

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

Appeal No.: E/42238/2018

[Arising out of Order-in-Appeal No. 199/2018 (CTA-II)
dated 27.04.2018 passed by the Commissioner of G.S.T. &
Central Excise (Appeals-II), Chennai]

M/s. Rane Engine Valve Ltd., : **Appellant**
Survey No. 22, Red Hills Road,
Madhavaram, Ponneri,
Tiruvallur District – 601 204

Versus

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

Appearance:-

Ms. S. Sridevi, Advocate

for the Appellant

Shri. L. Nandakumar, AC (AR)

for the Respondent

CORAM:

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

Date of Hearing: 30.11.2018

Date of Pronouncement: 07.12.2018

Final Order No. 43058 / 2018

The appellant is engaged in the manufacture of Parts of Engine Valves, Guides, Tappets for IC Engines and the same are supplied to M/s. Ashok Leyland Ltd. and M/s. Simpson & Co. Ltd. on payment of duty.

2.1 It is the case of the Revenue that during the course of audit and scrutiny of the appellant's records at their corporate office, they had found that the appellant had shut down its manufacturing operations and also closed its unit at Alandur and shifted to Madhavaram as Plant-III. It was also noticed by the Audit that the appellant had availed CENVAT Credit on input services rendered by M/s. CBRE South Asia Ltd. (hereinafter referred to as 'M/s. CBRE') with whom the appellant had entered into an agreement, to provide services to the appellant in identifying a suitable buyer for the appellant's factory premises i.e., land measuring 5.97 acres at Town Survey No. 77 (part) Old Survey No. 8 (part) Adambakkam Village, Alandur Taluk, during the month of April 2015. As per the agreement, the fee payable to M/s. CBRE was 0.75% of the sale consideration payable upon the receipt of full sale consideration by the appellants. Towards the completion of the sale proceedings, the appellant had availed input service tax credit of Rs. 7,09,175/- in their ER-1 return during the month of April 2015 which included the input service tax credit of Rs. 6,99,113/- on the invoices raised by M/s. CBRE (including applicable cesses).

2.2 Accordingly, a Show Cause Notice was issued on the ground that the aforesaid services being in the nature of Real Estate Agency

Services, did not qualify as valid input services as per Rule 2(l) of the CENVAT Credit Rules, 2004 since such services were not used “directly or indirectly, in or in relation to the manufacture of final products”. The Show Cause Notice also alleged that the CENVAT Credit of Rs. 11,341/- being cesses, were wrongly utilized towards the payment of Excise Duty on the removal of goods in the months of July, August and September 2015 apart from proposing applicable interest and penalty. The appellant had filed a detailed reply *inter alia* pleading that in view of the fund flow/working capital problem they had to sell the factory land and utilize the proceeds for running their unit; that in this regard they had utilized the services of M/s. CBRE for whose service the payment was made on the invoice; that the input service in question was not figuring out in the exclusion list, etc. The Order-in-Original came to be passed after considering the above detailed reply, wherein the adjudicating authority accepted the pleadings of the appellant and dropped the proceedings. Aggrieved by the same, the Revenue preferred an appeal before the Commissioner of G.S.T. & Central Excise (Appeals-II), Chennai, who vide impugned Order-in-Appeal No. 199/2018 dated 27.04.2018 allowed the Department Appeal against which, the present appeal has been filed by the assessee.

3. Today when the matter came up for hearing, Ld. Advocate Ms. S. Sridevi appeared for the assessee while Ld. AC (AR) Shri. L. Nandakumar represented the Department.

4. During the course of hearing, Ld. Advocate while reiterating the submissions made before the lower authorities, has also relied on the following decisions :

- *TamilNadu Petroproducts Ltd. Vs. C.C.E., LTU, Chennai – 2017 (52) S.T.R. 427 (Tri. – Chennai);*
- *Ahmednagar Forgings Ltd. Vs. C.C.E., Pune-III – 2017 (6) G.S.T.L. 54 (Tri. – Mum.);*
- *M/s. Bright Brothers Ltd. Vs. C.C.E., Pondicherry – 2018 (6) T.M.I. 635 – CESTAT Chennai.*

5. *Per contra*, Ld. AR submitted that the credit availed by the assessee was on the service tax paid by M/s. CBRE for valuation of property at factory premises at Alandur and identifying the purchaser which is nothing but brokerage for rendering Real Estate Agency Service; that since the service received by the assessee was Real Estate Agency Service, the service rendered by M/s. CBRE was not a banking or financial service, was not intended to raise finance to carry out the manufacturing activity and hence, the CENVAT Credit taken by them was not proper. He therefore submitted that the impugned Order is required to be sustained.

6. I have heard the rival contentions, perused the documents placed on record and have also gone through the judicial pronouncements referred to during the course of arguments.

7.1 The period of dispute is April 2015 and July to September 2015 and hence, amended provisions of Rule 2(l) of the CENVAT Credit Rules, 2004 apply. There is no dispute with regard to the submissions of the Ld. Advocate that the amended definition of “input service” has an inclusive part and an exclusive part. For the sake of convenience, the relevant portion of Rule 2(l) is extracted below :

“(l) “input service” means any service, -

- (i) used by a provider of [output service] for providing an output service; or*
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;..”

7.2 The settled position as to the interpretation of the above Rule is that as long as a service is used directly or indirectly, in or in relation to, the manufacture of final products and clearance thereof,

such service is an eligible input service. M/s. CBRE, as submitted by the Ld. Advocate and also the pleadings urged in response to audit objection, was entrusted with the work of completing the process of selling the land belonging to the appellant within a reasonable time. This, I am afraid, has no connection with the 'financing' activity figuring in the inclusive part of the definition of "input service". The role of M/s. CBRE is thus limited; may be the purpose of the appellant is different but what is important is the service provided by the service provider that is used by the manufacturer, directly or indirectly, in or in relation to, the manufacture of final products and clearance thereof.

8. From one of the replies dated 15.02.2017 filed before the Superintendent of Central Excise, the appellant has also taken a stand that it was "... an activity relating to business and therefore, the service rendered by M/s. CBRE very much qualifies as an input service". This cannot help the assessee because, the scope of the definition of "input service" revolves around the manufacturing activity and not the business activity. Viewed from this angle, the Orders of the Tribunal relied on by the Ld. Advocate namely :

- *TamilNadu Petroproducts Ltd. Vs. C.C.E., LTU, Chennai – 2017 (52) S.T.R. 427 (Tri. – Chennai),*
- *Ahmednagar Forgings Ltd. Vs. C.C.E., Pune-III – 2017 (6) G.S.T.L. 54 (Tri. – Mum.); and*

- *M/s. Bright Brothers Ltd. Vs. C.C.E., Pondicherry – 2018 (6) T.M.I. 635 – CESTAT Chennai*

will **not** help the assessee in any way.

9. For the above reasons, I am of the considered view that M/s. CBRE rendered the services of Real Estate Agent simpliciter and hence, I do not find any reason to interfere with the findings of the first appellate authority.

10. The appeal therefore stands dismissed.

(Pronounced in open court on 07.12.2018)

(P. Dinesha)
Member (Judicial)

Sdd