CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 51626 of 2014

[Arising out of Order-in-Original No. 42-43/Commr./PKL/2013 dated 27.12.2013 passed by the Commissioner of Central Excise & Service Tax, Panchkula]

M/s IFB Industries Limited **......Appellant**
C/o General and Allied Industries
Compound, near Devi Lal Chowk,
Near Shani Mandir, G.T. Road,
Karnal, Haryana-132001

VERSUS

Commissioner of Central Excise **......Respondent**
And Service Tax-Panchkula
SCO 407-408, Sector-8, Panchkula-134119

<u>APPEARANCE:</u>

Shri Bikash Gupta, Chartered Accountant for the Appellant
Shri Aniram Meena and Shri Yashpal Singh, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60915/2025

DATE OF HEARING: 23.07.2025
DATE OF DECISION: 31.07.2025

<u>P. ANJANI KUMAR</u>:

The appellants, M/s IFB Industries, are engaged in providing taxable services under Management, Maintenance & Repair Service and are registered for the said purpose; during the course of audit on 17.09.2010, it appeared to the Revenue that the appellants have been selling consumer goods and have engaged themselves in offering maintenance and repair after the warranty period; the appellants have availed CENVAT credit on various inputs. It appeared to the Revenue that as the appellants are providing taxable service of Management, Maintenance & Repair and are providing exempted services like trading etc., the appellants are required to follow the provisions of Rule 6(2) and Rule 6(3) of CENVAT Credit Rules, 2004. Alleging that the appellants have neither maintained separate records for common inputs and input services on which credit is availed, two show cause notices dated 01.03.2012 and 11.10.2012 were issued to the appellants demanding service tax of Rs.44,40,888/- and Rs.64,82,994/- respectively. Commissioner of Central Excise & Service Tax, Panchkula vide impugned order dated 26.12.2013 confirmed the demand along with interest and equal penalty. Hence, this appeal.

2. Shri Bikash Gupta, learned Consultant for the appellants, submits that the appellant has two branches viz. marketing division and service division; as per corporate policy, both the divisions maintained their accounts separately and therefore, there is no question of cross-utilization. Therefore, the only questions that remained to be decided would be in respect of the service division considering the following two questions:

(i) Whether the sale of own manufactured goods by the marketing division of the appellant would be considered to be trading and thus, to be treated as exempted service.

(ii) Whether "free after-sale service" in the nature of repair and maintenance during the warranty period are to be treated as exempted services.

3. Learned Consultant submits that the issue is no longer res integra. Tribunal in appellant's own case vide Final Order No.60021/2018 dated 04.01.2018 has allowed CENVAT credit to the appellants. Further, in respect of other proceedings, the matter has also reached the Tribunal, which vide Order No. A/62106/2017-CU (DB) dated 02.11.2017 remanded the matter back to the adjudicating authority; the adjudicating authority vide Order-in-Remand dated 14.05.2019 decided both the issues in favour of the appellants and the Department has not filed any appeal against the same. Moreover, CESTAT, New Delhi in the appellant's own case vide Final Order No.56363/2016 dated 23.12.2016 allowed the credit on the inputs used as spares for providing repair and maintenance service during the impugned period. Learned Consultant further submits that as there is no deliberate misconduct on the part of the appellants, penalties cannot be imposed. He relies on Hindustan Steel Ltd. -1978 (2) ELT J159 (SC).

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. We find that this Bench vide Final Order No.60021/2018 dated 04.01.2018 held as follows:

5. Heard both sides and considered the submissions. The issue emerges before us after the arguments advanced by both sides are:-

> (a) Whether the service of Repair and Maintenance provided by the appellant during the period of warranty free of cost, is an exempted service or not?
>
> (b) Whether the appellant is engaged in the activity of trading or not?
>
> As regards the issue (a) above, whether the services of Repair and Maintenance provided by the appellant during the period of warranty free of cost, is an exempted service or not? We find that Repairs and Maintenance service is taxable service with effect from 01.07.2003 in terms of provisions of Section 65 (105) (zzg) of Finance Act, 1994 and the said activity thereafter has never been exempted by the Government by way of any notification thereof. Further, merely because the appellant are not charging any amount towards providing this service, does not mean that the service is an exempted service. Therefore, it cannot be said that the service provided by the appellant is exempted service. In fact, the said service is taxable service as per the provisions of Section 65 (105) (zzg) of the Act. Therefore, we hold that appellant is providing taxable service of Repairs and Maintenance to the customers free of cost during the period of warranty.
>
> As regards issue (b) above, whether the appellant is engaged in the activity of trading or not? - We find that the appellant is a branch office of their head office and they are getting the goods on stock transfer basis from head office for sale. Therefore, the appellant are selling their own goods, manufactured by them. If the person selling the goods manufactured them, in that circumstance, the appellant cannot be said that he is a trader. Therefore, we hold that the appellant is not engaged in the activity of trading.

6. In view of the above, we answer both the issues in favour of the appellant. As in the appellant s own case, this Tribunal vide order dated 23.12.2016 (supra) allowed the Cenvat credit on the

said service and for the subsequent period, the adjudicating authority himself has dropped the demand against the appellant. In that circumstances, we hold that appellant has correctly availed Cenvat credit on input services in question which are attributable to the branch office of the appellant in question. Therefore, we set-aside the impugned order and allow the appeal with consequent relief, if any.

6. In view of the above, we are of the considered opinion that the issue is squarely settled in favour of the appellants and therefore, the impugned order cannot be sustained.

7. In the result, the appeal is allowed.

(Order pronounced in the open court on 31/07/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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