

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 60075 Of 2022**

[Arising out of OIA No. 79/CE/CGST-APPEAL-GURUGRAM/SKS/2021-2022 dated 16.12.2021 passed by the Commissioner (Appeals) of Gurugram]

**Maruti Suzuki India Ltd.**

Palam Gurgaon road, Gurgaon

**: Appellant (s)**

Vs

**CCE & ST-Gurugram**

Plot No. 36-37, Sector 32, Gurugram  
Haryana-122001

**: Respondent (s)**

APPEARANCE:

Ms. Krati Singh, Advocate for the Appellant

Ms. Swati Chopra, Mr. Manish Bhatnagar, ARs for the Respondent

**CORAM : HON'BLE MR. S.S. GARG , MEMBER (JUDICIAL)**

**ORDER No. A/60002 / 2023**

Date of Hearing:25.01.2023

Date of Decision:31.01.2023

**Per : Mr. S.S. GARG**

The present appeal is directed against the impugned order dated 16.12.2021 passed by the Ld. Commissioner (Appeals) whereby the Ld. Commissioner (Appeals) has dismissed the appeal of the appellant and upheld the order-in-original.

2. Briefly stated the facts of the case are that the appellant was engaged in the manufacture of Engine, Transmission and their spares and components falling under Chapter Headings 84073310, 87089900 and 84099941 of the First Schedule of the Central Excise Tariff Act, 1985 and was availing cenvat credit on inputs, capital goods and input services in accordance with the provisions of Cenvat Credit Rules,

2004. The appellant utilizes the services of M/s Apee Eskay Enterprises Pvt. Ltd for the purpose of computer networking and cabling services for establishment of computer network/electricity network also referred to as Business Auxiliary Services. During the course of audit of the records of the appellant, it was observed by the department that the appellant had wrongly availed cenvat credit of service tax paid on several services. Accordingly, two show cause notices dated 05.02.2016 and 07.01.2019 were issued to the appellant alleging that the appellant has wrongly availed cenvat credit on 'Business Auxiliary Services' and 'Housekeeping services' in contravention of the provision of sub-rule (1) of Rule 3 of the Cenvat Credit Rules, 2004.

3. After following due process, the adjudicating authority dropped the demand pertaining to 'Housekeeping Services' and confirmed the demand pertaining to Cenvat Credit on 'Business Auxiliary Services'. Aggrieved by the said decision, the appellant filed an appeal before the Ld. Commissioner (Appeals) who dismissed the appeal of the appellant on the sole ground that the demand on a similar issue in the case of appellant was confirmed against the appellant by this Tribunal vide Final Order No. A/54822/2014 dated 22.12.2014.

4. Heard both the parties and perused the records.

5. The Ld. Counsel for the appellant submitted that the impugned order denying cenvat credit of tax paid on 'Business Auxiliary Service' (Network Cable laying/dismantling, installation of network cable) on sole ground that on the similar issue, demand has been confirmed against the appellant vide order dated 22.12.2014. She further submitted that in the impugned order, the Ld. Commissioner

(Appeals) has not taken into consideration the rectification order dated 18.03.2016 passed by this Tribunal vide which it has allowed the rectification of mistake by recalling the order dated 22.12.2014 and further vide order dated 09.08.2017, the appeal filed by the department has also been dismissed. She further submitted that the order-in-appeal dated 29.10.2013 passed by the Ld. Commissioner (Appeals) allowing the credit on 'Business Auxiliary Services' (network related services) has attained finality and accordingly, the appellant is entitled to cenvat credit during the disputed period. She further submitted that during the previous period (even post the amendment brought in the definition of 'input service'), the Ld. Commissioner (Appeals) has allowed the cenvat credit on 'Business Auxiliary Services'. She further submitted that once the matter has attained finality, thereafter, the department cannot be permitted to take a contrary stand in this appeal. For this submission, she relied upon the following decisions:-

- (a) Rosmerta Technologies vs. CCE 2019 (110) TMI 1573-CESTAT Chandigarh
- (b) Popular Carbonic Pvt. Ltd. Vs. CCE 2021 (8) TMI 240-CESTAT Chennai

6. As far as interest and penalty is concerned, she submitted that when the duty itself is not liable to be paid, the question of payment of interest and penalty does not arise.

7. On the other hand, the Ld. AR appearing on behalf of the Respondent reiterated the findings in the impugned order and submitted that the appellant has failed to prove that lying of cables or network cables has any nexus with the manufacturing process/clearance of their final products and hence does not fall in the scope of definition of 'input service' under Rule 2 (I) of Cenvat Credit

Rules, 2004. He further submitted that the burden of proof that the impugned services fall in the definition of 'input service' lies on the appellant.

