

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70369 of 2017

(Arising out of Order-In-Original No.62-COMMISSIONER-NOIDA-II-2016-17,
dated-21/02/2017 passed by Commissioner, Central Excise, Noida-II)

M/s L G Electronics India Pvt. Ltd.

.....Appellant

(Plot No. 51, Udyog Vihar, Surajpur, Kasna Road,
Greater Noida, U.P 201306)

VERSUS

Commissioner, Central Excise, Noida-II

....Respondent

(3rd Floor, Wegmans Business Park,
Knowledge Park-III, Greater Noida, U.P.-201306)

APPEARANCE:

Shri Atul Gupta, Advocate & Ms. Ushmeet Kaur Monga, Advocate for
the Appellant

Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70047/2025

DATE OF HEARING : 02.08.2024
DATE OF DECISION : 31 January, 2025

P. K. CHOUDHARY:

The present appeal is arising out of Order-In-Original
No.62-COMMISSIONER-NOIDA-II-2016-17, dated-21/02/2017
passed by Commissioner, Central Excise, Noida-II.

2. The facts of the case in brief are that the Appellant is engaged in the manufacture and clearance of air conditioners, colour televisions, computers, monitors, refrigerators, microwave ovens, washing machines etc. falling under Chapters 84 & 85 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant is also engaged in providing and receiving taxable services such as repair & maintenance, commissioning & installation, consulting engineer, online information & data access

and retrieval, transport of goods by road etc. For this purpose, the Appellant is duly registered with the Service Tax Department vide Registration No. AAACL1745QST003.

3. Appellant is providing, after-sales service by Authorized Service Centres (ASCs) and Direct Service Centres (DSCs) to end consumers for their products. These services include In-warranty service, Annual Maintenance contract service (repair & maintenance) and Out-of-warranty service. For In-warranty service and AMC service provided by ASCs to end customers, the ASCs charge monthly compensation from the Appellant. However, for Out of warranty service, the repair and maintenance charges are collected by the ASCs from end customers.

4. The Appellant has provided a Toll-Free Telephone Number to its customers, in case they face any problem or defect with the product. These calls received by such call centres are transferred to DSC (owned by the Appellant), whereas if the customers are located in an area where no service centres are available then the calls are transferred to Authorized Service Centres. An agreement was entered between the call centres and the Appellant.

5. An audit of the Appellant's record was carried out for the period from April 2013 to March 2014. In audit report dated 13.05.2015 it was objected that ASCs were providing service to the Appellant, but the same were not 'input services' and the Appellant cannot avail input credit on the same.

6. The Appellant vide letter dated 31.10.2014 clarified that call centre services qualified as 'input services' within the definition envisaged under Rule 2(l) of the Credit Rules. Rule 3 does not bar the assessee from taking Cenvat Credit on the input services. Moreover, since call centre services were used 'in or in relation to' the manufacture of dutiable final products and for providing taxable service, Cenvat credit was correctly availed by the Appellant.

7. Thereafter, a Show Cause notice¹ dated 05.09.2016 was issued alleging that, there was no direct or indirect nexus between the manufacturing of final goods or clearance of final goods with the call centre service. The department alleges that the call centre service to be a post-manufacturing service and does not qualify under Section 2(l) of the Cenvat Credit Rules. Following this, the Appellant filed a detailed reply to the SCN on 04.11.2016.

8. The Commissioner, examined both the SCNs along with the reply filed by the Appellant and vide the impugned Order-in-Original dated 21.02.2017, gave the order and confirmed:

- The demand of Cenvat Credit of Rs. 4,60,31,773/- under Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A of Central Excise Act, 1944.
- Interest under Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A of Central Excise Act, 1944.
- Penalty of Rs. 4,60,31,773/- was imposed under Rule 15 of the Cenvat Credit Rules 2004 read with Section 11AC (1) of Central Excise Act, 1944.

Hence, the present appeal before the Tribunal.

10. Learned Advocate appearing on behalf of the Appellant submits that the whole principle of the Cenvat Credit Scheme was introduced to avoid the cascading effect of taxes and duties and therefore manufacturers would be entitled to avail Cenvat Credit of service tax paid on all those services, the cost of which is getting included in the assessable value of the final products. The Appellant relies on the **Press Note dated 12.08.2002** and **Master Circular 97/6/2007-ST dated 23.08.2007** issued by the Central Board of Excise & Customs. The said note and circular indicate that even the Department is of the view that a manufacturer is entitled to avail Cenvat Credit on all input services, the cost incurred on which becomes a part of the Assessable Value for payment of excise duty on final products.

¹ SCN

11. He further submitted that the input service used is integrally connected with the manufacturing of the final product and the cost of such input service is included in the cost of the final product, as such credit of service tax paid on such input service is allowable. Reliance is placed on following judgments in support of such a preposition:

- a. CCE, Nagpur v. Ultratech Cement Ltd., 2010 (260) ELT 369 (Bom.)**
- b. Coca Cola India Pvt. Ltd. v. Commissioner, 2009 (15) S.T.R. 657 (Bom.)**
- c. Reliance Industries Ltd. v. CCE, 2014 (36) STR 467 (Tri.-Mum.) and**
- d. BCH Electric Ltd. v. CCE, Delhi-IV, 2013 (31) S.T.R. 68 (Tri. - Del.)**

12. The scope of the expression "in or in relation to" is very wide in nature and it will cover within its ambit all those services which are used in or in relation to the manufacturing activity. Admittedly, in the present case, the call centre services have an indirect nexus with the manufacturing activity of the Appellant, therefore the same would get covered under the 'means clause' of the definition of input service.

13. The phrase "in or in relation to" used in the definition of 'input service' widens the scope of the said definition. In this regard, reliance is placed on the following Judgement:

- a. CCE v. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (S.C.)**
- b. UOI v. Ahmedabad Electricity Co. Ltd., 2003 (158) E.L.T. 3 (S.C.)**
- c. Coca Cola India Pvt. Ltd. v. CCE, 2009 (15) STR 657**
- d. Comr. of C.EX., Visakhapatnam vs. Dr. Reddy's Laboratories Ltd. 2011 (21) STR 283 (Tri-Bang.)**

14. He also submitted that the service received from Call Centres are used for sales promotion as such facility increases the image of the Appellant in the eyes of the consumers and build goodwill, thus, causes sales promotion of the finished goods of the Appellant.

15. Apart from that, such services increase the sale of the parts and components of the finished goods at the Direct Service Centre (DSC) and Authorised Service Centre (ASC). In serving and repairing of the goods during warranty and after expiry of warranty, DSC uses parts and components supplied by the Appellant only.

16. Even, the ASC are also bound & obliged under Agreement to use spare parts of the Appellants only in serving and repairing of the goods during warranty and after expiry of warranty. The relevant portion of from the sample ASC agreement filed with the Appeal is re-produced below:

"Article 3

Responsibilities

The primary responsibility of the ASC shall be to render warranty and post warranty service for the above stated products in respect of the territories as per Annexure -2 (hereinafter referred to as the "Territory"), which shall form part and parcel of this agreement...

ASC shall use its best endeavours to provide best quality warranty and post warranty services for the above stated products at the earliest in the territory."

*ARTICLE 4**

"Same as provided hereinabove, ASC shall maintain sufficient inventory of spare parts of various models of all products serviced by ASC as per LGEIL recommendation. ASC shall indent for necessary spare parts well in advance. In case, LGEIL comes to know of ASC using non-LGEIL spare

parts, LGEIL reserve the right of cancel this agreement as & when deems fit..."

17. In view of this, he submitted that the Call Centres which helps to connect the customers to DSC and ASC in turn help directly to cause sales promotion and accordingly the services provided by the call centre were admissible and covered under the inclusive part "sales promotion" of the definition of input services. Thus, it is submitted that the Credit of the service tax paid on the services received from the call centres is admissible.

18. The learned Departmental Representative appearing on behalf of the Revenue has justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, be dismissed.

19. Heard both the sides and perused the appeal records.

20. We find that from the bare reading of the definition of 'Input Service', as defined under Rule 2(I) of the Cenvat Credit Rules, 2004, it is clear that, the definition is divided into two parts, i.e. (i) Means- Clause and (ii) Inclusive- Clause. Further, vide Notification No. 3/2011-CE (NT) an Exclusion-Clause was included in the definition. The services excluded were construction service, rent-a-cab service, general insurance service for motor vehicles and repair service. The Cenvat credit in relation to these services is allowable either to certain service providers only or on the satisfaction of certain conditions. Furthermore, the services that are used primarily for personal use or consumption of any employee like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club etc. are also excluded from the definition of the input services.

21. The conclusion on the basis of which Order-in-Original is passed indicates that the Commissioner has read only the 'means' part of the definition and not the 'inclusive' part of definition under Rule 2(I) of the Credit Rules. This reasoning is

legally flawed and is against the principle of statutory interpretation. One of the main principles of statutory interpretation is that all the parts of a statute shall be read harmoniously. The Appellant has relied on the following judgements of Hon'ble Supreme Court to fortify his argument.

- **Grasim Industries Ltd. v. CC, Bombay, 2002 (141) ELT 593 (SC)**
- **Commissioner of Customs, C.G.O. vs Sonam International 2012 (275) ELT 326**

22. In the present case, the Appellant is receiving the service of Call Centres which helps in building brand image of the Appellant which ultimately leads to sale of the final products. Such sale being the goal of undertaking the activity of manufacture and the aforementioned services having been received in relation to sale of the final product manufactured by the Appellant, can be said to have been used in relation to manufacture of the final product of the Appellant, hence, they qualify as an input service. The services in relation to 'Sales Promotion' have nexus with the manufacturing activity as sale is the most logical conclusion of manufacturing activity and any effort made to boost the sale is bound to influence the manufacturing. Therefore, credit in question is admissible to the Appellant.

