CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/714/2010

[Arising out of Order-in-Original 09/2010 dt.31.08.2010 passed by the Commissioner of Central Excise, Tiruchirapalli]

Bharat Heavy Electricals Ltd	Assessee
Versus	
Commissioner of Central Excise, Trichy	Revenue

Appeal No.E/181/2011

[Arising out of Order-in-Appeal No.01/2011 dt.7.01.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli]

Commissioner of Central Excise, Tiruchirapalli	Revenue
Versus	
Bharat Heavy Electricals Ltd	Assessee

Appearance:

Shri M.Karthikeyan, Advocate
For the Assessee

Shri S.Govindarajan, AC (AR)
For the Revenue

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 4.4.2018

Per Bench

FINAL ORDER No. 41076-41077/2018

The issue involved in both these appeals being the same, they are heard together and are disposed by this common order. The parties are hereafter referred to as assessee and department for the sake of convenience.

2. The assessee is engaged in the manufacture of boilers and are registered with the Service Tax Department for various services. They were availing the facility of CENVAT Credit on various input services. It was noticed that for the period 10/2007 to10/2009, the appellants had wrongly availed cenvat credit on various input services.

3. Show Cause Notices were issued for the period 10/2007 to 10/2008 and 11/2008 to 10/2009 proposing to disallow the credit and to demand service tax alongwith interest and to impose penalties. After due process of law, the original authority for the period 10/2007 to 10/2008 disallowed the credit and confirmed the demand, interest and imposed penalties. Against this, the assessee filed appeal before the Commissioner (Appeals), who vide order impugned herein allowed the credit and thereby setaside the demand, interest and penalties. Aggrieved, the department has filed the Appeal No.E/181/2011.

4. The show cause notice issued for the period 11/2008 to 10/2009 was adjudicated by the Commissoner who disallowed the credit on various services and confirmed the demand, interest and imposed penalties. Against this order, the assessee has filed appeal E/714/2010.

5. On behalf of the assessee, the Ld.Counsel, Sh.M.Karthikeyan submitted that the period involved is prior to 1.4.2011 when the term 'activity relating to business' was included in the definition of input services. The impugned order passed by the Commissioner has denied credit on input services stating the reason that these services do not have nexus with manufacturing activity. Such decision is arrived mainly relying on the decision of the Hon.Apex Court in the case of ***Maruthi Suzuki Ltd Vs CCE, Delhi-III, 2009 (240) E.L.T.641 (S.C.).*** He submitted that the said decision was doubted and referred to Larger Bench in the case of ***Ramala Sahkari Chini Mills Ltd vs Commissioner of Central Excise, Meerut-I and as reported by the Larger Bench in 2016 (334) E.L.T. 3 (S.C.),*** it has been held that the word "include" enlarges the meaning of the preceding word and it is to be applied by way of extension and not with restriction. The input services under dispute in Appeal No.E/714/2010 are Outdoor catering and canteen related service, House keeping at Guest House, Transit house, Hostels, Manpower and Security Services at the township and various installations outside factory premises, AC Maintenance at Hospital & upkeep of medical dept., Garden Maintenance Service, Postal Services (Speed Post), Tyre retreading and Hospitality Service. He submitted that the gardening services were availed for the horticultural maintenance of green area in the periphery of the factory. That there are installations for facility of the factory outside the registered premises also where the appellants have availed the services of gardening (horticulture) to maintain green area.

In ***Wipro Ltd Vs CCE, Pondicherry 2017-TIOL-897-HC-MAD-ST***, the Hon.High Court had held that the gardening services / landscaping services was eligible for credit. Similar view was taken in the case of housekeeping services by the Hon.High Court in the very same decision. In regard to credit availed on postal services, the credit has been denied alleging that certain details are not available in the document issued by the postal department. That when there is no dispute as to payment of service tax nor the availment of services, the department cannot deny the credit. To support his arguments on eligibility of credit on various services, he relied upon the decision in the case of ***CCE, Chennai Vs BHEL 2016 (42) S.T.R.815, HCL Tech. Ltd. vs CCE & ST, Noida 2015 (40) S.T.R.1124, CCE, Kanpur vs GAIL India Ltd 2017 (52) S.T.R.50, Kakinada Seaport Ltd 2015 (40) S.T.R.509 Millipore India Pvt Ltd 2012 (26) S.T.R.514 and India Cements 2017 (3) GSTL 144.***

6. The Ld.AR, Shri S.Govindarajan appearing on behalf of the department supported the findings in the order impugned in Appeal No.E/714/2010 and reiterated grounds raised in Appeal No.E/181/2011. He submitted that the assessee has to justify the eligibility of credit and has to establish the nexus of the input services to activity of manufacture or clearance of finished products. The services impugned in these appeals are not necessary for manufacture or clearance of finished products. Therefore the Commissioner has rightly disallowed the credit available on these services. He pleaded that the credit allowed in Appeal No.181/2011 by the Commissioner (Appeals) may be set aside.

7. Heard both sides.

8. The period involved is prior to 1/4/2011 when the definition of input services included the words 'activities relating to business'. The definition thus had a wide ambit during the disputed period and the scope of these words in the definition was discussed by the Hon.Bombay High Court in the case of ***Coca Cola India Ltd vs CCE, Pune 2009 (15) S.T.R.657 (Bombay).*** The decision relied by the Ld.AR in the case of ***Maruthi Suzuki Ltd Vs CCE, Delhi-III, 2009*** (supra), is a decision rendered with regard to the definition of 'inputs' and not under 'input services'. The decision rendered in Maruthi Suzuki Ltd (supra) is no longer good law, as it was doubted and referred to Larger Bench, wherein the Hon.Apex Court held that the word 'includes' is used to enlarge the meaning of the preceding words and is not used with restriction. Thus the definition of input service not only covers services which fall under the means part, but also covers services which are covered under the inclusive part of the definition. In CCE, Nagpur vs Ultratech Cement Ltd 2010 (260) ELT 369 (Bom.), the Hon.Court held that if the cost of any input service forms part of the cost of final product, service would be eligible for the said input service credit. In CCE & St, LTU, Chennai vs Rane TRW Steering Systems Ltd, the Hon'ble jurisdictional High Court held that gardening services where an employer spends money to maintain their factory premises in an eco-friendly manner is eligible for credit. The issue whether House Keeping Services and gardening services are eligible for credit was considered by the jurisdictional High Court in the

case of ***Wipro Ltd*** (supra) and ***Sri Rama Vilas Services Ltd. Versus CESTAT, Chennai 2017 (3) G.S.T.L.24 (Mad.)***. The other decisions relied by the Ld.Counsel for the appellant have analysed the issue with regard to availability of credit on the impugned services. Following the said decisions, we are of the view that the disallowance of credit is unjustified. The credit in respect of postal services has been disallowed for the reason that the document issued by the postal department does not contain a few details. The department has no dispute with regard to the service tax paid on such document and also with regard to the availment of postal services. The department cannot then deny the credit.

9. From the above discussions, we are of the considered opinion that the services impugned are eligible for credit. The appeal filed by the assessee is allowed. Consequently, the appeal filed by department is dismissed.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

Vsr/Rkp