

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

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70078 of 2020

(Arising out of Order-In-Appeal No.NOI-EXCUS-002-APP-1313-19-20, dated-13/01/2020 passed by Commissioner (Appeals), CGST, Noida)

M/sL G Electronics India Pvt. Ltd.Appellant

(Plot No. 51, Udyog Vihar, Phase-II, Surajpur, Kasna Road,
Greater Noida, U.P 201305)

VERSUS

Commissioner, Central Excise, Noida-IIRespondent

(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.-70053/2025

DATE OF HEARING : 21.08.2024
DATE OF DECISION : 04 February, 2025

P. K. CHOUDHARY:

The present appeal is arising out of Order-In-Appeal No.NOI-EXCUS-002-APP-1313-19-20, dated-13/01/2020 passed by Commissioner (Appeals), CGST, Noida.

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 records were carried out for the period from April 2013 to March 2014. In the audit report dated 13.05.2015, it was objected that Call Centres were providing service to the Appellant, but the same were not 'input services' and the Appellant cannot avail input credit on the same. The Audit team was having objection only to the extent of amount pertained to ASC's. Thus, in their opinion credit for DSCs was correctly availed. Subsequently, the Appellant was asked to furnish the information of service tax availed on Call Centre services from April 2016 to June 2017. This information was duly submitted by the Appellant.

6. Thereafter, a Show Cause notice¹ dated 04.08.2018 was issued based on the information provided by the Appellant. It was alleged that, there was no direct or indirect nexus between the manufacturing of final goods or clearance of final goods with the call centre service, and the call centre service to be a post-manufacturing service and does not qualify under Rule 2(l) of the Cenvat Credit Rules, 2004. It was also alleged that the Appellant has wrongly availed credit of Service Tax on Call Charges billed by these call centres viz. DSCs and ASCs during the relevant period. Reply to the show cause notice was filed.

7. The learned Commissioner passed the following order :-

- The demand of Cenvat Credit of Rs. 1,44,03,920/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944.
- The interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944.
- The penalty of Rs. 14,40,392/- under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

8. Aggrieved by the Order-In-Original, Appellant filed appeal before the First Appellate Authority and vide the impugned Order-In-Appeal, the learned Commissioner (Appeals) upheld the order of the Adjudicating Authority. Hence, the present appeal before the Tribunal.

9. 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

¹SCN

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.

10. 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. He relied upon the following judgments in support of such a proposition:

- 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.)**

11. 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.

12. 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.)**

13. 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.

14. 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.

15. Even, the ASC are also bound & obliged under Agreement to use spare parts of the Appellant only in serving and repairing of the goods during warranty and after expiry of warranty. The relevant portion of ASC agreement filed with the Appeal is reproduced 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..."

16. 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 causesales 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.

17. 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.

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

19. 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.

20. 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. One of the main

principles of statutory interpretation is that all the parts of a statute shall be read harmoniously. This issue has been dealt by the Hon'ble Supreme Court in the following judgements:-

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

21. 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.

22. 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.

23. 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. Paras 11,12

24. The learned Adjudicating Authority has relied on various judgements in the Order-In-Original but none of them applies to the facts of the present case. The reasoning adopted by the learned Adjudicating Authority 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. 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.

25. The learned Adjudicating Authority 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).**

26. 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 learned Adjudicating Authority 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.

27. 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.

28. 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.

29. 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.)**

30. 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.

31. 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, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX”
(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 Hollend 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

33. We find that the present demand arises on the basis of audit 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. JakapMetindPvt. Ltd. v. Commissioner of Customs, Pune, -III reported at 2015 (329) E.L.T. 485 (Tri. -Mumbai)**

35. 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.

36. 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. We do not find any ingredient to indicate

that the Appellant contravened any provisions of law as they did not avail any credit in contravention of any provisions of law.

37. 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.

38. 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:

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

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

"6. I have carefully gone through the facts and records of the case including the grounds of appeal, submissions made by the appellant, both oral as well as written, and relevant provisions of the Act. The adjudicating authority has denied the cenvat credit taken by the appellant in respect of services received from call centres on the ground that the services provided by the call centres cannot be treated as services used for 'sales promotion' of the appellant and were utilized beyond the place of removal and not upto the place of removal and therefore do not have any nexus with the manufacture of the final product.

7. In terms of the Rule 2(1) of the Cenvat Credit Rules 2004 (in short "CCR'04"), as it existed during the relevant period-

(1) "Input service" means any service-

used by a provider of output service for providing an output service; or (10 used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement

of inputs, accounting auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal: but excludes. -

Explanation For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis"

From the above definition of 'input service', it is observed that eligibility for input service credit on services used for clearance of final products, viz., outward transport services, storage, loading/unloading etc. is to be examined in connection with place of removal but there is no such requirement as regards to other services. In respect of other services what is to be examined is whether they can be held to be rendered in or in relation to manufacture directly or indirectly or whether they are included in the inclusive definition of input services under Rule 2(1) of the CCR'04. The services provided by the call centres utilized towards facilitating services provided by the service centres on their own account cannot be held to be rendered in or in relation to manufacture of appellant's final products directly or indirectly. The appellant contended that the call center service was used for 'sales promotion' of his manufactured goods and as 'sales promotion is defined as input services in the inclusive part of Rule 2(1) of the CCR'04, he is eligible for availing cenvat credit on call center services. However, I find that the call centres are actually providing services to the service centres that are generally providing repair and maintenance services to the customers on expiry of warranty, on their own account, for which they are liable to pay service tax to the Govt. account as distinct service

providers. For the above reason, services provided by the call centers cannot be treated as 'sales promotion' relating to appellant's manufactured goods and therefore do not fall under the inclusive definition of input services under Rule 2(1) of the CCR'04 and the appellant is not eligible to avail input service credit on such call centre services.

8. Thus, I am of the considered view that the demand confirmed for recovery of the such irregular input service credit availed by the appellant with interest under Rule 14 of the CCR'04 read-with Section 11A and 11AA of the Act and 10% penalty imposed under Rule 15 of the CCR'04 read-with Section 11AC of the Act by the adjudicating authority are sustainable."

41. 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 assessees 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.

42. 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.

43. 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.

44. 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- 04 February, 2025)

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

akp