken by the appellant on the guest house services availed by them on the ground that no proper accommodation was available at Village Bavla, where the factory situated is 35 km away from the nearby city Ahmedabad. Hence the engineers, consultants and experts were provided accommodation at Ahmedabad by the service provider M/s Prefer Corporate Services Limited, which also provided facility to warehouse materials used for production and plant & machinery. The Guest House service was provided by a third party and it was not appellant's own guest house.

The credit has been denied in the impugned order holding that accommodation facility provided to the engineers etc., is only a welfare activity and has no nexus with the manufacture of goods; that input credit of services provided to a residential colony was denied as the same was considered to be a welfare activity in the case of Cement-2010 (20) S.T.R. 456 (Bom.), holding that to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(I) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

5.1 During the course of personal hearing the appellant submitted that the judgements relied upon in the order-in-original are not applicable in the present case in as much as the same pertains to residential colony for employees whereas in the present case, the credit pertains to guest houses for stay of professionals who were involved in the setting up of factory. Further, the entire credit pertains to the period prior to 01.04.2011. The appellant relies upon the following judgements to submit that the credit is rightly eligible

(i) ACC, Associated Capsules P Limited - 2019 (20) GSTL 346 (Bom.)

(ii) Mafatlal Industries Limited - 2020 (43) G.S.T.L. 562 (Tri. - Ahmd.)

5.2 We find that the analogy of residential colony with respect to services of guest house has not been correctly drawn in the impugned order. Whereas the residential colony, if for a longer period and for the benefit of not the employees only but for their families, in the present case, the appellant has claimed that the services of guest house were availed as the visiting engineers, consultants and experts. Such an expense has a clear nexus with the business activity, as the appellant has to make arrangements for these persons visiting factory on adhoc basis for some temporary assignment. Such guest house expenses are akin to the hotel expenses which are eligible for Cenvat credit. Further we find the decision in the case of ACG Associated Capsules P. Limited - 2019 (20) GSTL 346 (Bom) is squarely in favour of the appellant where the Hon'ble High Court has held as under:-

“3. Appellant-Assessee is a Private Limited Company and is engaged in manufacturing of Empty hard gelatin Capsules and other Capsules. The Assessee has its manufacturing units located at three places - namely - Kandivali, Dhanu and Shirwal. The Department noticed that Assessee had claimed input credit of services related to guest houses maintained by the Assessee. It was further noticed that, these guest houses were situated at various places such as Andheri, Malad, Kandivali, Lonawala, Pune, Alibaug, Dhanu, Shriwal, Hyderabad and Chennai. According to the Department, these guest houses were not utilized for the purpose of Assessee's manufacturing activity and the Assessee, therefore, could not have availed input credit in relation to such services. A show cause notice, therefore, came to be issued on 27th April, 2016, calling upon the Assessee to show cause why the Cenvat credit availed should not be reversed with interest.

4. Assessee replied to the said show cause notice and opposed the demand, *inter alia*, on the ground of limitation. The Assessing Officer, however, confirmed the demand upon which the issue reached the Tribunal. The Tribunal, by the impugned judgment, remanded the proceeding before the Assessing Officer, after holding that some of the guest houses were intended for personal use of the employees while others which were located next to the factory premises, may be for the use other than personal use of the employees. Tribunal, therefore, in the concluding portion passed following order :-

“Relying on the said decision, the credit of guest houses located next to the factory premises is allowed and the credit in respect of guest houses located away from the factory premises is allowed. The matter is remanded to the original adjudicating authority to determine the guest house which are located next to the factory and those which are not located next to the factory and determine the liability. Accordingly, the appeal is allowed by way of remand to the original adjudicating authority.”

5. Having heard the Learned Counsel for the parties and having perused the documents on record, we notice that the term 'input service' contained in Cenvat Credit Rules, 2004, contains certain exclusion clause. Clause (C), *inter alia*, excludes 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. Accordingly, if the guest houses were utilized by the Assessee for extending benefit to the employees, for the personal use or consumption, the Assessee was not entitled to avail Cenvat credit thereof. This, even Assessee does not dispute. The case of the Assessee, however, is that, none of the guest houses were used for the personal use or consumption of the

employees. In order to test this premise, Tribunal itself formulated the test that those guest houses which are situated next to the manufacturing unit of the Assessee, would qualify for the benefits. The rest would not. This, may appear to provide a rough and ready formula, in our opinion, the same is not entirely satisfactorily.

6. Even in relation to a guest house which may not have been situated close to the manufacturing unit of the Assessee, if it is pointed out that the use thereof was not for the personal use or consumption of the employees, exclusion clause in the definition of input service, may not apply. In the circumstances, while the Tribunal has already remanded the issue for fresh consideration, we do not interfere with the remand order. However, the tests laid down by the Tribunal in the impugned judgment, would not apply. In light of the observations made above, it would be open for the Assessee to attempt to persuade the Assessing Officer that the guest houses in question were not used for the personal use or consumption of the employees.

