CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH – COURT NO. 1

Central Excise Appeal No. 157 of 2012

[Arising out of Order-in-Original No. 17/2011 dated 30/09/2011 passed by the Commissioner of Central Excise, Bangalore-II (Appeals)]

ITC Ltd. **....Appellant**
Meenakunte Village, Jala Hobli
Bangalore – 562 157
KA

VERSUS

Commissioner of Central Tax, Bangalore North **....Respondent**
No.59, HMT Bhawan
Ground Floor, Bellary Road
Bangalore – 560 032
Karnataka

WITH

Central Excise Appeal No. 22447 of 2014

[Arising out of Order-in-Appeal No. 206/2014 dated 28/03/2014 passed by the Commissioner of Central Excise, Bangalore (Appeals-I)]

ITC Ltd. **....Appellant**
Meenakunte Village, Jala Hobli
Bangalore – 562 157
Karnataka

Commissioner of Central Excise, Service Tax And Customs, Bangalore-IV **....Respondent**
Office of the Commissioner of Central Excise & Service Tax
Bangalore-IV Commissionerate, 59,
HMT Bhavan, Bellary Road
Bangalore – 560 032
Karnataka

<u>APPEARANCE:</u>

Mr. K.S. Ravishankar, Senior Advocate & Mr. N. Anand, Advocate — For the Appellants

Mrs. C.V. Savitha, Superintendent (AR) — For the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order Nos. 20079 - 20080 / 2022

Date of Hearing: 03/03/2022
Date of Decision: 03/03/2022

Per : ASHOK JINDAL

These appeals are against the impugned orders wherein cenvat credit has been denied on input services availed by the appellant in the course of their business of manufacturing of excisable goods during the period April 2004 to September 2009 and April 2010 to November 2010.

2. The facts of the case are that the appellant is engaged in the manufacture of Machine Rolled Cigarettes and Cut Tobacco falling under Chapter 24 of the Central Excise Tariff Act, 1985 and are availing the facility of cenvat credit on various input services under the Cenvat Credit Rules, 2004 being distributed by their Head Office located at Kolkata which is having centralized Service Tax Registration. The appellants are also availing Service Tax credit distributed by India Leaf Tobacco Division (ILTD) located at Guntur and also availed Service Tax credit for which Bangalore Factory makes payments and utilized the same for payment of duty on the final product. It appeared to the Department that the appellant has wrongly availed Service Tax credit on certain services that was distributed by their Head Office Kolkatta as well as payments made by Bangalore Factory which appeared to be ineligible under the provisions of Cenvat Credit Rules, 2004. Therefore, two show-cause notices were issued for the period April 2004 to September 2009 and April 2010 to November 2010 on 03/09/2010 and 03/03/2011 respectively

to deny cenvat credit on following services namely Air Travel Agent Service, Tour Operator Service, Cable Operator, Construction Service, Interior Decorator Service, Outdoor Catering Service and Membership of Club or Association Service. The appellant contested the same but the adjudicating authority confirmed the demand on account of denial of cenvat credit on the above said services and hold that the same are not 'input services' as per Rule 2(l) of Cenvat Credit Rules, 2004 and are not used in the factory premises of the appellant. Aggrieved from the said orders, the appellant is before us.

3. The learned counsel appearing on behalf of the appellant submits that the issue has already been settled in their own case for the period October 2009 to March 2010 wherein this Tribunal after examining the issue has held that appellant is entitled to cenvat credit. Therefore, the impugned orders are to be set aside.

4. On the other hand the learned AR opposed the contention of the learned counsel and submits that as the services have been availed by the appellant outside their factory premises and not used in the manufacture of their final product, therefore they are not entitled to take cenvat credit.

5. Heard the parties.

6. Considering the fact that the periodical show-cause notices have been issued to the appellant and during the impugned period there was a issue of availment of cenvat credit on the services was under judicial scrutiny, in that circumstances extended period of limitation is not invokable. Therefore, for the show-cause notice dated 03/09/2010

issued by invoking extended period of limitation, we hold that the demand of extended period of limitation is not sustainable on limitation itself.

6.1. Further, we find that the above mentioned services as explained by the learned counsel during the course of arguments have been used by them for their business operations of manufacturing of excisable goods. In that circumstances, relying on the decision in the appellant’s own case reported in ***2017-TIOL-1981-CESTAT-BANG.*** & ***2017-TIOL-1894-CESTAT-BANG.*** and in the decision of ***Ultra Tech Cement Ltd. Vs. Commissioner of Central Excise, Kolhapur – 2018 (10) GSTL 80 (Tri.-Mum.),*** we hold that the appellant is entitled to avail cenvat credit on the above said services as the same has been used by the appellant in the course of their business of manufacturing of excisable goods. Therefore, we do not find any merit in the impugned orders and the same are set aside.

7. In the result, appeals are allowed with consequential relief, if any.

(Operative portion of the order was pronounced
in the open court on **03/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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