23. The Appellant as DSC is also engaged in providing Repair and Maintenance Service to its Customers. The Call Centres facilitates the Appellant in bringing works/ calls from the customers and thus the service of Call Centres is Input Service to the Appellant. After call is received from the customers, the work may be diverted towards DSCs or ASCs according to the availability of the Centre at the nearest place, therefore, service of call centres availed by the DSCs is available in totality.

24. The Input Services in the form of work orders/calls provided by the Call Centres are used by the Appellant (Service

Provider/ DSC) for providing an Output Service i.e. Repair and Maintenance Service. Thus, the impugned service falls within means clause of Rule 2(1) of Credit Rules. Therefore, the credit pertaining to Impugned Service provided by Call Centres to DSC (Appellant) could not be denied as the same is directly related to the output service provided by the Appellant.

25. The Commissioner has relied on various judgements in the Order-In-Original but none of them applies to the present case. The reasoning adopted by the Commissioner is completely flawed and the decision of the Tribunal in the case of **Kohinoor Biscuits Products v. CCE, Noida, 2015 (37) STR 567 (Tri-Del.)** which was later affirmed by the Hon'ble Allahabad High Court is not applicable to the present case since the 'includes' clause of the definition of input service extends to all those services which are related to post manufacturing activities. If the interpretation of the Commissioner in the impugned order is accepted, then the legislative intention on inclusion of services like accounting, auditing, legal services, business exhibition and market research will be frustrated and all of them will be susceptible to challenge as input service, as they are all related to post-manufacturing activities. Furthermore, the phrase "upto the place of removal" in the definition of input service is only to be read with "outward transportation" and not all parts of the inclusive clause. It is therefore submitted that the above decision cited by the Commissioner is not applicable to the present case.

26. The Commissioner has followed the following judgements to hold that there is no nexus between input services and the manufacture of final product:

- **Vikram Cement v. CCE, Indore, 2009 (242) ELT 545 (Tri.)**
- **Vandana Global v. CCE, Raipur, 2010 (253) ELT 440; and**
- **Maruti Suzuki v. CCE, Delhi-III, 2009 (240) ELT 641 (SC).**

27. We observe that in the case of Vikram Cement (supra), the core issue was admissibility of Cenvat credit on welding electrodes used for repair and maintenance. Tribunal held that repair and maintenance activity did not constitute part of manufacturing process of the Appellant, thereby making Cenvat credit inadmissible. However, the present case differs significantly from the decision cited. The Commissioner has diverted from the core issue at hand and incorrectly applied the aforementioned decision to the case under consideration. The Appellant has thoroughly argued that the impugned services fall within the 'means' clause of the definition of input service. Alternatively, even under 'include' clause the category of sale promotion service in question qualifies for Cenvat credit.

28. Similarly, the issue involved in the decisions of Vandana Global (supra) and Maruti Suzuki (supra) are totally different to the facts of the present case. In both these decisions, the issue was regarding the eligibility of inputs for the benefit of Cenvat credit under the Credit Rules. In the present case, the issue involved is regarding the eligibility of call centre services as input service credit.

29. Further, the Commissioner at Para 5.16 of the impugned order has also relied upon the decision of the Tribunal in the **case of Vikram Ispat v. CCE, Raigad, 2009 (16) STR (195) (Tri.-Mum.) & Tower Vision India Pvt. Ltd. v. CCE, Delhi, 2016 (42) STR 249 (Tri.-LB.)** to hold that no service may be classified under the definition of input service unless the quintessential requirements laid down in the main part of the definition is not established. In this regard, we find that the Appellants have made detailed arguments that the services of call centres qualify as input services under the Credit Rules.

30. Section 11A (1) of the Excise Act states that the demand could be raised against the assessee in cases of default only

within a period of one year. The proviso extended the normal period of limitation only in cases where there is fraud, suppression, or misstatement of facts on the part of the assessee. Since the demand in the present case pertains to the period before as well as after 08.04.2011, the new as well as the old provisions of Section 11A need to be considered. However, since the provisions pertaining to the time limit are same during both the periods, there won't be any impact.

31. The demand raised in the present case by the SCN dated 05.09.2016 relates to the period from July 2011 to March 2016. Therefore, the demand amounting to Rs. 3,85,86,821/-, for the period upto July 2015, is barred by limitation as the SCN was issued after one year from the relevant date.

32. The Impugned Order does not disclose any evidence of any positive act of fraud, suppression, or wilful misstatement with the intention to evade payment of duty on the part of the Appellant. The SCN read with the Impugned Order, only emphasised the fact that the alleged inadmissible Cenvat Credit, was detected by the Department during the audit of the records.

33. Reliance is placed on the following decisions:

- **Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut 2005 (188) E.L.T. 149 (S.C.)**
- **Ajay Mishra vs. Commissioner of Service Tax, Delhi -III 2023 (386) E.L.T. 310 (Tri- Del.)**
- **Arya Logistics vs. Commissioner of C. EX. &S.T., Rajkot 2024 (80) G.S.T.L. 108 (Tri- Ahmd.)**

34. We observe that there is no provision in the format of the ER-1 Returns to mention the amount of Cenvat credit availed under each service category or transaction-wise. Only the total availment of Cenvat credit is required to be reflected in the return. Therefore, the finding that the Appellant did not inform

the Department of such availment of Cenvat credit on the said services is unsustainable.

35. We observe that the issue of Cenvat Credit on invoices of Authorized Service Station for the services provided during the warranty period has already been dealt by the Tribunal in the Appellant's case being Service Tax Appeal No.70634 of 2017 vide Final Order No.70514 of 2024 dated 08.08.2024. The relevant paragraphs of the judgment are reproduced below:-

4.4 Availed CENVAT Credit on invoices of Authorized Service Stations for the services provided during the Warranty Period

This issue is also no longer res-integra. In case of Escorts Construction Equipment Ltd, supra after taking note of previous decisions on the issue Chandigarh Bench has observed as follows:

"6. After considering the submissions of both the parties and perusal of material on record, we find that the issue involved in the present case has been considered in the appellant's own case for a different period by this Bench of the Tribunal and vide its order dated 05.07.2018 cited (supra), it has been held as under:-

"As the issue has already been settled by this Tribunal that the free service sale services of the vehicle provided during warranty period is an input service for the manufacturer i.e. the appellant in this case. Therefore, we do not find any merit in the impugned order, the same is set-aside."

6.1 Further, we find that this issue has also been considered by this Tribunal recently in the case of JCB India Ltd. cited (supra) wherein this Tribunal on identical facts has considered various decisions rendered on the issue of cenvat credit of service tax paid on repair and maintenance service during the warranty period and has also considered the definition of input service prior to 01.04.2011 and after 01.04.2011 and held as under:-

"19. The issue, therefore, that arises for consideration in the present appeal is whether CENVAT credit of service tax paid by the appellant on „repair and maintenance services“ provided by the dealers for fulfilling the warranty obligations of the appellant has been denied for good and valid reasons.

20. To examine this issue, it would be necessary to reproduce the relevant portion of the definition of „input service“, as defined in rule 2(I) of the Credit Rules. Rule 2(I) was substituted by Notification dated 01.03.2011 w.e.f 01.04.2011 and it is reproduced below : w.e.f 01.04.2011

"2(I) "input service" means any service,-

(i) used by a provider of output 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 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, 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 exclude, XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

(emphasis supplied)

21. Rule 2(I), as it stood prior to 01.04.2011, is also reproduced below : 5. prior to 01.04.2011

"2(I) "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;"*

(emphasis supplied)

22. "Input service" either prior to 01.04.2011 or w.e.f. 01.04.2011 means any service used by the manufacturer, whether directly or indirectly, or in relation to the manufacture of final products. The appellant is under an obligation to provide after sale service on the final products manufactured by it. The dealers provide the services and the appellant pays service tax on the amount paid by it to the dealers. The service is provided free of cost by the dealers during the warranty period but the appellant makes payment to the dealers for the services they provide to the customers. The repair and maintenance services are, therefore, linked to the sale. The services are, therefore, used indirectly in relation to the manufacture of final products.

24. Further, we also find that the department has filed appeals before the Hon'ble High Court where the Tribunal has given the relief to the assessee but the decisions of the Tribunal in those cases have not been stayed and hence, the ratio of the said decisions are binding on the lower authorities.

25. Further, we also find that the department has not been able to distinguish the latest two decisions of the Tribunal in the case of Johnson Controls Hitachi Air Conditioning India Ltd. and M/s Case New Holland Construction Equipment (I) Pvt. Ltd. cited (*supra*) involving identical issues wherein all earlier decisions of the Tribunal were considered and thereafter, the demands were dropped.

26. Further, we are of the opinion that the decisions relied upon by the Revenue are not directly on the issue and does not reflect the controversy involved in the present case.

27. In view of our discussion above, we hold that the appellant has correctly availed cenvat credit on the amount of service tax paid for the services provided by the dealers to the customers on behalf of the appellant for fulfilling the warranty obligations of the appellant.

28. The ratio of the decisions relied upon by the appellant is squarely applicable to the instant case and relying upon the aforesaid decision, we find that the credit on warranty service provided free of cost during the warranty period through third parties cannot be denied. 29. As regards, the invocation of extended period of limitation, we hold that there does not exist any reason for invoking the extended period of limitation as the issue involved in the present case has already been decided in favour of the appellant. Moreover, the department did not bring any material on record to show that the appellant has suppressed the material facts with intent to evade payment of service tax. Besides this, the audit of the record of the appellant was conducted in February/March 2007 whereas the show cause notice was issued in 2009 after the expiry of two and half years which makes the substantial demand beyond the period of limitation.

30. In view of our discussion above, the impugned orders are set-aside and both the appeals of the appellant are allowed with consequential relief, if any, as per law."

