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

Appeal No.E/42487/2017

[Arising out of Order-in-Appeal No.62/2017 (CTA-II) dt.30.06.2017 passed by the Commissioner of Central Tax (Appeals-II) CGST & Central Excise, Chennai]

Emerson Process Management Ltd. Appellant

Versus

Commissioner of GST & Central Excise,
Chennai South. Respondent

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[Arising out of Order-in-Appeal No.63/2017 (CTA-II) dt.30.06.2017 passed by the Commissioner of Central Tax (Appeals-II) CGST & Central Excise, Chennai]

Appearance:

Shri S.Adithya, Consultant
For the Appellant

Shri R.Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)

Date of hearing / decision : 31.5.2018

FINAL ORDER No. 41723-41724/2018

The issues involved in both these appeals are similar, they were heard together and are disposed of by this common order.

2. The brief facts are that the appellant is a manufacturer of Industrial valves, regulators, actuators and are availing the facility of Cenvat Credit on inputs, capital goods and input services. During the course of verification of accounts for the period from April 2015, June 2015, July 2015, September 2015 and November 2015, it was noticed that the appellants had availed service tax credit for various services like Garden upkeep, Interior Decorator service, Renting of immovable property services and other services which were not eligible.

3. Show cause notice was issued proposing to deny the credit on these services. After due process of law, the original authority disallowed the credit in respect of certain services and confirmed the demand, interest and imposed penalties. In appeal, the Commissioner (Appeals) disallowed the credit in respect of garden upkeep services, interior decorator services, renting of immovable property services. Hence this appeal.

4. On behalf of appellant, the Ld.Consultant, Sh.S.Adithya submitted that in Appeal No.ST/42486/2017 the issue arising for consideration is only whether the appellant is eligible for availing credit on renting of immovable property services. In Appeal No.ST/42487/2017 alongwith the above issue, there is disallowance of credit on garden upkeep services, as well as interior decorator services. He submitted that the appellant had availed the garden upkeep/maintenance services as per the requirement under the Statute to maintain a garden (Green Area) in terms of Pollution Control Order and under Factories Act. He relied upon the decision in

the case of ***M/s.Rane TRW Steering System Ltd, 2018-TIOL-414-HC-MAD-CX, High Court of Madras***. With regard to credit availed on interior decorator service, he submitted that these services were used only for modernization and repairs of the premises. He adverted to the sample invoice and argued that the works carried out were merely Rectification of welding booth floor, LVP paint booth scrubber foundation concrete work, Manual cover, plastic work indicating that these were merely repair and rectification works and therefore are covered by the definition of input services. With regard to credit availed on renting of immovable property, he submitted that the appellant had paid rent for the Branch Offices and the same has been denied stating that these branch offices are situated outside the factory and therefore being post manufactrure expenses have no nexus with manufacturing activity. He submitted that the sales offices are used for procuring orders and coordinating with customers for the purpose of supply of materials, its installation and doing market research. These activities are integral to the manufacturing activity and therefore is eligible for credit. He relied upon the decision in the case of ***Carrier Airconditioning & Refrigeration Ltd. Vs C.C.E., Delhi-IV 2016 (41) S.T.R. 824 (Tri. – Chan.)***

5. The Ld.AR, Sh.R.Subramanian supported the findings in the impugned order. He submitted that al the above services do not have nexus with the manufacturing activity and therefore the authorities below have rightly denied the credit. In respect of interior decorator services, he submitted that the appellant had not furnished sufficient proof to show that the services were used for work situations.

6. Heard both sides.

7. The first issue that arises for consideration is whether the appellant is eligible for garden upkeep/maintenance services. The appellant is a manufacturer and as per pollution control norms, they are required to maintain certain percentage of green area in their factory premises. The Hon.High Court of Madras in the case of ***M/s.Rane TRW Steering System Ltd*** (supra) has considered the very same issue and held that the credit is eligible. Following the same, I am of the view that the denial of credit is unjustified and requires to be setaside which I hereby do.

8. The second issue that arises for consideration is the credit availed on interior decorator services. It is brought out from evidence that the appellant had furnished invoices relating to the services. It is stated in para 18 of Order-in-Original No.08/2016 that the interior decorator service for designing and drawing of their office and workstations does not have a nexus with manufacturing activity and therefore it is not eligible for credit. The appellant had done some minor civil work with respect to workstations used for overseeing manufacturing operations inside the factory. I find that the credit on these services is eligible.

9. The authorities below have disallowed the credit on renting of immovable property services in respect of branch offices. It is consistently argued by the appellants that they have setup branch offices in various places from where they collected sales orders from

customers and follow up for supply of materials, payments and after sales coordination. A similar issue was analysed by the Tribunal in the case of ***Carrier Airconditioning & Refrigeration Ltd.*** (supra). The Tribunal observed that the credit availed on the renting of branch offices was eligible. Following the same, I am of the view that the disallowance of credit is improper and requires to be setaside which I hereby do.

10. In the result, the impugned orders are modified to the extent of allowing credit in respect of garden services, interior decorator services and renting of immovable property services of branch offices. The impugned order to the extent of confirming the demand on these services is set aside. The appeals are allowed in above terms with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

(Sulekha Beevi C.S)
Member (Judicial)

vsr