

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

E/20659/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-
MSC-107-2017-18 dated 22/12/2017 passed by the
Commissioner of Central Tax, Belgaum (Appeals)]

Hindalco Industries Ltd.

P.B Road, Yamanapur
Belgaum – 590 010
Karnataka

Appellant(s)

Versus

**Commissioner of Central Tax And
Central Excise, Belgaum**

No.71, Club Road,
Belgaum – 590 001
Karnataka

Respondent(s)

Appearance:

Mrs. Neethu James, Advocate
World Trade Centre No.404-406, 4th
Floor, South Wing Brigade Gateway
Campus, No.26/1,
Dr. Rajkumar Road,
Bangalore - 560 055
Karnataka

For the Appellant

Mr. K. Murali, Superintendent (AR)

For the Respondent

Date of Hearing: 20/12/2018

Date of Decision: 20/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21926 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated
17.01.2018 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellants are engaged in manufacture of Inorganic Chemicals such as Calcimined Alumina Hydrate under Chapter 28 of the Central Excise Tariff Act, 1985 and also registered as Service Tax assessee for GTA, Manpower Services and other taxable services. During the audit of the said unit by the Departmental Officers, it was noticed that the appellant has availed cenvat credit on input services viz., Engineering Designs and Drawings for civil and structural works in respect of Special Alumina Expansion Project services inasmuch as the said services do not fall within the ambit of Rule 2(l) of Cenvat Credit Rules, 2004. Accordingly, a show-cause notice Sl. No. 70/2014 ADC (ST) dated 16.12.2014 was issued proposing to recover Service Tax credit availed on ineligible services to the tune of Rs. 17,21,994/- (Rupees Seventeen Lakhs Twenty One Thousand Nine Hundred and Ninety Four only) along with interest and imposition of penalty. After following the due process, the Assistant Commissioner vide Order-in-Original dated 15.12.2016 disallowed and ordered for recovery of the cenvat credit of Rs. 17,21,994/- (Rupees Seventeen Lakhs Twenty One Thousand Nine Hundred and Ninety Four only) along with appropriate interest and imposed a penalty of Rs. 8,60,997/- (Rupees Eight Lakhs Sixty Thousand Nine Hundred and Ninety Seven only) in terms of Rule 15(2) of the Cenvat Credit Rules, 2004. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the appeal. Hence the present appeal.

2. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly

appreciating the facts and the law. She further submitted that only those services which have been specifically mentioned in the exclusion clause are liable to be excluded from the ambit of 'input service'. She also submitted that in the impugned order it has not been disputed that the services received by the appellant are not construction service itself but are merely related to construction service. She also submitted that the exclusion clause of Rule 2(I) of Cenvat Credit Rules must be strictly construed and a particular service cannot be excluded by the exclusion clause unless it is specifically enlisted therein. She also submitted that the exclusion Clause (A) would apply only to construction service or works contract service when used in or in relation to construction of a building or a civil structure or a part thereof and other ancillary services like Drawings, Design, Consulting Engineer's Service etc which are also used in respect of construction of a building would not be hit by the said exclusion. For this she relied upon the following decisions where credit was allowed on such related services:

- a. *Manaksia Coated Metals & Industries Ltd. V. CCE, Kutch - 2018 (12) GSTL 90 (Tri.-Ahmd.)*
- b. *M/s. Idea Cellular Ltd. V. CCE, Mumbai-II - 2016-TIOL-1198-CESTAT-MUM.*

2.1. She further submitted that the impugned services have been availed for the appellant's expansion project and expansion is nothing but renovation and therefore gets covered under the inclusion clause.

3. On the other hand the learned AR reiterated the findings in the impugned order and submitted that Rule 2(I) of Cenvat Credit Rules, 2004

specifically excludes the services related to service portion in the exclusion of Works contract and civil structure. He also submitted that the impugned services being related to construction services are excluded from the definition of 'input service' as per the exclusion clause of Rule 2(I) of the Cenvat Credit Rules, 2004.

4. After considering the submissions made by both the parties and on perusal of the material on record, I find it necessary to reproduce the definition of 'input service' as provided in Rule 2(I) of the Cenvat Credit Rules, which is reproduced herein below:

²[(l) "input service" means any service, -

(i) used by a provider of ³[output service] for providing an output service; or

(ii) 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; ⁴[but excludes], -

⁵[(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services]”

4.1. Further I find that in view of the Purchase Order and the various invoices issued by DCPL (Development Consultants Private Limited, Kolkata) the service provided by them are not construction service and are not covered under exclusion clause of Rule 2(I) of the Cenvat Credit Rules which only excluded specific services relating to construction service or works contract service when used in or in relation to construction of a building or a civil structure or a part thereof. Further I find that the services rendered by DCPL is only relating to Drawing or Design and Consulting Engineer's Services whereas the construction services have been rendered by some other person and the DCPL are not concerned with the construction activity at all. Further I find that the definition of 'input service' is very wide and includes inputs used in or in relation to the manufacturing activity. Further I note that DCPL have not undertaken any actual or physical construction activity for the appellant and they were merely provided Design and Drawing in respect of civil structure and Plant and Machinery/equipment which were to be installed in the factory and this service is not envisaged under the

exclusion Clause of Rule 2(I) of Cenvat Credit Rules. Further I find that in the case of ***Idea Cellular Ltd. Vs. CCE reported in 2016-TIOL-1198***, the Tribunal has held that the services like Erection, Commissioning and Installation and Consulting Engineer Services are not excluded in the amended definition of 'input service'. In view of the above discussion, I am of the view that the impugned order is not sustainable and therefore the same is set aside by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **20/12/2018**)

(S.S GARG)
JUDICIAL MEMBER

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