6.2 Further, we find that the Tribunal in the case of M/s New Holland Construction Equipment (I) Pvt. Ltd. cited (supra) has considered the identical issue and has held as under:-

"41. It is, therefore, considered appropriate to follow the three decisions rendered by the Tribunal in Carrier Airconditioning & Refrigeration, Honda Motorcycle and Samsung India Electronics in preference to the later decision rendered on 24.11.2017, which has distinguished these three decisions on a non-existent ground. This is what was observed by the Supreme Court in Babu Parasu Kaikadi and the relevant portion is reproduced below:

"18. Furthermore, this Court, while rendering judgment in Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal¹⁵ was bound by its earlier decision of a coordinate Bench in Ramchandra Keshav Adke vs. Govind Joti Chavare. We are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered without adequate argument at the Bar and also without reference to the mandatory provisions of the Act."

42. In this view of the matter, the appellant correctly availed CENVAT credit on the amount of service tax paid for the services provided by the dealers to the customers on behalf of the appellant for fulfilling the warranty obligations of the appellant.

43. The order dated 25.05.2018 passed by the Commissioner (Appeals), therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed."

6.3 Further, we find that the contention of the Revenue is that the earlier decisions of the Tribunal in the appellant's own case as well as in the case of CCE, Nashik vs. Mahindra & Mahindra Ltd. cited (supra), the department has filed appeal which is pending before

the Hon“ble High Court of Punjab and Haryana and Hon“ble High Court of Bombay will not help the case of the Revenue because in both the cases only appeal has been admitted and no stay granted.

6.4 Further, we find that this Tribunal in various decisions relied upon by the appellant on identical issues has consistently held that the assessee is entitled to cenvat credit of service tax paid on Repair and Maintenance during the warranty period as the same fall within the ambit of "Input Service" as provided in Rule 2(l) of CCR, 2004."

In view of the above we find that CESTAT has constantly been taking view in respect of admissibility of CENVAT credit in on warranty services provided through third party – authorized service centres. Thus we do not find any merits in this demand and set aside the same

36. We find that the impugned notice does not disclose any evidence of any positive act of fraud, suppression, wilful misstatement, with intention to evade payment of duty on the part of the Appellant. It is submitted that the mere fact of detection by the Department, does not by itself prove that the Appellant deliberately and fraudulently availed Cenvat credit on the service in question with intention to avail and utilize inadmissible credit. Reliance is placed on the following decisions:

- **Continental Foundation JT. Venture vs. Commr. of C. Ex, Chandigarh-I 2007(216) E.L.T. 177 (SC)**
- **PVR Ltd. vs. Commissioner of Service Tax, New Delhi 2021 (55) G.S.T.L. 435 (Tri- Del.)**

37. We find that the present demand arises on the basis of audit conducted by the Excise Officer of the Appellant's records for the period from April 2013 to March 2014. All the details were present, and all the queries raised by the Audit team were properly answered by the Appellant. The Appellant places reliance on the following decisions where it was held that when duty demand is based on an Audit objection, there cannot be any allegation of suppression.

- a. **Commissioner of Central Excise, 19 Mumbai-III v. Essel Propack Ltd., 2015 (323) E.L.T. 248 (S.C.)**

b. Jakap Metind Pvt. Ltd. v. Commissioner of Customs, Pune, -III reported at 2015 (329) E.L.T. 485 (Tri. - Mumbai)

38. In the context of the erstwhile proviso to Section 11A (1), which also was an exception to the main provision of Section 11A(1) providing one year for the issue of SCN, the Hon'ble Supreme Court held in **Pushpam Pharmaceuticals Company v. CCE, 1995 (78) ELT 401 (SC)** that the proviso being an exception to the main section, it has to be construed strictly. Similar, proposition was held in **Tamil Nadu Housing Board v. CCE, Madras, 1994 (74) ELT 9 (SC), and CCE, Chandigarh v. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC).**

39. The present case involves interpretational issues involving complex legal provisions to determine the correct admissibility of Cenvat credit. It is a settled position that a case involving interpretation of the statutory provisions cannot be construed to be a case of wilful misstatement or suppression of facts, with intent to evade payment of tax or avail Cenvat credit in a fraudulent manner.

40. As per Section 11AC of the Act read with Rule 15 of Cenvat Credit Rules, 2004 the penalty can be imposed only in cases of fraud, collusion, wilful misstatement or suppression of facts or contravention of provisions of Excise Act with an intention to evade payment of duty. The Appellant has already stated that they have not contravened any provisions of law as they did not avail any credit in contravention of any provisions of law.

41. According to Rule 14 read with Section 11AA, interest is chargeable only when any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded or Cenvat credit has been erroneously taken and utilized. The situations contemplated under Rule 14 as well as under Section 11AA are absent in this case. Therefore, where the

demand of Cenvat credit is itself liable to be set aside, as a necessary consequence, interest is also not payable. Therefore, the impugned order confirming recovery thereof, is liable to be set aside and we do so.

42. In view of the above discussions, the impugned order cannot be sustained and is accordingly, set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Pronounced in open court on.....)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

**Separate concerning
order**

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal

SANJIV SRIVASTAVA:

43. I have gone through the order prepared by Learned Member (Judicial). However, I intent to record my findings in the matter as follows:-

44. The issue involve in the present case is that Cenvat credit has been sought to be denied by observing as follows:-

"Moreover, perusal of the records and returns submitted by the party shows that they had never declared this fact in the department about availing credit of service the paid on the Call Centre Services as billed by the service provider. It was detected, only during the course of audit that they were found availing such inadmissible credit of service is which could not be termed as an 'Input service' under rule 2(l) of the Cenvat Credit Rules 2004, as also discussed on the foregoing pages. On being asked to deposit the inadmissible credit as pointed out, the party did not agree with the department's view, vide their letter dated 31.10.2014. They submitted that these services were covered as input services and that accordingly they were eligible to take credit on the services provided by these call centers. It thus appears that the party knowingly and willfully treated these services as input service and at the same time concealed this fact and never disclosed to the department. Hence, demand of duty invoking the extended period of five years is applicable in the present case under the provisions of Section 11A (4) of the Central Excise Act, 1944.

45 Thus in view of the facts discussed as above, the party is found to have wrongly availed credit of Service Tax paid on Call charges billed by these Call Centres, viz DSCs as well as ASCS amounting to Rs. 4,60,31,773/-, during the period July-2011 to March 2016. As per details given in Annexure A to this notice. This amount is recoverable from

them under Rule 14 of Cenvat Credit Rules 2004 read with Section 11A (4) of Central Excise Act 1944."

45. There is no issue with regards to denial of Cenvat credit in respect of services provided at authorized service stations to the customers by the appellant.

46. For confirming the demand Order-in-Original records as follows:-

"5.6 I have also noted that the party has since themselves declared that the impugned services were performed at the places beyond the place of manufacture. These places are not connected with the completion of manufacture of goods having been removed from the factory. The said goods also have gone away from the place of removal before performance of service and it abundantly conveys to mean that the said service rendered by Call Centers were performed by a number of service providers at a place other than the place of manufacture, having no nexus directly or indirectly with the event of completion of manufacture of final products.

5.7 Having regard to the submissions advanced by the party on this score, it is seen that the inclusion clause of Rule 2 of CC Rules 2004 stipulates that

"and includes services used in relation to setting up, modernization, renovation or repairs of factory, premises of output service or an office relating to such factory or premises, advertisement or sales promotion, market research,, storage up to 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 on inputs, or capital goods and outward transportation of up to the place of removal."

5.8 Here, it is worthwhile to observe that the provisions, as cited above, evince that impugned services are for activities rendered by the service providers or those consumed by the manufacturers of final product up to the place of removal. Such services were eligible either for an office relating to such factory or for the premises of a service provider. Undisputedly, the party has not contended that the place of removal in respect of their final products is not their factory gate. The services were performed beyond the factory gate. In other words, it means that the services rendered by Call Centers has no nexus with the completion of manufacture of final products. In the instant matter, the inclusion clause of Rule 2 of the CC Rules 2004, does not cover the incidences of services performed and utilized at a place other than the place of removal. In the instant matter, places of provision of services fall beyond the place of removal that is the factory gate of the party.

5.9 While deciding the said issue, I place reliance on the decision of the Hon'ble Tribunal in the case of Kohinoor Biscuit Products Vs CCE, Noida, 2015 (37) STR 567 (Tri. Delhi.) CESTAT, Principal Bench New Delhi, wherein the goods viz. biscuits were assessed to duty under Sec 4A of the Central Excise Tariff Act, 1985. The facts of the case and the observations and findings of the Hon'ble Tribunal are as under-

"The biscuits were manufactured by them and were delivered at their depots from-where the same were being sold. During the period of dispute. the biscuits were notified under section 4A of the central Excise Act, 1944 and accordingly the duty on the biscuits cleared by the appellant was being paid on the basis of assessable value determined with reference to declared MKP, 1.6. MRP minus abatement. The point of dispute in this case is as to whether the appellant would be eligible for Cenvat credit of service tax paid on the GTA service availed for

transportation of the biscuits from their factory to the depot of m/s Parle biscuits.....(para 1)

5.....

Ultratech Cement Ltd. Vs CCE Raipur/Chandigarh [Final Order Nos.A/58257- 58259/2013 EX (DB) dated 18-11-2013 (2014 (35) STR 751 (TRI- DEL)), wherein it has been held that in the case where the duty on the finished products is at specific rate or where the assessable value is determined under section 4A of the Contral Excise Act, 1944 and the provisions of Section 4 are not applicable, the definition of "place of removal" in the Section 4(3) (c) cannot be adopted for the purpose of Cenvat Credit Rules, 2004 and accordingly the place of removal would be the factory gate, ie. the place on removal from which the duty is liable to paid.

8.