7. All contentions of both the sides are kept open.

8. Accordingly, Appeal disposed of. No order as to costs. “

5.3 Having heard the Learned Counsel for the parties and having perused the documents on record, we notice that the term 'input service' contained in Cenvat Credit Rules, 2004, contains certain exclusion clause. Clause (C), *inter alia*, excludes 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. Accordingly, if the guest houses were utilized by the Assessee for extending benefit to the employees, for the personal use or consumption, the Assessee was not entitled to avail Cenvat credit thereof. This, even Assessee does not dispute. The case of the Assessee, however, is that, none of the guest houses were used for the personal use or consumption of the employees. In order to test this premise, Tribunal itself formulated the test that those guest houses which are situated next to the manufacturing unit of the Assessee, would qualify for the benefits. The rest would not. This, may appear to provide a rough and ready formula, in our opinion, the same is not entirely satisfactorily.

5.4 Even in relation to a guest house which may not have been situated close to the manufacturing unit of the Assessee, if it is pointed out that the use thereof was not for the personal use or consumption of the employees, exclusion clause in the definition of input service, may not apply. In the circumstances, while the Tribunal has already remanded the issue for fresh consideration, we do not interfere with the remand order. However, the tests laid down by the Tribunal in the impugned judgment, would not apply. In light

of the observations made above, it would be open for the Assessee to attempt to persuade the Assessing Officer that the guest houses in question were not used for the personal use or consumption of the employees.

5.5 We further find that even the coordinate bench of this Tribunal has held the Cenvat credit on Guest House service eligible in the case law Mafatlal Industries Limited - 2020 (43) G.S.T.L. 562 (Tri. - Ahmd.) cited by the appellant. Accordingly, Cenvat credit on this ground is allowed and impugned order is set aside.

(f) Credit on Event Management Service — Rs. 1,97,306/-

6. We find that the Cenvat credit on this ground was allowed by the Commissioner in earlier round of adjudication proceedings which was not challenged by the Revenue. Accordingly, Revenue has no *locus-standi* to deny the Cenvat credit in de-novo proceedings. Accordingly, Impugned order is set aside on this ground.

(g) Credit availed on invoices with different address — Rs. 1,01,671/-

7. In this case the Appellant has claimed credit on the basis of invoices which were raised on other units of the appellant. These invoices were in the name of either in the name of Bangalore unit or Pune office or Mumbai address or Kolkata address or Gurgaon addresses etc., though the appellant has claimed that the services have been availed by them. On going through the invoices produced by the appellant it is found that the invoices were mostly for the transportation of certain persons. The assessee has claimed that the services were used by their employees when the factory was being set-up and there was no finance department and some of the service providers billed in the name of their other units. On going the through the invoices, it is found that some of the invoices have been raised in the name of units which are their sister concerns but have different identity. Accordingly, we hold that only invoices which are in their own name or their Bangalore Head Office are eligible for Cenvat credit. Cenvat Credit on other invoices is disallowed. The appellant will produce the necessary documents for verification. The Cenvat credit taken against the invoices which do not pertain to them, or their head

office cannot be considered to be bonafide and accordingly, the appellant will also pay the applicable interest and equal penalty under Section 78 of the Finance Act, 1994.

(h) Outdoor catering — Rs. 58,278/-

8. The appellant has engaged services of outdoor catering to their employees and submitted that as their factory is located 35 km away from the city. that there are no eating arrangements around factory area and hence they availed the service of outdoor catering to provide food to the employees. However, the Cenvat credit on these services was denied on the ground that the services provided was only a welfare activity and no nexus to the manufacturing activity. We find that the appellant's own case at Bangalore, the matter has been decided in their favour vide decision in SKF Technologies India Pvt. Ltd. 2014-TIOL-576-CESTAT-Bang. The impugned order is accordingly, set aside on this ground.

(i) Credit on Commercial or Industrial Construction Service — Rs. 22, 590/-.

9. The appellant has submitted that they have already reversed the demand of Rs. 22,590/- confirmed in the order. However, the appellant will be required to pay the interest applicable under Section 75 and penalty under Section 78 of the Finance Act, 1994 if not paid earlier.

(j) Credit on Real estate Service — Rs. 2,673/-.

10. The appellant has taken services of real estate agents in finding accommodation for their employees. In the impugned order it has been alleged that this real estate service has no nexus to the business activity. We find that the matter has already been decided in favour of the assessee by CESTAT Mumbai bench in the case of DBOI Global Services Pvt Limited - 2017 (48) STR 157 (Tri-Mumbai) holding that real estate services for leasing renting etc. are related to business activities. Accordingly, we set aside the impugned order on this ground.

11. The demand of Cenvat credit of Rs 1,01,671 availed on invoices with different address and the demand of Rs. 2,590 on account of Commercial or Industrial Service is confirmed as discussed in para 7 and 9 above. Rest of the demands as raised in the impugned order-in-original is set-aside.

12. The impugned order-in-original is modified to the above extent and the appeals are disposed of in terms of above modification. In the result, the appeals are disposed of accordingly.

(Pronounced in the open court on 11.12.2024)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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