

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: E/40356/2013

[Arising out of Order-in-Appeal No. 61/2012 (Chennai-II)
dated 14.11.2012 passed by the Commissioner of Central
Excise (Appeals), Chennai-I Commissionerate]

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

Versus

M/s. Sundaram Clayton Ltd., : **Respondent**
(Die Casting Division),
MTH Road, Padi,
Chennai – 600 050

Appearance:-

Shri. A. Cletus, ADC (AR)
for the Appellant
Shri. V. Ravindran, Advocate
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 03.12.2018

Final Order No. 43098 / 2018

Per P. Dinesha :

The Department has filed this appeal against the Order-in-Appeal No. 61/2012 (Chennai-II) dated 14.11.2012 passed by the Commissioner of Central Excise (Appeals), Chennai-I Commissionerate.

2. Briefly stated, the assessee is engaged in the manufacture of Parts of Motor Vehicles falling under Chapter Heading 8409 99 41, 8708 99 00 and other Articles of Aluminium falling under Chapter Heading 7616 99 00 of the Central Excise Tariff Act, 1985 and avails CENVAT Credit of duty paid on inputs, capital goods and various input services.

3. Three Show Cause Notices dated 16.12.2009, 25.01.2010 and 01.07.2010 were issued to the assessee proposing to recover the wrongly availed input service tax credit availed on the certain services alleging that the same were not eligible input services for the availment of CENVAT Credit. The above proposals in the above Show Cause Notices came to be confirmed by the adjudicating authority vide common Order-in-Original Nos. 15 to 17/2011 dated 28.02.2011 along with applicable interest and penalty. Thereafter, an appeal was preferred by the assessee before the first appellate authority who vide impugned Order-in-Appeal No. 61/2012 (Chennai-II) dated 14.11.2012 set aside the Order passed by the Original Authority and allowed the assessee's appeal with consequential reliefs. Aggrieved by the same, the Department has come in appeal before this forum.

4. Today when the matter came up for hearing Ld. ADC (AR) Shri. A. Cletus appeared on behalf of the Department while Ld. Advocate Shri. V. Ravindran appeared on behalf of the assessee/respondent.

5.1 During the course of hearing, Ld. AR reiterated the grounds of appeal. He submitted that the Commissioner (Appeals) had erred in allowing the Credit in respect of eight of the input services, viz. :

- (i) Auction Services
- (ii) Courier Services
- (iii) Information Technology Services
- (iv) Photography Services
- (v) Rent-a-Cab Services
- (vi) Travel Booking Services
- (vii) Business Exhibition
- (viii) AMC for Weigh Bridge

5.2 He submitted that as per Rule 2(1) of the CENVAT Credit Rules, 2004, for a service to be eligible as input service, the same should either be directly or indirectly related to the manufacture of final products or be included in the inclusive list provided under the definition of "input service" which is not the case here. Hence, he prayed for setting aside of the impugned Order.

6.1 *Per contra*, Ld. Advocate for the assessee submitted that the entire issue related to the period prior to 01.04.2011 when the definition of “input service” had a wide ambit. He also stated that the eligibility of Credit in respect of each one of the impugned services were settled by a plethora of decisions of various Benches of the CESTAT and thus the same were no more *res integra*.

6.2 With regard to **Auction Service**, Ld. Advocate submitted that the same was used to clear the scrap of the factory as the same is indispensable to get manufacturing place and place for storing finished goods, free of scrap. He therefore submitted that the denial of Credit on the above service was unjustified.

6.3 Ld. Advocate submitted that **Courier Service** was utilized by the assessee for sending documents to the customers or the vendors and thus formed an integral part of business and therefore, the same is an eligible input service.

6.4 Coming to **Information Technology Service**, Ld. Advocate submitted that the same is an integral part of the assessee’s business activity to reduce the paper work and to enable them to carry out their business efficiently and effectively; that maintenance of software is also an integral part of their business activity and that therefore, the said service is inseparable from the business activity.

Hence, he argued that the denial of Credit on this service was improper.

6.5 With regard to **Photography Service**, Ld. Advocate stated that this service is used by the assessee to issue ID Cards to their employees and for other different business activities, which is used in relation to the manufacturing of final products. He thus argued that the availment of Credit by the assessee on the said service was justified.

6.6 Ld. Advocate also submitted that the **Rent-a-Cab** Service was utilized for the pick-up and drop of the employees, inter-unit travel and also for visiting the vendor premises for quality, accounting, procurement and sales; that the above service having nexus with their manufacturing activity was an eligible input service.

6.7 With regard to **Travel Booking Service**, Ld. Advocate submitted that the same was used by the assessee for the transportation of their employees to different customer places and also for business promotion activities; that the same was integrally connected to their business and that therefore, the denial of Credit on this count was unjustified as well.

6.8 Ld. Advocate further submitted that the services pertaining to **AMC Laptop, Weigh Bridge, ERP Software** were used to maintain

the hardware, equipment and infrastructure facility at the company without which the company cannot perform its operations. He therefore submitted that the said services having nexus with their manufacturing activity, are eligible for Credit of service tax on them.

6.9 Ld. Advocate submitted that above issues relating to Auction Service, Courier Service, Information Technology Service, Photography Service, Rent-a-Cab Service, Travel Booking Service and AMC Laptop, Bridge, ERP Software have already been considered and laid to rest by the decision of this Bench of the Tribunal in the respondent's own case in *Sundaram Clayton Ltd. Vs. Commissioner of C.Ex.,Chennai-II – 2016 (42) S.T.R. 741 (Tri. – Chennai)*, wherein the aforesaid services have been held to be eligible input services.

6.10 Ld. Advocate also submitted that **Business Exhibition** Services were used by the assessee in relation to participation in trade fairs and for exhibiting their products in the course of business development. He placed reliance on the decision of the Chandigarh Bench of the CESTAT in the case of *New Swan Enterprises Vs. Commissioner of C.Ex.,Ludhiana – 2017 (47) S.T.R. 354 (Tri. – Chan.)* to buttress his contentions.

7. We have heard the rival contentions, perused the materials placed on record and have also gone through the various judicial pronouncements referred to by the Ld. Advocate.

8. We find that the dispute relates to the period prior to 01.04.2011 when the definition of "input service" had a wide ambit and included any service used by a manufacturer in or in relation to the manufacture of final products and clearance of final products from the place of removal. Further, on going through the decision of this Bench in the assessee's own case (*supra*) as well as that of the Chandigarh Bench of the Tribunal in the case of *New Swan Enterprises (supra)*, we find that identical issues have been more or less decided and the same are squarely applicable to the case on hand. Following the above judicial precedents we are of the view that the impugned Order calls for no interference and the same is therefore upheld.

9. The Department Appeal stands dismissed.

(Operative part of the order was pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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