.....
....."since in this case the assessable value of the goods was being Watermined not under Sec. 4 but under Sec.4A of the Central Excise Act, 1944, the definition of "place of Removal" as given in Section 4(3) (c) cannot be adopted for the purpose of Cenvat credit rules 2004 and accordingly it is the factory gate which would be the place of removal. Moreover, even if the definition of "place of removal" is given in Section 4(3) (c) is treated as applicable to the cases where the duty on the finished goods is payable on the value determined under Section 4A, even then, the Depot of Mys Parle Biscuits cannot be treated as "Place of removal" in respect of the goods manufactured by the appellant as the, "Place of removal" defined in Section 4(3) (0) is the place of removal for the manufacture of the goods and in case, the manufacturer after clearing the goods from the factory to his depots (clears) all the depots it is those depots which would be the place of removal. However, when the manufacturer clears the goods to the depots of some other

persons, those depots cannot be treated as "Place of removal for the manufacture, unless the sales are on FOR basis. For this reason also, the "Place of removal" in this case is factory of the appellant. and the depot of M/s Parle Biscuits. In view of this, we hold that the Cenvat Credit of the service tax paid on the GTA services availed for transportation goods from the factory of the appellant to the depot has been correctly denied and, as such, the Cenvat credit demand has been correctly up-held along with interest.

In view of the above discussion, we do not find any merit in the appeal. The same is dismissed."

5.10 I further observe that against the above detailed order of the Principal Bench, the appellant M/s Kohinoor Biscuit Products preferred an appeal before the Hon'ble Allahabad High Court. However, the appeal was dismissed vide their order dated 07-10-2014. While dismissing the appeal, Hon'ble High Court observed as follows:-

"In the present case, the clear finding, which has been recorded both by the Commissioner (Appeals) and by the Tribunal, is that the sale had not taken place on an "FOR Destination" basis. Hence, the place of removal in the present case is the factory gate of the appellant not the Depot of Parle Biscuits. As a matter of fact, as held by the Commissioner (Appeals), the liability on account of freight is borne by Parle Biscuits. No amount was ne by the appellant towards freight under the agreement with Parle Biscuits. Hence, in this view of the matter, the Tribunal was justified in coming to the conclusion that the Cenvat credit on Service Tax paid on GTA Service availed for the transportation of the goods from the factory of appellant to the Depot of Parle Biscuits, has been correctly denied. The view which has been taken by Tribunal is in accordance with law.

The appeal, therefore, does not give rise to any substantial question of law. It is, accordingly, dismissed."

5.11 I note that sub-clause (qa) defining 'place of removal was inserted in Rule 2 of the Cenvat Credit Rules, 2004 vide Notification No. 21/2014-C.E. (N.T), dated 11.07.2014. The sub-clause (qa) to Rule 2 ibid is reproduced below:

Place of removal means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty,

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed."

5.12 Applying the ratio of the above decision of the Hon'ble Allahabad High Court, Tribunal and Notification No. 21/2014-C.E. (N.T), dated 11.07.2014 to the case in hand, I take the view that in this case the "place of removal in the matter cannot be accepted to be any place other than the factory gate (up to 10.07.2014) and factory gate, warehouse and depot (w.e.f 11.07.2014). In the instant matter, the party has taken credit of input services rendered and consumed at the places beyond the place of removal i.e. factory gate, warehouse and depot. It is pertinent to keep in mind that the goods manufactured by the party are assessed to duty under section 4A of the Central Excise Act, 1944, i.e. on the basis of Retail Sale Price.

5.13 On the aspect of admissibility of Input service credit availed on services rendered by Call Centers in the guise of "Advertising service or sales promotion", the party has vehemently contended that the same was admissible to them as the same was in the nature of sales promotion. In this regard, I have examined the party's plea that services

utilized in dispute satisfy the criteria of use in or in relation to the manufacture of dutiable final products and hence they are eligible for credit. I have also gone through the case laws referred by the assessee. I find that the issue has been critically examined in respect of input services in the case of Vikram Cement Vs. CCE Indore [2009(242) ELT 545]. In the said case, the Tribunal held that the definition of input contains expressions 'used', 'in or in relation to' and 'manufacture of final product and discloses that the same refer to products used in or integrally connected with the process of manufacture of final product. The term 'capital goods' has been defined independently in the Rules, therefore if the inputs were to include every product under the sun which is somehow related to the premises where the manufacturing process is carried out, then there is no need to provide a definition of the term capital goods. Relevant extracts of the verdict are reproduced below:-

28. *If one reads the decision of J.K. Cotton Spg. & Wvg. Mills Co. Ltd. case, it has been clearly held therein that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". This clearly discloses that the Apex Court in no uncertain term has ruled that of those goods which form part of the process carried out by the manufacturer for converting the raw material into finished goods would be the products used in the manufacture of the goods. In other words, if the product is not integrally connected with*

the process of the manufacture and which does not results in utilization of such product directly or indirectly into the manufacture of the finished product, then such a product cannot be said to be the input utilized for or in relation to manufacture of the final product. This is also evident from the definition of the term input as found in Rule 2(k). The definition clearly uses the word "used" and further clarity the same with the expression "in or in relation to" and further uses these expressions with reference to the term "manufacture of final products". The definition disclosing the expression like "used", "in or in relation to", "the manufacture of final products" would inevitably disclose, that the same refer to only those products which are used in or integrally connected with the process of actual manufacture of the final product and only such product could be entitled to be classified as the input in or in relation to the manufacture of final products, and not otherwise. When the legislature in its wisdom has specifically defined a term, no Court or Tribunal under the guise of interpretation thereof is empowered to expand the meaning of such term. If the contention on behalf of the appellants is accepted, it would virtually amount to expand the meaning of the term "input" beyond the scope prescribed under the definition clause in Rule 2(k) of the Cenvat Credit Rules, 2004.

29. *It is also pertinent to note that the legislature in its wisdom has independently defined the expression capital goods under Rule 2(a) of the said rules. If the inputs were to include every product under the sun which is somehow related to the premises where the manufacturing process goes on, then there is no need to provide a definition of the*

term capital goods and, therefore, the acceptance of the contention on behalf of the appellants would render the definition of the term the capital goods to be redundant as well as the provisions relating to extending the benefit of Cenvat credit to the capital goods.

5.14 I note that the above views of the Tribunal in the case of Vikram Cement case supra were later endorsed by the larger bench of the Tribunal in the case of Vandana Global (2010(253) ELT 440) wherein Hon'ble Tribunal held that in the case where cement and steel items used for laying soundation and, building structural support and not used in the course of manufacture of final product, the same are not eligible for taking Cenvat credit. Further, the decision also clarified that definition of Inputs cannot be interpreted to include either capital goods or foundation and supporting structures for such capital goods. Para 44 of the sald Judgement is reproduced below:-

44. Another argument is that even the main definition of input under Rule 2(k) would include cement and steel items used for laying foundation and making supporting structures as the expression used there-under is wide and includes everything "used in or in relation to the manufacture" of final products whether directly or indirectly. The argument is that cement and steel itens so used are used in relation to the manufacture of final products. It has also been argued that at one time the definition of inputs excluded machines, machinery, plant, equipment, apparatus, tools, appliances used for producing or processing of any goods or for bringing about any hange in any substance in or in relation to the manufacture of the final products and therefore, but for the exclusion, the expression inputs would have included machines etc. This argument appears to us to be clearly untenable. The exclusion provided earlier clearly appears to have been so

provided by way of abundant caution to clarify that the inputs in any case would not include machinery and equipment. From such a clarificatory provision, it cannot be concluded that the expression 'input' would include cement and steel items used for laying foundation and making supporting structures. Moreover, if for a moment one has to agree with the contention that Input included machinery etc. there would have been no need for providing a separate definition for capital goods and making a separate provision for allowing credit on capital goods. Such an argument cannot also be accepted as it would imply that capital goods would be included twice in the definition under Rule 2(a) with limited scope and with unlimited scope under Rule 2(k). Such a proposition appears to be totally absurd as the rule-makers cannot be seen to have provided two separate definitions to cover the same thing. There are also other rules in the Cenvat Credit rules namely Rule 3. Rule 3(1), Rule 3(5), Rule 3(5a), Rule 3(5b), Rule 4(1), Rule 4(2), Rule 4(3), Rule 4(4), Rule 5, Rule 6, Rule 9, Rule 15 which provide for different provisions for inputs and capital goods. It is very clear from these provisions that the rule making authority intended to deal with capital goods separately and inputs separately and the definition of input cannot be interpreted to include either the capital goods, or foundation and supporting structures for the same, as being argued by some of the Advocates"

5.15 I also take note of the decision of the Hon'ble Apex court in the case of Maruti Suzuki [2009(240)ELT 641(S.C.)] wherein it has been stressed that integral connection of the input service with final product, which includes dependence test and functionality test decide, whether any item is eligible for Cenvat credit as input. Applying the ratio, I find that the activities of Call Centres do not have any nexus with the manufacturing activities

undertaken at the factory. While making this observation, I refer to para 14 of the said decision:-

14. *In the case of Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd. reported in (1989) 4 SCC 566 the difference between the expression "used in the manufacture" and "used as input (raw material)" was highlighted. In that judgment, it was held that undoubtedly the said two expressions are distinct and separate, but, when an ancillary process (like electricity generation) aids the making of an end product, then, the ancillary process gets integrally connected to the end product. In the said judgment, this Court applied what is called as "the dependence test". It may, however, be noted that in the definition of "input" the expression "used in or in relation to the manufacture of final product" is not a standalone item. It has to be read in entirety and when so read it reads as "used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not". These words "whether directly or indirectly" and "whether contained in the final product or not" indicates the intention of the legislature. What the legislature intends to say is that even if the use of input (like electricity) in the manufacturing process is not direct but indirect still such an item would stand covered by the definition of "input". In the past, there was a controversy as to what is the meaning of the word "input", conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of "input", the Legislature has clarified that even if an item is not*

contained in the final product still it would be classifiable as an "input" under the above definition. In other words, it has been clarified by the definition of "input" that the following considerations will not be relevant :

(a) use of input in the manufacturing process be it direct or indirect;

(b) even if the input is not contained in the final product, it would still be covered by the definition.

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input". Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

On perusal of above observations, I find the ratio of the above case is applicable in the present matter for the purpose of determining nexus between input services and the manufacture of final products.

