CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. II

APPEAL NO. E/60704/2017-EX[SM]

[Arising out of Order-in-Appeal No. 72/CE/APPL-II/Delhi/2017 dated 12.06.2017 passed by the Commissioner of C.Ex, (Appeals-II), Delhi]

Date of hearing/decision: 26.03.2018

For approval and signature:

Hon'ble Mr. Devender Singh, Member (Technical)

CCE, Gurgaon-I	**:**	**Appellant(s)**
VS		
Desiccant Rotors International Pvt Ltd	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. G.M. Sharma, A.R.
Present for the Respondent(s): Mr. R. Krishnan, Advocate

CORAM:

Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 61998/2018

Per : Devender Singh

This appeal has been filed by the Revenue against the impugned order dt. 12.06.2017 passed by the Commissioner (Appeals).

2. The main issue in this appeal is whether input service credit on civil construction service for construction of their factory premises is admissible to respondent under the Cenvat Credit Rules, 2004. In his order, Ld. Commissioner (Appeals) allowed the benefit on the basis of

the judgment of Hon'ble Bombay High Court in the case of *Coca Cola India vs. CCE – 2009 (242) ELT 168 (Bom.).* The main ground of Revenue in the appeal is that the commercial or industrial construction service or works contract service is an input service for output service namely renting of immovable property service. It is also argued by the Revenue that the service in question has been used for construction of the immovable property and not in used for providing taxable services. Ld. A.R. also relied on the Board's Circular No. 98/01/2008-ST dt. 04.01.2008.

3. Ld. Advocate for the respondent submits that the issue is no longer *res integra* and has been settled by the judgment of the Jurisdictional High Court of Punjab & Haryana High Court in the case of *CCE, Delhi-III vs. Bellsonica Auto Components India P. Ltd. – 2015 (40) S.T.R. 41 (P&H)*. He also points out that the Circular dt. 04.01.2008 was considered by the Hon'ble High Court in the said judgment. He also relies upon the following decisions of this Tribunal on the same issue:

(i) John Deere India Pvt Ltd vs. CCE, Pune-III – 2016 (41) STR 990 (Tri.-Mumbai)

(ii) Reliance Industries Ltd. vs. CCE & ST (LTU), Mumbai – 2016 (42) STR 457 (Tri.-Mumbai)

(iii) NTF (India) Pvt Ltd vs. CCE, Delhi-III - 2013 (30) STR 575 (Tri.-Delhi)

4. Heard both sides and perused the record.

5. As rightly pointed out by Ld. Advocate, the issue pertaining to admissibility of input service credit on construction service for factory/manufacturing plant is already settled by the judgment of the

Hon'ble High Court of Punjab & Haryana in the case of *CCE, Delhi-III vs. Bellsonica Auto Components India P. Ltd. (supra),* wherein, the Court, while examining the issue, held as below:

> ***"8.*** *The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(l) aptly referred to by Mr. Amrinder Singh as the "means part."*
>
> ***9.*** *The respondents' case also falls within the second part of Rule 2(l) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(l)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(l)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product.*
>
> ***10.*** *This becomes clearer from the fact that by an amendment of the year 2011 to Rule 2(l), construction services were excluded from the definition of "input service." The amended section in so far as it is relevant reads as under :-*
>
> *"(l) "input service" means any service, -*
>
> *…. ….. ….*

(ii) (A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -

(a) construction of a building or a civil structure or a part thereof; or" Clause (105)(zzq) of Section 65 of the Finance Act reads as under :-

> *"(105) "taxable service" means any service provided or to be provided, -*
>
> *(zzq) to any person, by any other person, in relation to commercial or industrial construction.*
>
> *Explanation.- For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force shall be deemed to be service provided by the builder to the buyer."*

11. *If in fact the said services were not covered by Rule 2(l), it would not have been necessary to introduce the amendment. It is clear, therefore, that prior to the amendment the setting up of a factory premises of a provider for output service relating to such a factory fell within the definition of 'input service.' The amendment of 2011 is not retrospective and is not applicable to the respondents' case.*

12. *Our view is supported by the judgment of a Division Bench of the Bombay High Court in Coca Cola India Pvt. Ltd. v. Commissioner of C. Ex., Pune-III, 2009 (242) E.L.T. 168 (Bom.). = 2009 (15) S.T.R. 657. The Division Bench construed Section 2(l) as follows :-*

> *"39. The definition of input service which has been reproduced earlier, can be effectively divided into the following five categories, in so far as a manufacturer is concerned :*
>
> *(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products,*
>
> *(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal,*
>
> *(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,*

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal;

Each limb of the definition of input service can be considered as an independent benefit or concession exemption. If an assessee can satisfy any one of the limbs of the above benefit, exemption or concession, then credit of the input service would be available. This would be so even if the assessee does not satisfy other limb/limbs of the above definition. To illustrate, input services used in relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal. This would follow from the observation of the Supreme Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. v. Commissioner of Income-tax, 1998 (5) SCC 48, which is as under :

> *7. We may notice that the provision is introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."*

We are in respectful agreement with the judgment of the Bombay High Court.

13. *We approve the findings of the Tribunal as well as the basis on which they have been arrived at. The Tribunal rightly did not agree with the Commissioner's findings that the services in question had been used for brining into existence an immovable property and not for the manufacture of the final product. The said services cannot be said to be remotely connected to the final product as observed by the Commissioner.*

14. *In the circumstances, the questions of law are answered against the appellant and in favour of the assessees/respondents. The appeal is dismissed.***"**

6. By following the above judgment of the Jurisdictional High Court, which squarely covers the issue, I hold that the appeal filed by the Revenue is devoid of any merit and deserves to be rejected.

7. In the result, the appeal is dismissed.

(Dictated and pronounced in the court)

(Devender Singh)
Member (Technical)

RAS'