CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/20846/2018-SM

[Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-212-17-18 dated 22/02/2018 passed by the Commissioner of Central Tax, Mysore Central Tax Commissionerate, Mysore (Appeals)]

Plansee India High Performance Materials Pvt. Ltd. Plot No. 311, Hebbal Industrial Area, Metagalli Post, Mysore – 570 016 Karnataka	**Appellant(s)**

VERSUS

Commissioner Of Central Tax, Mysore Commissionerate No. S-1 & S2, Vinaya Marga Siddhartha Nagar Mysore – 570 011 Karnataka	**Respondent(s)**

Appearance:

Mr. S. Loknath, CA 459, 'Aashianaa', 6th Main, 1st Stage, Vijayanagar, Mysore – 570 017 Karnataka	For the Appellant
Mrs. Kavita Podwal, Superintendent (AR)	For the Respondent

CORAM:

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

Final Order No. 20357 / 2019

Date of Hearing: 15/04/2019
Date of Decision: 15/04/2019

Per: S.S GARG

The present appeal is directed against the impugned order dated 22.02.2018 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 appellant is manufacturer of tungsten and molybdenum wires and was availing the credit of the service tax paid on inputs and input service. It was seen that during the period 09/2013 to 12/2014 the assessee had availed the credit of the duty/service tax paid on various items which would not fit in the definition under Rule 2(e) of the Cenvat Credit Rules. The total amount taken as credit and alleged as irregular by the department was Rs. 2,92,104/- (Rupees Two Lakhs Ninety Two Thousand One Hundred and Four only). Notice dated 09/11/2015 issued demanding the reversal of such irregular credit availed. After considering the reply of the assessee the lower authority confirmed the demand of Rs. 19,549/- (Rupees Nineteen Thousand Five Hundred and Forty Nine only) along with interest and 50% penalty. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner who rejected the same. Hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned consultant appearing 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. He further submitted

that the service of the car was carried out on the vehicle which is used to ferry the employees inside the manufacturing unit and also to transport the work-in-progress. He also submitted that the repair of the MD's car is necessary to make things comfortable. Further credit of service tax paid on photography service and shamiana service for ground breaking ceremony is in relation to manufacturing activity hence eligible. Further with regard to service tax paid on cleaning and removing of debris in the factory is necessary for manufacturing and hence credit cannot be denied. Further rent-a-cab is used for employees and indirectly eligible for credit.

4. On the other hand the learned AR defended the impugned order and submitted that as per the 'input service' definition some of the services have been excluded and has rightly been denied the cenvat credit for the services involved in the present case.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the repair service of the car which is used to ferry the employees inside the factory and also used for material for work-in-progress is eligible as the same is indirectly related to the manufacture. Similarly the repair of the MD car is also in connection with the manufacture of the final product and is eligible. Further with regard to other services viz. photography for ground breaking function, hiring charges and cleaning and debris removal fall in the definition of 'input service as the same is directly or indirectly related to the manufacture of the final product and thereby fall in the definition of 'input service'. As far as rent-a-cab

service is concerned, the learned consultant did not press for the same being small amount. In view of my above discussion, I hold that except rent-a-cab on which the appellant has not pressed for cenvat credit, other services fall in the definition of 'input service' and the appellant is entitled to cenvat credit of the same. Accordingly, the appeal is partly allowed and cenvat credit on repair of vehicles and other services relating to photography, hiring charges of various items and cleaning and debris removal is allowed. Appeal is accordingly partly allowed.

(Operative portion of the Order was pronounced
in Open Court on **15/04/2019**)

(S.S GARG)
JUDICIAL MEMBER

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