5.16 On the question of inclusion clause of service rendered by Call Centers under Rule 2(1) of the CC Rules 2004, I rely on the case of Vikram Ispat Versus C.C.E., Raigad, 2009 (16) ST.R. 195 (Tri Mumbai), while deciding the said case, Hon'ble Tribunal have held that input service should have nexus with manufacture of goods. Applying the same ratio, I find that the defence could not adduce any evidence to establish the nexus between Service rendered by Call Centers and the manufacturing activities undertaken at the factory. In this context, I find relevant to reproduced para 3, as below:-

3. *The learned counsel further refers to each of the four items on which the Cenvat credits in question were taken. He submits that these items are coming within the scope and ambit of the definition of "input service" given under Rule 2(I). The learned SDR has contested this claim. After considering the submissions, I find that the subscription given by the assessee to SIMA was in no way connected with the manufacture of final products or with clearance thereof from the factory. There is not even a remote connection between this item and anything contained in the definition of "input service". Security services were employed at the railway siding at Roha where the raw-material for the factory was unloaded from railway wagons and loaded on to the trucks which carried the goods by road to the factory. It is said that the security personnel were posted at that point to ensure the supply of the goods and the unloading/loading operations. The purpose of posting of security personnel must be discerned from the*

agreement between the appellant and security agency. But none is forthcoming. In this scenario, I am not in a position to accept the claim of the appellant that the security personnel were doing something, directly, or indirectly, in or in relation to the manufacture or clearance of final product. In other words, the claim is unsustainable. Coming to "rent-a-cab services", I am told that these services were used by functionaries, officials and employees of the company for purposes connected directly or indirectly with the manufacture or clearance of the final products. To a specific query from the Bench, the learned counsel submits that, if the representative of the company who is present in Court to assist him avails himself of "rent-a-cab service" for commuting between the administrative office of the company and this Court, Cenvat credit on the service is admissible to the appellant. This argument is farfetched inasmuch as, if it is accepted, Cenvat credit will have to be allowed to the assessee in respect of "rent-a-cab service " availed by the counsel himself to come to this Court to argue their case. It is understandable if the above service was used by functionaries/officials/employees of the company to commute between their administrative office and the factory for purposes connected with the manufacture and/or clearance of the finished goods. Even for this purpose, there must be documentary evidence. No document is available on record. "Mobile telephony service" has already been claimed to be an 'input service' defined under Rule 2(I). It is within anybody's knowledge that a mobile phone can be used by a person for multifarious purposes. No doubt, a functionary/official/employee of the company could use it for purposes connected with the manufacture and/or clearance of the final

products, but the assessee has failed to establish that the mobile phones in question were dedicated to this purpose. The learned counsel has referred to the Tribunal's Larger Bench decision in CCE, Mumbai-V v. GTC Industries Ltd. - [2008 \(12\) S.T.R. 468](#) (Tri.-LB), wherein outdoor catering services used for supply of food in a factory canteen were held to be input services. The learned counsel has cited the above decision in support of his submission that the definition of "input service" should be construed liberally. It is his submission that some of the items mentioned in the inclusive part of that definition are comparable to one or the other of the services in question and, therefore, it should be held that the latter are also covered by the definition of "input service". I do not agree. Any service to be brought within the ambit of definition of "input service" should be one which should specify the essential requirement contained in the main part of the definition. This requirement is equally applicable to the various items mentioned in the inclusive part of the definition as well. In this view of the matter, I am constrained to hold that the appellant is not entitled to Cenvat credit on any of the four items of "services" in question. In respect of some of the said services, they have not adduced evidence to establish the nexus, if any, between the "services" and the manufacture/clearance of the final products.

5.17 While deciding this matter, I also rely on the decision given by the Larger Bench of the CESTAT in the case of Tower Vision India Pvt. Ltd. Versus CCE (Adj) Delhi, reported in 2016 (42) S.TR 249 (Tri. Larger Bench). In this case, it was held by the Hon'ble Tribunal that since there was no nexus between duty paid inputs and the telecommunication services hence credit was not

extendable. The larger bench observed that Cenvat credit was not available because Telecom companies have created infrastructure and provided such business support service to themselves. So, Infrastructure spun out to separate companies. In such case, no distinction could be made between telecom operators and Infrastructure companies in deciding eligibility of Cenvat credit on MS angles, channels, etc. and pre-fabricated shelters, used for fabricating telecommunication towers into concrete platform at site. Therefore, Rule 2(1) of CC Rules, 2004 does not allow credit on such activities.

The relevant paras (21-823) are reproduced below:

21. *Learned Counsel relied on the Hon'ble Supreme Court's decision in CCE, Ahmedabad v. Solid & Correct Engineering Works reported in [2010 \(252\) E.L.T. 481](#) (S.C.). The Supreme Court was examining excise duty liability of asphalt drum hot mix plant. The Court examined Section 3(26) of the General Clauses Act with reference to "Immovable Property". The term "attached to the earth" has been examined with reference to Section 3 of Transfer of Property Act. The Hon'ble Apex Court concluded that any plant which is fixed by nuts and bolts to a foundation, wherein there is no assimilation of the machinery with a structure permanently and the civil foundation was only necessary to provide a wobble free operation of the machine, the test of permanency would fail. We have carefully perused the Apex Court order in this case. The Apex Court held that the hot mix plant which is specifically covered under Plant and Machinery Tariff Heading 8474 are manufactured and brought. The point decided by the Apex Court was whether setting up of such plant and machinery would amount to manufacture liable to Central Excise. First of all, in*

the present case we have no admitted capital goods brought for installation or erection in the desired site. The towers and their components cleared as angles and channels or as set of angles in CKD condition are cleared after duty payment by the manufacturer under Chapter 73, which is an excluded chapter for capital goods. As such, there is no movable capital goods which are otherwise eligible for Cenvat credit which are being denied such credit only applying the test of immovability.

Tower Parts (MS Channels, Angles, etc.) as "Inputs" for availing credit :- *An alternate claim has been made by the appellants to allow Cenvat credit paid on structural parts/towers/shelters treating them as inputs in terms of Rule 2(k)(ii) which allows credit of all goods used for providing output services. It was argued that there is no bar for goods which do not fall under the category of capital goods to qualify as inputs. Reliance was placed on the Larger Bench decision in Union Carbide India Ltd. v. CCE, Calcutta-I reported in [1996 \(86\) E.L.T. 613](#) (Tribunal). In this ruling, Tribunal considered spare parts of machines to be eligible for credit as inputs under Modvat scheme. In Tata Engineering & Locomotive Co. Ltd. v. CCE, Pune reported in [1994 \(70\) E.L.T. 75](#) (Tribunal), the Tribunal held that credit on the machines which stand excluded is available under input category. We have examined the appellant's plea in the light of decided cases. In the present case, duty paid items are MS Angles and Channels/Shelters which are brought to the site installed/erected and further put to use for mounting/installing telecommunication antenna and other equipment. It is necessary to decide whether duty paid MS angles/shelter are used*

by infra-companies for providing business support service to telecom companies or for providing telecom service by telecom operators. This will bring us to the next question relevant to decide this issue.

Question of nexus and Cenvat credit flow :- *The duty payment is on MS angles, channels (or towers in CKD as claimed by the appellants) and pre-fabricated shelters. The credit of this duty is claimed. The admitted basic requirement for eligibility of any duty credit is that goods on which duty is paid (credit of which is claimed) should have a connection or nexus to the output service. The credit availed on input is used for discharging tax on output service. In the present case, the duty paid MS angles, channels, etc., are brought to the site, fabricated into towers on a concrete platform. Similarly, the duty paid pre-fabricated shelters are brought and fixed to the ground base firmly. On such towers, the antenna or dish are fixed and connected by cables to electronic equipment housed in the pre-fabricated shelter on the ground. It is apparent that these duty paid items are not used for providing telecommunication service. The telecommunication service is provided by using erected and fixed towers and shelters. The inputs like MS Angles and Channels have gone into the making of such towers which in turn are used for providing infra-support service/telecom service. To apply the term "used for" in the definition for inputs, there should be a nexus between the inputs goods and the output service. In the present case the manipulation/fabrication of raw materials involved in erection and installation, fixing of towers and shelters will render such nexus tenuous. If the claim of the appellant is to be accepted, the credit can be even extended to duty*

paid MS Ingots if procured by the appellants to get the MS Angles manufactured which in turn used for erection of tower which in turn is used for providing telecom service. It is clear that such far remote linkages are not within the scope of the term "used for".

22. *Learned Counsel also relied on decision of Hon'ble Supreme Court in Hyundai Unitech Electrical Transmission Ltd. reported in 2015-VIL-104-SC-CE = [2015 \(323\) E.L.T. 220](#) (S.C.). In the said case the Hon'ble Supreme Court held that doors and electrical boxes are components and/or parts of wind operated electricity generators. Learned Counsel submitted that towers of wind mill generator stand on a similar footing to the towers now in dispute and these should be considered as parts of overall BTS. We have examined the said decision as well as the Tribunal's decision which was considered by the Supreme Court. It is clear that the Tribunal was considering the scope of terms "wind operated electricity generator, their components and parts thereof". Applying the principle in a Customs case of import of such towers, the Tribunal held the assessee eligible for exemption on such towers as parts. The Tribunal in Customs case Bharat Heavy Electricals Ltd. v. CC, Chennai reported in [1999 \(108\) E.L.T. 448](#) (Tribunal) examined the technical literature of imported wind mill generator/tower to arrive at the decision. Here, it is the assertion of appellants that the tower should be considered as part of BTS. The integrated BTS is never cleared as excisable item. The various tower structures are erected at site and integrated to create the required infra structure. Hence, the decision of the Hon'ble Supreme Court that doors and electrical boxes are to*

be considered as parts of electricity generator is not of any help to appellants.

