

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

Appeal No.: E/40027/2013

[Arising out of Order-in-Appeal No. 222/2012 dated
25.09.2012 passed by the Commissioner of Customs and
Central Excise (Appeals), Tiruchirapalli]

M/s. Sanmar Foundries Ltd., : **Appellant**
89/1, Vadukapatti Village, Viralimalai,
Pudukottai District – 621 316

Versus

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

Appearance:-

Shri. V. S. Manoj, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

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

Date of Hearing/Decision: **10.12.2018**

Final Order No. **43180 / 2018**

Per P. Dinesha :

The assessee-appellant was Show Caused on the pretext of
wrong availment of service tax Credit on :

- (i) Management Maintenance and Repair Service of helicopter;
- (ii) Rent-a-Cab and Contract Bus Service; and
- (iii) Management Consultancy Service;

vide Show Cause Notice dated 03.06.2011. Order-in-Original dated 30.03.2012 came to be passed thereafter confirming the proposed disallowances. The appellant having met with the same fate in its first appeal before the Commissioner of Customs and Central Excise (Appeals), Tiruchirapalli, has assailed the same by this appeal.

2. Today when the matter came up for hearing, Ld. Advocate Shri. V.S. Manoj appeared for the assessee and Ld. DC (AR) Ms. T. Usha Devi appeared for the Revenue.

3. During the course of arguments, Ld. Advocate pointed out that the issues involved have already been considered and decided in favour of the assessee in the *appellant's own case vide Final Order No. 40643/2016 dated 25.04.2016* reported in *2016 (43) S.T.R. 362 (Tri. – Chennai)* by this very Bench of the Tribunal for an earlier period.

4. *Per contra*, Ld. AR supported the findings of the lower authorities.

5. We have heard the rival contentions, perused the documents placed on record and have also gone through the Order of this Bench (*supra*) relied upon by the Ld. Advocate.

6. On going through the Order of this Bench (*supra*), we note that the very same issues have been considered and decided. The relevant portion of the Order reads as under :

“ 6. I have carefully gone through the case records. The issue under dispute is whether the availment of Cenvat credit on the following services are eligible for input service credit (i) Management, Maintenance and Repair service of helicopter; (ii) Rent-a-cab and contract bus service; and (iii) Management Consultant Service.

7. With regard to the eligibility of credit on the maintenance and repair service of helicopter, the ld. Commissioner (Appeals) has in Para 4.2 not disputed the eligibility of credit, but has sought to deny on the ground that the helicopter was not exclusively used for the appellant's unit at Viralimalai. The ld. Commissioner (Appeals) has failed to note that the helicopter was used for the transportation of the Directors and Chairman of the company. While not disputing the eligibility for credit based on the Tribunal's ruling in the case of Force Motors Ltd. v. Commissioner, reported in [2009 \(13\) S.T.R. 692](#) (Tri.-Mumbai), wherein it was held that in this modern age, use of aircraft is to be considered as a bare requisite for business purposes and held that any service tax paid on the services for the maintenance of aircraft is admissible as credit. The Appellate authority has erred in holding that the dispute is not regarding ownership of the helicopter, but whether the services were utilized by the appellant's unit. In the course of hearing, the ld. Counsel has filed copy of invoices raised by the appellant company on other companies for the usage of Helicopter and Service Tax has also been collected under the category 'Business Auxiliary Service'. There is no requirement under Rule 2(l) of the Cenvat Credit Rules, 2004 which defines 'input service' that the usage has to be in relation to a particular unit. Input service definition during the period in dispute, i.e., March, 2010 to April, 2010 was very wide and the inclusive definition covered "activities relating to business", which has not been taken into consideration. The denial of credit is therefore, incorrect and unsustainable.

8. As regards eligibility to credit on Rent-a-Cab service and contract bus service, which are used exclusively for the transportation of officers, the Commissioner (Appeals) has held that they recover the cost from the employees and there is no denial of the same. A consistent stand taken by various Courts and Tribunals is that when there is a recovery of cost, the proportionate credit should be reversed. The denial of the entire credit is erroneous and the appellants are directed to reverse the proportionate credit to the extent of recovery of cost from the employees.

9. As regards eligibility for credit on management and consultancy service, the ld. Commissioner (Appeals) has held that the appellants have not specifically confirmed that they were used exclusively for the appellants unit and what was

the nature of consultancy given and how it is related to the manufacture and clearance of their final product; that the services are not exclusively used for the appellants unit. There is no requirement in the input service definition that the eligibility to credit is factory based. The consultancy provided has not been disputed. When there is no dispute on the consultancy provided, denial for the reason that, "there is every reason to believe that his consultancy service is not meant for the exclusive use of the appellants unit alone" in the show cause notice without elaborating as to the reason for the said belief is unsustainable. The show cause notice is the foundation for any proceeding. In this case, the allegation is too vague and therefore, the appellant's contention to the contrary cannot be doubted. Accordingly, credit is eligible.

10. With regard to the imposition of penalty, the issue being interpretative in nature, penalty is not warranted and the same is accordingly set aside.

11. In view of foregoing discussions, the credit is eligible on the management, maintenance and repair service of helicopter. With regard to Rent-a-Cab service, the cost recovered from the employees is liable to be reversed. The credit is otherwise eligible. With regard to the credit on management and consultancy service, the same is held to be eligible. Penalty is set aside. Appeal is accordingly allowed on the above terms with consequential relief, if any."

7. Ld. AR Ms. T. Usha Devi was unable to point out any change in law or change in facts as contrary to the one already decided by this Bench and therefore, we adopt the same findings and thereby set aside the impugned Order.

8. The appeal is allowed with consequential benefits, if any, as per law.

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

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd