

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]**

Appeal Nos.: E/41051, 41052 & 41053/2018

[Arising out of Order in Appeal No. 168/2017 (CTA-II)
dated 30.11.2017 passed by Commissioner of G.S.T. &
Central Excise (Appeals-II), Chennai]

M/s. Flowserve Sanmar Ltd., : **Appellant**
No. 147, Karapakkam Village,
Perungudi,
Chennai – 600 097

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai South Commissionerate

Appearance:-

Shri. V. S. Manoj, Advocate
for the Appellant

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

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 19.11.2018

Date of Pronouncement: **05.12.2018**

Final Order No. **43055-43057 / 2018**

These appeals filed by the assessee involve common issues and hence, are taken up together for common disposal.

2.1 Three Show Cause Notices were issued covering the period from 01.04.2006 to 30.06.2011 alleging that the assessee/appellant

had availed CENVAT CREDIT of service tax paid on various services such as Rent-a-Cab Service, Clearing and Forwarding Agent, Courier Agency, Maintenance and Repair Service, Works Contract Service, Catering Services, Photocopier Services, Business Support Services, Commission Agent Services, Chartered Accountancy Services, Business Auxiliary Services, Advertisement, Printing Agency and Management Consultancy Services, etc.; that the above services not being connected to the manufacture of final product are therefore, ineligible input services as per Rule 2(l)(ii) and Rule 3(1) of the CENVAT Credit Rules (CCR), 2004. The demand proposed in the above Show Cause Notices for three periods are tabulated as under :

Sl. No.	SCN No. & Date	Period involved	Amount (in Rs.)
1.	116/2010 dt. 14.10.2010	01.10.2009 to 31.08.2010	9,00,528/-
2.	04/2011 dt. 01.04.2011	01.04.2006 to 31.08.2010	1,10,82,007/-
3.	40/2011 dt. 26.09.2011	01.09.2010 to 30.06.2011	51,44,603/-

2.2 The Additional Commissioner vide common Orders-in-Original No. 26 to 28/2017 dated 23.02.2017 thought it proper to drop further proceedings initiated vide above Show Cause Notices. The adjudicating authority observed that the

adjudication proceedings were taken up subsequent to the disposal of Departmental Appeal by the Hon'ble High Court of Madras in respect of availment of input service tax Credit on Rent-a-Cab Service. In the Order-in-Original, the adjudicating authority after carefully going through the records of the case as well as the reply/documents filed by the appellant and also after considering various judicial precedents, has concluded that the impugned services were eligible input services of the assessee during the material period and thereafter, dropped the further proceedings.

2.3 Feeling aggrieved, the Revenue preferred an appeal before the Commissioner (Appeals) and the first appellate authority has vide impugned Order-in-Appeal No. 168/2017 (CTA-II) dated 30.11.2017 allowed the appeal by remanding the case back to the file of the Original Authority to verify the eligibility of each of the services for the purpose of availing Credit since, according to him, the adjudicating authority had not given any finding regarding the nature of service provided in each case as well as the applicability of case-laws relied upon by the adjudicating

authority. Aggrieved by the above, the assessee has filed these appeals before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Shri. V. S. Manoj appeared for the assessee while Ld. AC (AR) Shri. L. Nandakumar appeared for the Revenue.

4. I have heard the rival contentions, perused the documents placed on record and have also gone through the various judgements referred to during the course of arguments.

5. On a perusal of the three Show Cause Notices, I find that the only allegation of the Revenue is that the impugned services were not used in relation to the manufacture of final product. When statutory notices are issued to an assessee, it is the duty of such assessee to respond to such notices and explain how and where those services were used. Viewed from this angle, when the Revenue entertains a doubt as to the use of the impugned services in relation to the manufacture of final product, it is the primary duty of the assessee to place facts first and then address the issue of eligibility with the aid of decided case laws as to availing of input service tax Credit on the above services. The appellant in the appeal memo has filed copy of its replies filed in

response to the Show Cause Notices and on a perusal of the same, I find that the appellant has rather proceeded to address the eligibility taking shelter under various case laws instead of first satisfying the first question. The eligibility of the impugned services has more or less been settled, but however, on going through each of the judgements/Orders referred to and relied on by the Ld. Advocate, the courts have always addressed the facts first and then given a finding on the eligibility thereof, which means that the facts are required in the first place and hence, it is always the duty of the assessee to place the facts first on record.

6. Once that is done, it is for the authorities thereafter to appreciate such facts and then adjudicate, in the light of the decided cases, if any. In the assessee's own case decided by this Bench which is relied on by the Ld. Advocate, this Bench at paragraph 2 records a plea that the Business Auxiliary Service availed related to the sales commission paid to the agents for the purpose of sales promotion. Similarly, the Hon'ble jurisdictional High Court in the case of *C.C.E. & S.T., L.T.U., Chennai Vs. M/s. Turbo Energy Ltd. – 2015-TIOL-629-HC-MAD-CX* has recorded the brief facts and thereafter given a finding in favour of the

assessee. Unfortunately, such facts are not forthcoming here, in this case. Thus on the peculiar facts of this case, I am of the opinion that the facts are required to be placed on record first, especially when the Revenue entertains a doubt; and this having not been attended to by the assessee by placing the facts on record, I find no infirmity in the Order of the first appellate authority.

7. However, sustaining the remand order passed by the Commissioner (Appeals), I deem it proper to modify his directions and direct the adjudicating authority not to be influenced by any of the findings/directions of the Commissioner (Appeals), rather restrict himself to the doubts entertained in the Show Cause Notice and pass a fresh adjudication Order in accordance with law. Needless to say that the appellant shall place all relevant facts on record for fair adjudication by the adjudicating authority.

8. With the above observations, the appeal is dismissed.

(Pronounced in open court on 05.12.2018)

(P Dinesha)
Member (Judicial)

Sdd