Applicability of ratio followed for telecom companies to infrastructure companies :-

On the above analysis, the first point for difference of opinion referred to this Larger Bench relating to non-applicability of the decision of the Hon'ble Bombay High Court in Bharti Airtel to infrastructure companies to provide business support service to telecom operators can be examined. We find in the normal course the nature of output service should not have any bearing to decide credit eligibility on capital goods now under dispute. A distinction was sought to be made that the decision of Hon'ble Bombay High Court was applicable only to active telecom service providers and not to providers of passive infrastructural support to such telecom operators. Reliance was sought to be placed on the decision of the Tribunal in GTL Infrastructure Ltd. v. CST, Mumbai reported in [2015 \(37\) S.T.R. 577](#) (Tri. - Mumbai) and Tribunal's final order Nos. A/382-383/2015, dated 26-11-2014 in Reliance Infratel Ltd. v. CST, Mumbai-II reported in [2015 \(38\) S.T.R. 984](#) (Tri. - Mumbai). We have perused the GTL Infrastructure Ltd. decision. In the said decision it was mentioned that towers/BTS Cabins were used for providing business auxiliary service and, hence, Cenvat credit cannot be denied. Further, reliance placed by the Original Authority on Explanation-II and Rule 2(k)(i) was found to be incorrect as the same dealt with a manufacturer and not a service provider. The Tribunal was referring to its earlier order in Bharti Airtel Ltd. v. CCE, Pune reported in [2013 \(29\) S.T.R. 401](#) (Tri. - Mumbai) and observed that the said case dealt with facts which are totally

different. It was found that since appellants were allowing the operators right to install antenna and BTS equipments and rendering an output service under business auxiliary service they were eligible for credit. We find that this decision of Tribunal is not based on a proper appreciation of the ratio of the Hon'ble Bombay High Court. The Hon'ble Bombay High Court order in Bharti Airtel Ltd. (supra) was not available to the Tribunal while deciding GTL Infrastructure Ltd. The tower and BTS Cabin are used for providing output service, here business auxiliary/support service but the question is, is there any duty claimed as credit paid on tower or BTS Cabins as installed at site. These items cannot be considered as inputs as they were held to be immovable property. The inputs which suffered duty like MS angles and pre-fabricated shelters, per se, were not used for providing output service. In other words there is a tower and cabin structure erected and embedded before such support service could be provided to the telecom operators.

23. *It is necessary to note that before infrastructure companies came into the picture, telecom operators themselves were putting up such infrastructure and using the same to provide telecom service. In other words, in the absence of infrastructure companies as an intermediary, telecom companies themselves created such infrastructure and "provided" such business support service to self. The issue of Service Tax liability in such situation on business support service is not raised because there are no two persons as a provider or recipient of such service. In a sense such service was to the self. Considering such factual matrix, we find that no distinction could be made*

between the telecom operators and the infrastructure companies in deciding the eligibility of Cenvat credit on the impugned items now under consideration.”

5.18 In the case of Vikram Ispat Vs CCE Raigad reported in 2010 (19) S.T.R. 52 (Tri.- Mumbai), I observe that that Hon'ble Tribunal have held that no service may be classified as input service unless quintessential requirements laid down in main part of definition is not established. In the absence of any nexus between a services and manufacture/clearance of goods, such services may not be termed as input services on which the assessee could claim benefit of credit of service tax. The Hon'ble Tribunal quoted the case of Manikgarh Cement Work Final Order No. A/632/2009/SMB/C-IV, dated 3-11-2009 with approval and held that –

5. I have considered the grounds of this appeal, the written submissions of the appellant and the argument of the learned SDR. The lower authorities have found that the barges and tugs were used in the sea and the channel and not in the jetty. In other words, it has been found that these vessels were operated in the sea and channel beyond the jetty. On the other hand, the appellant has claimed in the memorandum of appeal that the said vessels were used not only for bringing raw materials from the ships anchored in the sea to their own jetty but also for conveying the goods from the jetty to their factory. It is claimed that the jetty is located within the precincts of their factory. There is no evidence in support of these claims. In other words, the aforesaid findings of the lower authorities cannot be intertered with. Even according to the appellant, the ships laden with iron ore were anchored in the sea away from the jetty and the tugs and barges were

used for transporting the goods from the ships to the jetty. The services in question were availed in respect of these tugs and barges. One service was used for repairs and maintenance of these vessels, another for insuring the vessels, and the third one for inspection and certification of the vessels. The fourth one was used for recruiting persons as crew of the vessels. Yet another service was availed for 'hydrographic survey of Revdanda channel/port for dredging etc.' The question before me is whether these services would qualify to be 'input services' defined under Rule 2(l) of the Cenvat Credit Rules, 2004. In the context of considering a similar question in the case of Manikgarh Cement Work (supra), I held that a nexus should be established between the services in question and the manufacture/clearance of excisable goods by the assessee for claiming the benefit of Cenvat Credit of the service tax paid on such services. Paras 4 to 7 of the order passed in that case are reproduced below :

"4. The Hon'ble High Court, in the case of Coca Cola (supra), examined the scope of the above definition. It held that the definition could be divided into five categories and that each category/limb of the definition could be considered as an independent benefit or concession/exemption. Their Lordships clarified that, if an assessee could satisfy any one of the five categories/limbs, credit of the service tax paid on the relevant services would be available to him. The assessee need not satisfy the other limb(s) of the definition. According to the Id. counsel, the question whether Cenvat credit of service tax paid on the aforesaid four services rendered at the residential colony

outside the factory is admissible to the respondent is squarely covered by the Hon'ble High Court's decision, in their favour. On the other hand, Id. DR has heavily relied on the Hon'ble Supreme court's decision in Maruti Suzuki case. According to him, the Hon'ble Supreme Court's decision impliedly overrules the High Court's decision. I agree. In the case of Maruti Suzuki, the Supreme Court was considering the definition of 'input' given under the CENVAT Credit Rules. The definition reads as under :-

"(k) 'input' means -

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Their Lordships considered the above definition to be divisible into three parts : (1) specific part (main or substantive part); (2) inclusive

part; (3) place of use. Further discussion relevant to the instant case can be had from para 14 of the judgment and the same reads as under :-

"It may, however, be noted that in the definition of "input" the expression 'used in or in relation to the manufacture of final products' is not a standalone item. It has to be read in entirety and when so read it reads as 'used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not'. These words "whether directly or indirectly" and "whether contained in the final product or not" indicates the intention of the legislature. What the legislature intends to say is that even if the use of input (like electricity) in the manufacturing process is not direct but indirect still such an item would stand covered by the definition of 'input'. In the past, there was a controversy as to what is the meaning of the word 'input' conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of 'input', the Legislature has clarified that even if an item is not contained in the final product still it would be classifiable as an 'input' under the above definition. In other words, it has been clarified by the definition of 'input' that the following considerations will not be relevant :

(a) use of input in the manufacturing process be it direct or indirect;

(b) even if the input is not contained in the final product, it would still be covered by the definition.

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final products" which, as stated above, is the crucial requirement of the definition of 'input'. Moreover, the said expression, viz, "used in or in relation to the manufacture of final products" in the specific/substantive part of the definition is so wide that it would cover innumerable items as 'input' and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is 'used as packing material'. Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product." (emphasis supplied)

The above judgment of the Supreme court hands down an important ruling, which it is to the effect that, where the inclusive part of a

definition provides a list of items, any such item should also satisfy the quintessential ingredients of the main part of the definition. In other words, the definition has to be considered in its entirety. The inclusive part is not independent of the main part. It is not a 'stand-alone' provision. This ruling is applicable to 'input service', given the definition of this expression under Rule 2(I) of the Cenvat Credit Rules. There is nothing in this definition to indicate that the legislative intent behind it is different from the one underlying the definition of 'input'. Accordingly, I hold that any service which is apparently covered by the parameters of the inclusive part of the definition of "input service" should also satisfy the quintessential requirements of the main part of the definition and, accordingly, any person claiming the benefit of Cenvat credit on input service in terms of the inclusive part of the definition of "input service" should establish that such service was used, directly or indirectly, in or in relation to the manufacture of his final products or the clearance of such products from his factory.

5. I am not impressed with the way the Id. counsel has sought to distinguish Maruti Suzuki case from Coca Cola case. He argued that the apex court's decision relating to 'input' could not be applied to "input service". This argument is not acceptable, given the definition of 'input' and "input service". Whether it be input or input service, the main part of the definition contains the quintessential ingredients and the inclusive part provides a non-exhaustive list of items each of which should satisfy the

requirements of the main part. Ld. counsel has pointed out that, in the case of input, "place of use" is a third part of the definition, which is conspicuously absent in the definition of "input service". It has been argued that an input service need not necessarily be rendered within the factory premises whereas an input should normally be used within the factory. Broadly, this distinction sounds valid. But, again, it doesn't offer an answer to the question whether the service (which is rendered within the factory or outside) satisfies other essential requirements laid down in the main part of the definition. Even if it be held that there is no place of use in relation to input service, the basic requirement remains to be that anything mentioned as an input service in the inclusive part of the definition should be shown to have been used in or in relation to the manufacture or clearance of final products, whether directly or indirectly.

6. In the earlier cases of the same assessee, coordinate benches held in their favour. According to the Ld. counsel, the Hon'ble High Court's decision in Coca Cola case should be followed as binding precedent in this case. I find that the Hon'ble Supreme Court's ruling in Maruti Suzuki case is to the contra and the same is constitutionally binding on this Tribunal.

7. In the result, the view taken by the lower appellate authority by following an earlier decision of this Tribunal which is presently under challenge before the Hon'ble High Court cannot be accepted. On the other hand, the view taken by the Ld. DR on the strength of the Hon'ble Supreme Court's ruling in Maruti Suzuki case should be followed. Accordingly, it is held that, as the respondent has not established

nexus between any of the four services and the manufacture or clearance of excisable goods, the benefit of Cenvat credit in respect of such service cannot be allowed. It is ordered accordingly. However, I think, in a case of this nature, the assessee should not be penalised. This case involves rival interpretations of a provision of law. In typical cases of interpretative nature, penalties have been waived by this Tribunal. In this view of the matter, the order-in-original is sustained except in respect of penalty imposed by the original authority. The appeal is disposed of accordingly."