8. After considering the submissions of both the parties and perused the case records, I find that the Ld. Commissioner (Appeals) has dismissed the appeal of the appellant solely on the ground that the demand on a similar issue in the appellant's own case was confirmed against the appellant by the Principal Bench of this Tribunal vide Final Order No. 54822 of 2014 dated 22.12.2014. Further, I find that the Ld. Commissioner (Appeals) has failed to consider the subsequent rectification order dated 18.03.2016 passed by this Tribunal, allowing the rectification of mistake by recalling the order dated 22.12.2014. Further, I find that vide order dated 09.08.2017, the appeal filed by the Department has been dismissed. I also find that for the previous period before the amendment sought in the definition of 'input service', the Ld. Commissioner (Appeals) has himself allowed the cenvat credit on 'Business Auxiliary Service' and various orders are on record. Further, I note that once the order of the Ld. Commissioner (Appeals) has attained finality and department has not filed any appeal then now the department is not permitted to take a contrary stand as held in the case of Rosmerta Technologies (supra).

9. Further, I find on the analysis of the definition of 'input service' as provided in Rule 2(I) of Cenvat Credit Rules, 2004 that the computer networking is specifically included in the 'includes clause' of the definition of input services.

10. Further, I note that the computer now a days is required in all areas starting from procurement of material, store accounting, production, sales, accounts and administration etc. Further, I find that this issue is no more res-integra and has been settled by the various decisions of the Hon'ble High Courts and the Hon'ble Supreme Court relied upon by the appellant cited herein under:-

- (a) Bhoruka Park Private Limited vs. CST 2017 (5) TMI 1576-CESTAT Bangalore
- (b) Doosan Infracore (India) Pvt. Ltd. vs. CST 2015 (9) TMI 1089-CESTAT Chennai
- (c) Mahindra CIE Automotive Ltd. vs. CCE 2018 (2) TMI 1660-CESTAT Mumbai
- (d) Honda Motorcycle & Scooter India Pvt. Ltd. vs. CCE 2019 (4) TMI 927-CESTAT Chandigarh
- (e) Adani Port & Special Economic Zone Ltd. vs. C.S.T. Ahmedabad 2016 (42) STR 1010 (Tri.-Ahmd.)

11. Further, I would like to mention the decision of Hon'ble Madras High Court in the case of Rane TRW Steering System Ltd. Vs. CCE Chennai 2018 (11) GSTL J187 (Mad.) wherein the Hon'ble High Court has considered the definition of 'input service' and has observed as under:-

"24. In Doypack Systems (PVT) Ltd., Vs. Union of India { 1988 (36) ELT 201 (SC)}, the Hon'ble Supreme Court, considered the words and phrases, "pertaining to", "in relation to", "arising out of" and "includes". Though the above said words and expressions were explained in the context of the statutes considered therein, principles of law laid down by the Hon'ble Supreme Court, in the matter of interpretation of statute, requires to be considered. While considering the expression, "in relation to", in Doypack Systems (Pvt) Ltd., the Hon'ble Supreme Court, at paragraph No. 48, held as follows:-

"The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, though State Wakf Board Vs. Abdul Aziz (AIR 1968 Madras 79, 81, paragraph 8 and 10, following and approving Nitai Charan Bagchi Vs. Suresh Chandra Paul (66 CWN 767), Shyam Lal Vs. M. Shayamlal (AIR 1933 All. 649) and 76 Corpus Juris Secundum 621)."

25. At paragraph No. 48, in Doypack's case, the Hon'ble Supreme Court also referred to Corpus Juris Secundum at pages 620 and 621, wherein the term "relate" has been defined as meaning to bring into association or connection with. In Doypack's case, the Hon'ble Supreme Court also opined that it has been clearly mentioned that "relating to", has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction.

26. While considering the term "includes", at paragraph No. 64, the Hon'ble Supreme Court, in Doypack's case, held as follows:-

"The expression "in relation to" has been interpreted to be the words of widest amplitude."

27. Interpretation of Section 4 of Swadeshi Cotton Mills Company Limited (acquisition and transfer of undertakings) Act, 1986, was the subject matter of the discussion in Doypack's case. Adverting to the above, the Hon'ble Supreme Court, at paragraph No. 64, in Doypack's case, observed thus:-

"Section 4 appears to us to be an expanding section. It introduces a deeming provision. Deeming provision is intended to enlarge the meaning of a particular word or to include matter which otherwise may or may not fall within the main provisions. It is well settled that the word "includes" is an inclusive definition and expands the meaning. The Hon'ble Supreme Court has referred to the decision in Corporation of the City of Nagpur Vs. Its Employee { 1960 2 SCR 942) and Vasudev Ramchandra Shelat Vs. Pramlal Jayanand Thakar and Others (1975 1 SCR 534)."

12. Therefore, keeping in view, the ratio of the various decisions cited (supra), I am of the considered view that the impugned order is not sustainable in law and therefore, I set-aside the same by allowing the appeal of the appellant.

*(Pronounced on 31.01.2023)*

**(S.S. GARG)**  
MEMBER (JUDICIAL)

G.Y.