

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

Appeal No.E/40788/2018

[Arising out of Order-in-Appeal No.166/2017 (CTA-II) dt.30.11.2017
passed by the Commissioner of Central Tax (Appeals-II), Chennai]

Bharat Heavy Electricals Ltd Appellant

Versus

Commissioner of Central Tax (Appeals-II) Respondent
CGST & Central Excise, Chennai

Appearance:

Ms.S.Sridevi, Advocate
For the Appellant

Shri L.Nandakumar, AC (AR)
For the Respondent

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

Date of hearing / decision : 5.12.2018

FINAL ORDER No. 42996/2018

The issue involved in this appeal is with regard to the disallowance of Cenvat Credit on various services.

2. The Ld.Advocate, Ms.S.Sridevi appearing for the appellant submitted that the department has denied the credit alleging that it is not established that the services on which credit has been availed on the basis of ISD invoices have been used directly or indirectly in or in relation to manufacture and clearance of final products. She

submitted that the details of the services availed and the nexus with the manufacturing activity alongwith the decisions which related to the said services are given in the table below :-

S.NO.	Services Involved	Purpose	Covered decisions
1	Air Travel Agent / Rail travel Agent Services	Booking tickets for their employees who undergo visit to meeting / trainings / factory visits etc.,	Arm Embedded Technologies - 2016 (45) STR 133 (Tri Bang); Xlinx India Tech - 2016 (44) STR 635 (Tri Hyd); Mandarika (P) Ltd., - 2015 (39) STR 309 (Tri Del)
2	Cable operator services	Cable connection in office/conference to remain updated with business news and developments essential for efficient output	JP Morgan services - 2016 (43) STR 196 (Tri Mum); Stock holding Corp -2015 (39) STR 664 (Tri Mum)
3	Convention service	For arranging Annual general meetings / meetings of floating tenders/acceptance of orders	Virchow Laboratories - 2017 (51) STR 443 (Tri Hyd)
4	Membership service	Towards subscription to engineering institutes, management institutes, trade associations etc.,	Xlinx India Tech - 2016 (44) STR 635 (Tri Hyd); Virchow Laboratories - 2017 (51) STR 443 (Tri Hyd)
5	Erection commission/installation service	For installation of servers, generators, ups and other equipments	GE India technology Centre-2014-TIOL-1931-CESTAT-BANG Orient Cement Ltd., - 2017 (51) STR 459 (Tri Hyd)

6	Civil works services/Repairs and maintenance	Used for repairs/modernization and maintenance of office building	Zydus Nycomed Healthcare 2013 (3) STR 197 (Tri Mum);
7	Designing and printing services	Printing of tender docs/in house journals etc.,	Ultratech Cements Ltd., vs CCE., Jaipur - 2015 (40) STR 523 (Tri Del)
8	Cleaning services/Housekeeping	For maintaining the office	Xlinx India Tech - 2016 (44) STR 635 (Tri Hyd); CCE., vs Maruthi Suzuki - 2015 (38) STR 503 (Tri Del)
9	Sponsorship services	Publication of booklet, banner and conductive events in relation to business development etc.,	Xlinx India Tech - 2016 (44) STR 635 (Tri Hyd.)
10	Finance Lease services /	Purchase of computers/printers etc., on finance lease for execution of day to day routines. It relates to banking and financial services.	Xlinx India Tech - 2016 (44) STR 635 (Tri Hyd.) Stock holding Corp -2015 (39) STR 664 (Tri Mum)
11	Accommodation services	Regional operation division booked hotel rooms for the employees who are on official duty in attending meeting/customers etc.	Accenture Services (P) Ltd., 2015 (40) STR 719

3. The Ld.AR, Sh.L.Nanda Kumar supported the findings in the impugned order.

4. Heard both sides.

5. The issue is with regard to the eligibility of credit on the services shown in the table above. The appellant has explained the need for availing the various services also. After going through the submissions and perusal of records, I am of the view that the credit availed on air travel agent / rail travel agency service, cable operator service, convention service, erection, commission and installation service, designing and printing service, cleaning service / housekeeping, sponsorship service and finance lease service are eligible for credit. These issues were considered by the Tribunal in ***Xilinx India Tech. Services Pvt. Ltd. Vs CC., CE. & ST., Hyderabad-IV 2016 (44) S.T.R.635 (tri. – Hyd.)***. Following the said decision, I hold that the credit availed on the above services are legal and proper. The disallowance being unjustified, is set aside.

6. The Ld.Counsel for the appellant has produced the invoices relating to the services availed on membership fees. It is submitted by her that the appellant company had to take membership in Associated Chamber of Commerce and Industry of India. This is to enable the company to have connections with similar persons in the very same field of commerce and industry. This helps to develop the business and also to get updated with the trends in the industry and is therefore related to the activity of manufacture. It is not for personal membership in a Club. Similarly the appellant has taken membership in spending on conference of public enterprises. The Invoice is raised in the name of the company (Bharat Heavy Electricals Ltd). In ***CCE, Pune III vs Zensar Technologies Ltd 2016 (42) STR 570 (Tri. – Mum.)*** the said services were held to be eligible. These services

therefore cannot be said to be for personal consumption. I hold that the credit availed on membership services is eligible.

7. The Ld.Counsel has submitted that the credit for civil works / repairs and maintenance is actually in respect of charges for Annual maintenance contract for xerox machines. She has also produced the invoices relating to such AMC services. It is her case that the repairs and maintenance also include supply of toner and therefore the category of services in the invoices is mentioned as works contract service. Since these are used for repairs and maintenance of xerox machines which are used by the appellant factory, she contend that the credit ought to be allowed. On perusal of the records in para 8.3, the Commissioner (Appeals) has remanded to the adjudicating authority to reconsider the issue of various services. In para 8.4 of the Order in Original it is mentioned that works contract services as well as civil works services are disallowed. It is not possible to make out from the SCN or the order as to the services which come under works contract service and civil works services. This aspect needs to be reconsidered. Therefore this issue with respect to credit availed on works contract service / civil works service / repair and maintenance of xerox machine is remanded to the adjudicating authority.

8. So also the appellant contends that the accommodation services are availed for hotel accommodation for the employees who are on official duty. The appellant has to establish with necessary documents that the accommodation was availed for official purposes only. The Counsel for appellant submitted that the appellant would be able to

furnish documents to establish that this was availed for official purposes only. For this reason, I hold that the accommodation service also requires to be remanded to the adjudicating authority.

9. From the discussions made above, the services for civil works / repair and maintenance as well as accommodation services shown in the table above are remanded for fresh adjudication to the adjudicating authority. The credit availed for other services shown in the table are allowed. The appeal is partly allowed and partly remanded with consequential relief if any in above manner.

(Operative part of the order pronounced in open court)

(Sulekha Beevi C.S)
Member (Judicial)

vsr