*6. Following the above view, I have to reject the appellant's plea that the Hon'ble High Court's decision in Coca Cola India Pvt. Ltd.'s case be followed in preference to the Hon'ble Supreme Court's ruling in Maruti Suzuki Ltd.'s case. Accordingly, in terms of the ruling of the apex court, it is held, on the facts of this case, that none of the services in question is liable to be classified as "input service" as defined under Rule 2(l) *ibid* inasmuch as the quintessential requirements of "input service" laid down in the main part of the definition have not been established by the appellant.*

5.19 Having given due consideration to the facts and circumstances of the case, as discussed herein above, I conclude that the Cenvat credit taken in respect of the input services rendered by Call Centres were utilized beyond the place of removal and not up to the place of removal, and the credit attributable to said services was not admissible to the party. Accordingly, the demand of inadmissible credit Rs. 4,80,31,773/- paid on Call charges billed by the Call Centres and demand so raised vide the impugned notice stands confirmed."

47. In the present case some of the decisions relied upon in the impugned order has been set aside by the relevant Appellate Authority i.e Hon'ble High Courts and Hon'ble Supreme Court. Hence, reliance placed in various cases by the impugned order is not justified. We are concern with the case of the credit in respect of input services and not in respect of inputs, most of the decisions relied in the impugned order are the decisions rendered in respect of the inputs and in the input services. The definition of 'inputs' as per Section 2 (k) of the CENVAT Credit Rules is not pari materia with the definition of "input services" as per Rule 2 (l) ibid, and hence reliance on the decisions placed in the impugned order on such decisions which are in respect of inputs is bad in law.

We have constantly taken the view that in respect of input services there is no requirement for admissibility of credit that services should received within the registered manufacturer/premises of the appellant till the time loose nexus can be established between the use of the services directly or indirectly in relation to output goods being manufactured by the appellant. The credit in such cases need not be denied. The said ratio has been very categorically laid down by Hon'ble Bombay High Court in the case of M/s Coca Cola India Pvt. Ltd. 2009 (242) E.L.T. 168 (Bom.). However, I find the issue to be squarely covered by the said decision of Hon'ble Bombay High Court. Relevant paras of the said decision are reproduced as follows:-

"19. *To answer the questions framed we shall have first to answer as, what constitutes manufacturing cost? The Supreme Court in Union of India v. Bombay Tyres International [[1983 \(14\) E.L.T. 1896](#) (S.C.)] has held that all elements given to enrich the value of the excisable goods and contribute to its marketability, must form part of the manufacturing cost of the goods. The relevant portion of paragraph 49 of the said judgment is reproduced herein :*

"49. We shall now examine the claim. It is apparent that for purposes of determining the value, broadly speaking both the old Section 4(a) and the new Section 4(1)(a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old Section 4(a) or under the new Section 4(1)(a) is not ascertainable, the price is determined under the old Section 4(b) or the new Section 4(1)(b). Now, the price of an article is related to its value (using this term in a general sense), and into that value how poured several component, including those which have enriched its value and given to the article is marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value upto the date of sale, which apparently would be the date of delivery, are liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee upto the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after-sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after-sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee upto the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery. [Emphasis supplied]

20. The principles that flow from the Judgment in *Bombay Tyre International's case*

(a) *In terms of Section 3 of the Central Excise Act, which is the charging section, duty of excise is leviable on all excisable goods manufactured in India at the rate specified in the Central Excise Tariff.*

(b) *In terms of Section 4 of the Central Excise Act, where the rate of duty specified in the tariff is based on value, then such value is the sale price paid or payable for the excisable goods.*

(c) *In the case of Bombay Tyre International, the Supreme Court was considering the challenge to the levy of Central Excise duty on the basis of sale price. The assessee contended that the levy was on the manufacture of the goods and therefore the levy of Central Excise duty should be only on manufacturing cost and manufacturing profit. However, the Supreme Court held that even though the levy was on the manufacture, the measure can be with reference to the sale price.*

(d) *In this context, the Supreme Court observed that the price of article is related to its value and into that value several components are poured including those which have enriched its value and give to the article its marketability in the trade. Accordingly, the Supreme Court held that the expenses for marketing and selling the articles, including advertisement and publicity expenses would be one of the several components poured into the value of the goods under assessment and hence rejected the claim of the assessee, that value for levy of duty, should be only manufacturing cost and profit. Supreme Court therefore held that from the price, advertisement cost cannot be deducted.*

21. *That Advertisement of soft drink enhances the marketability of the Concentrate in our opinion is no longer res integra as it has been recognized in the following judgments :*

Pepsi Foods Ltd. v. Collector - [1996 \(82\) E.L.T. 33](#) (T) where the Supreme Court affirmed the view taken in Collector v. Pepsi Foods Ltd. - [1997 \(91\) E.L.T. 544](#) and in Pepsi Foods Limited v. CCE, [2003 \(158\) E.L.T. 552](#) (S.C.) where the royalty paid by the bottler to the assessee was held to be includable in assessable value. The Respondents on this premise have always been

collecting excise duty on full sale price charged by concentrate manufacturer from the bottler. Revenue has never disputed that advertisement of aerated water is an activity related to manufacture and sale of concentrate and that cost of advertisement is relatable to aerated water which forms part of value of concentrate in the hands of concentrate manufacturer and hence should be included in the sale price of concentrate charged by the concentrate manufacturer. On the other hand, since advertisement of aerated water promoted marketability of concentrate, manufacturers of concentrate are subject to excise duty, in terms of principles Laid down in Bombay Tyre International case, without excluding it from the sale price of concentrate charged by the concentrate manufacturer.

22. *In Philips India Ltd. v. Commissioner of Customs and Excise - [1997 \(91\) E.L.T. 540](#)] the Hon'ble Supreme Court held that where the cost of advertisements was borne half and half by the manufacturer and dealer, no deduction is permissible because the advertisement may benefit in equal degree, the manufacturer and dealer. The Hon'ble Court further held in that legitimate business consideration must be kept in mind in adjudicating such matters under Central Excise.*

23. *We now propose to consider some of the expressions used in the definition of input service. Firstly what does the expression means and includes mean. The definition of input service uses the term means and includes. These expression must be understood as now judicially recognized. In Regional Director v. High Land Coffee Works - 1991 (3) SCC 617, the Hon'ble Supreme Court has held as under :*

The word include in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word include is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things

which the interpretation clause declares that they shall include. [See (i) Strouds Judicial Dictionary , 5th edn. Vol. 3, p. 1263 and (ii) C.I.T. v. Taj Mahal Hotel 1, (iii) State of Bombay v. Hospital Mazdoor Sabha.

This has been reiterated in C.I.T. v. T.T.K. Health Care Ltd. - (2007) 11 SCC 796.

In M/s. Mahalakshmi Oil Mills v. State of Andhra Pradesh, AIR 1989 Supreme Court 335, the Court dealing with the expression means and includes observed as under :

As Lord Watson observed in Dilworth v. Commissioner of Stamps (1899) AC 99 the joint use of the words "mean and include" can have this effect. He said, in a passage quoted with approval in earlier decisions of this Court :

Section 2 is, beyond all question, an interpretation clauses, and must have been intended by the Legislature to be taken into account in construing the expression "charitable device or bequest," as it occurs in Section 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. (emphasis supplied)

The Supreme Court in the case of Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union - (2007) 4 SCC 685 observed as under :

It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the phrase "means" is used in the definition, to borrow the words of Lord Esher M.R. in Gough v. Gough - (1891) 2 Q.B. 665 it is a "hard and fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see : P. Kasilingam and Ors. v. P.S.G. College of Technology and Ors. MANU/SC/0265/1995). On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

Considering these judicial pronouncements, it is clear that the expression means and includes is exhaustive. By the word includes services which may otherwise have not come within the ambit of the definition clause are included and by the words means these are made exhaustive.

24. *The next expression to be considered from the definition is 'such as'. A few dictionary meanings of the term 'such as' are reproduced. Concise Oxford Dictionary, Such as means for example or of a kind that; Chambers Dictionary, such as means for example :*

In Good Year India Ltd. v. Collector of Customs - [1997 \(95\) E.L.T. 450](#) the Supreme Court observed as under :

The words such as stainless steel, nickel monel, incoloy, hastelloy in sub-heading (2) are only illustrative of the various

metals from which valves can be made but the said description is not exhaustive of the metals.

The words such as therefore are illustrative and not exhaustive. In the context of business, those are services, related to the business. They may not be exhaustive, but are illustrative.

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.).*

The Hon'ble Supreme Court in State of Karnataka v. Shreyas Paper Pvt. Ltd. 2006 SCC affirmed the view taken by the Hon'ble Karnataka High Court reported at 2001 (121) STC 738, which, inter alia, held as under :

Business comprises of the regular and systematic activity with an object of earning of profits. The machinery, plant, building and the land over which they have erected or constructed are only the tools of such business. Assets and liabilities including goodwill are the necessary ingredients to constitute a business, besides the stocks and other movable and immovable items connected with the said business.

In Mazgaon Dock Ltd. v. Commissioner of Income tax and Excess Profits Tax - AIR 1958 SC 861 the Hon'ble Supreme Court held as follows :

14. The word "business" is, as has often been said, one of the wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense.

15. "The word 'business connotes', it was observed by this court in *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax*, 1955 1 SCR 952 "some real, substantial and systematic or organised course of activity or conduct with a set purpose."

The term "business" therefore, particularly in fiscal statutes, is of wide import.

26. The definition of input service employs the phrase activity relating to business. The words relating to further widens the scope of the expression activities relating to business. This is in view of following observations of Supreme Court in *Doypack Systems (P) Limited v. Union of India* - [1988 \(36\) E.L.T. 201 \(S.C.\)](#), interpreting the expression in relation to :

48. The expression in relation to (so also pertaining to), is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *State Wakf Board v. Abdul Aziz* (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10, following and approving *Nitai Charan Bagchi v. Suresh Chandra Paul* (66 C.W.N. 767), *Shyam Lal v. M. Shayamlal* (AIR 1933 All. 649) and 76 *Corpus Juris Secundum* 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term relate is also defined as meaning to bring into association or connection with. It has been clearly mentioned that relating to has been held to be equivalent to or synonymous with as to concerning with and pertaining to. The expression pertaining to is an expression of expansion and not of contraction.

The expression Relating to thus widens the scope of the definition.

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.*

28. *In CIT v. Chandulal Keshavlal & Co. - (1960) 38 ITR 601 (SC) the Apex Court held as under :*

The test laid down by this case therefore was that in the absence of fraud or an oblique motive and if a transaction is of a nature which is entered in the course of a business of the assessee and is commercially expedient that it does become a deductible allowance. If as a result of the transaction the assessee benefits is immaterial that a third party also benefits thereby. (Emphasis supplied)

Similarly, in Eastern Investments Limited v. CIT - 1951 (20) ITR 1 the Hon'ble Apex Court held as under :

Most commercial transactione are entered into for the mutual benefit of both sides, or at any rate each side hopes to gain something for itself. The test for present purposes is not whether the other party benefited, nor indeed whether this was a prudent transaction which resulted in ultimate gain to the appellant, but whether it was properly entered into as a part of the appellants legitimate commercial undertakings in order to indirectly facilitate the carrying on of its business.

Further, in Commissioner of Income Tax v. Royal Calcutta Turf - 1961 (41) ITR 414 it was held that deduction may be allowed in cases where the payment or expenditure is incurred for the purpose of the trade of the subject making the return and it

does not matter that this payment may inure to the benefit of a third party.

29. *The above test was followed by the Hon'ble Allahabad High Court in Additional Commissioner of Income Tax v. Symonds Distributors (P) Ltd. - (1977) 108 ITR 947 (All) wherein the dispute was that if a sales company voluntarily reduced its own commission which it received from the manufacturing company so as to support the manufacturing unit, whether it amounts to a business expenditure? The claim was disallowed by ITO and AAC on appeal. The tribunal allowed the expenditure on the finding that the same has incurred wholly and exclusively for the purpose of assessee's business out of commercial expediency. This view was upheld by the Hon'ble High Court observing as under :*

A sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade. This test has been quoted with approval and applied by the Supreme Court in Eastern Investments Ltd. v. CIT (1951 20 ITR 1 SC).

30. *The House of Lords in the context of Credit under VAT itself, in Customs and Excise Commissioners v. Redrow Group Plc. - (1999 Simon Tax Cases 161) has taken an identical view relating to input VAT deduction. Facts of that case, briefly stated as under :- Redrow was involved in constructing new houses for sale to the prospective customers. The prospective customer of a Redrow home had an existing home to sell and cannot purchase unless and until they have a buyer for their existing home. Redrow, therefore, declares a sales incentive scheme to deal with this problem. Redrow chooses a real estate agent to value the prospective purchasers existing home and handle its sale. Redrow pays the estate agents fee on the sale of the prospective purchasers home only if the prospective purchaser completes the purchase of Redrow home. The estate agent charge Redrow his fee plus applicable VAT on that. Redrow claimed input tax credit of the same. The Commissioner*

disallowed the deduction. Value Added Tax Tribunal allowed Redrows appeal. On appeal by the Commissioner, the Queen's Bench dismissed the Revenue's appeal. However, on further appeal the Court of Appeal reversed the matter in favour of the revenue. On appeal by Redrow, House of Lord reversed the decision of the Court of Appeal and allowed Redrows claim.

The Relevant extract from the speech of Lord Hope of Craighead, is set out as under :

Clearly the estate agents were supplying services to the prospective purchasers, as they were engaged in the marketing and sale of the existing homes which belonged to the prospective purchasers and not to Redrow. But Redrow was prepared to undertake to pay for these services in order to facilitate the sale of its homes to the prospective purchasers. The estate agents received their instructions from Redrow and, so long as the prospective purchasers completed with Redrow, it was Redrow who paid for the services which were supplied. I do not see how the transactions between Redrow and the estate agents can be described other than as the supply of services for a consideration to Redrow. The agents were doing what Redrow instructed them to do, for which they charged a fee which was paid by Redrow.

The word services is given such a wide meaning for the purposes of value added tax that it is capable of embracing everything which a taxable person does in the course or furtherance of a business carried on by him which is done for a consideration. The name or description which one might apply to the service is immaterial, because the concept does not all for that kind of analysis. The service is that which is done in return for the consideration. As one moves down the chain of supply, each taxable person receives a service when another taxable person does something for him in the course or furtherance of a business carried on by that other person for which he takes a consideration in return. Questions such as who benefits from the service or who is the consumer of it are not helpful. The answers are likely to differ according to the interest which various people may have in the transaction. The matter has to

be looked at from the standpoint of the person who is claiming the deduction by way of input tax. Was something being done for him for which, in the course or furtherance of a business carried on by him, he has had to pay a consideration which has attracted value added tax? The fact that someone else in this case, the prospective purchaser also received a service as part of the same transaction does not deprive the person who instructed the service and who has had to pay for it of the benefit of the deduction (emphasis supplied).

Then in the speech of Lord Millet it was thus observed :

The solution lies in two features of the tax to which I have already referred. The first is that anything done for a consideration which is not : a supply of goods constitutes a supply of services. This makes it unnecessary to define the services in question. The second is that unless the services are rendered for a consideration they cannot constitute the subject matter of a supply. In fact, of course, there can be no question of deducting input tax unless the taxpayer has incurred a liability to pay it as part of the consideration payable by him for a supply of goods or services.

In my opinion, these two factors compel the conclusion that one should start with the taxpayer's claim to deduct tax. He must identify the payment of which the tax to be deducted formed part; if the goods or services are to be paid for by someone else he has no claim to deduction. Once the taxpayer has identified the payment the question to be asked is : did he obtain anything – anything at all – used or to be used for the purposes of his. business in return for that payment? This will normally consist of the supply of goods or services to the taxpayer. But it may equally well consist of the right to have goods delivered or services rendered to a third party. The grant of such a right, is itself a supply of services.

Conclusion

It is sufficient that the taxpayer obtained something of value in return for the payment of the agent's fees in those cases where it became liable to pay them, and that what it

obtained was obtained for the purposes of the taxpayer's business. Both those conditions are satisfied in the present case. It is not necessary that there should be "a direct and immediate link" between the services supplied by the agent and the sale of a particular Redrow home, although if it were necessary then this condition too would be satisfied on the facts of the present case. From the taxpayer's standpoint, which is what matters, the agent's fees incurred in the sale of a prospective purchaser's own home are not part of the taxpayer's general overhead costs but a necessary cost of and exclusively attributable to the sale of a Redrow home to that same purchaser. If the sale of the Redrow home were an exempt supply and not merely zero-rated, the agent's fees would not be deductible for the reasons given by the Court of Justice in B.L.P. Group Plc. v. Customs and Excise Commissioners (Case C--4/94) (1996) 1 W.L.R. 174.

I would allow the appeal and affirm the decision of the value added tax tribunal.

31. *CBEC by Circular No. 80/10/2004-S.T., dated 17-9-2004, inter alia, clarified as under :*

Service Tax like Cenvat is basically a value added tax which is operated through credit mechanism.

32. *CBEC Circular No. 56/5/2003-S.T., dated 25-4-2003 issued in the context of export of services, clarified that service tax is a consumption tax. Relevant extract is reproduced herewith as under (remaining paragraphs in context of export of services are not quoted here) :*

I am directed to clarify that the Service Tax is destination based consumption tax and it is not applicable on export of services.

32A. *Name of tax was rechristened as Cenvat w.e.f. 12-5-2000. Section 3 of Central Excise Act, 1944 as it stood before 12-5-2000 read as under :-*

SECTION 3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied

(a) a duty of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.....

Section 3 of Central Excise Act, 1944 as it stands after 12-5-2000 reads as under :-

SECTION 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied

(a) a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

33. *The above amendment will show that the manifest object of legislature is to levy and collect excise duty as a value added tax. The Supreme Court in All India Federation of Tax Practitioners v. Union of India (supra) has explained that excise duty and service tax are value added taxes. They are consumption taxes. Justice Kapadia, speaking for the Bench has observed as under :*

6. At this stage we may refer to VAT which is a general tax that applies in principle to all commercial activities involving production of goods and provision of services. VAT is a consumption tax that is borne by the consumer.

7. In the light of what is stated above, it is clear that service tax is a VAT which in turn is a destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would logically be leviable only on services provided within the country. Service tax is a value added tax.

8. As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Therefore, for our understanding, broadly services fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandapwalas etc. Performance based services are services provided by service providers like stock brokers, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents etc.

20. On the basis of the above discussion it is clear that service tax is VAT which in turn is both a general tax as well as destination based consumption tax leviable on services provided within the country.

(emphasis supplied)

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.*

The appeal filed against this decision has been dismissed by Hon'ble Supreme Court on monitory grounds.

48. The services of ASC and DSC availed by the appellant definitely go to enrich the value of the output goods cleared by

them by creating a brand image for the appellant. Hence, in terms of the Rule 2(I) of Cenvat Credit Rules, exists between the said services and the goods being cleared by the appellant. I do not find any merits in the order denying the Cenvat credit in respect of these services.

49. As I set aside the demand on merits of the issue I am not inclined to discuss any further argument made in respect of limitation. As the demand is being set aside, penalties imposed and demand for interest is also set aside.

50. With the observations as above, I am concur with the conclusion arrived in the order of Learned Member (Judicial) for setting aside the impugned order.

(Order pronounced in open court on-31 January, 2025)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

akp