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

Appeal Nos. E/40688 & 40871/2017

(Arising out of Order-in-Appeal No.424/2016 (CXA-II) dated 23.11.2016 and Order-in-Appeal No. 485/2016 (CXA-II) dated 20.12.2016 both passed by the Commissioner of Central Excise (Appeals – II), Chennai)

M/s. Samsung India Electronics Pvt. Ltd. Appellant

Vs.

CCE, Chennai – IV Respondent

Appearance

Ms.Sweta Giridhar, Advocate for the Appellant
Shri C.Arul Durairaj, Superintendent (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **27.10.2017**

Final Order Nos. 42465-42466 / 2017

The above appeals are filed against the orders passed by the Commissioner (Appeals) who has upheld the disallowance of CENVAT credit availed on input services namely house-keeping / cleaning services.

2. Brief facts are that the appellants are engaged in the manufacture of colour television, air conditioner, refrigerators, washing machines etc. and are registered with the Service Tax Department. During scrutiny of records, it was noticed that the

appellants had availed input service tax credit to the tune of Rs.1,95,836/- for the April 2014 to September 2014 and Rs.1,51,006/- for the period October 2014 to March 2015 on housekeeping / cleaning services. The department was of the view that the said services do not qualify for credit as input services as these are not used directly or indirectly in or in relation to the manufacture and clearance of final products. Show cause notice dated 15.10.2015 was issued proposing to recover the wrongly availed credit along with interest and to impose equal penalty. After due process of law, the original authority disallowed the credit, confirming the demand, interest thereof as well as imposing penalties. In appeal, Commissioner (Appeals) upheld the same. Hence the appellants have filed these appeals.

2. On behalf of the appellants, ld. counsel Sweta Giridhar submitted that the impugned services were availed by them in their branch office situated all over India. The Head Office which is located at Delhi distributed the credit to the appellant's factory at Chennai and thus the appellants have availed credit on input services. She submitted that the housekeeping services were used for keeping the branch office in a clean and hygienic manner as contemplated under the Tamil Nadu Shops & Establishments Act. She referred to section 20 of Tamil Nadu Shops & Establishments Act, 1947 and submitted that as per this Act, the premises of every

establishment has to be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. That these methods include lime washing, colour washing, painting, varnishing, disinfecting and deodorizing. That since the appellants have to keep the premises of their branch office in a clean manner, housekeeping services were availed by them for which service tax was paid and the Head office at Delhi has distributed the credit to the appellant. She contended that this is directly connected with the manufacturing activity since these branch offices are situated to their depot where the finished products are stored prior to clearance. The branch offices are used for clearance and marketing of the finished products. That the appellants have rightly availed the credit.

3. The ld. AR Shri Arul C. Durairaj reiterated the findings in the impugned order. He stressed that the appellants have not been able to establish that the impugned services are used directly or indirectly in or in relation to the manufacture of finished products. Since the services are availed in branch office the same are not eligible for credit as they do not qualify as input services. The branch offices being outside the place of removal / factory, the impugned services are not eligible for credit. It was also added by him that the issue whether the appellant come within the purview of Shops and

Customs, Excise & Service Tax Appellate Tribunal

Establishments Act has not been examined by the authority below, for which the matter requires to be remanded.

4. Heard both sides.

5. In the appellant's own case, vide Final Order Nos. 42303 & 42304/2016 dated 18.11.2016, the Tribunal had analysed the very same and had remanded the matter to consider the issue whether the appellant would fall within the purview of Shops and Establishments Act as contended by them. In line with the above decision, I am of the view that the matter requires to be remanded to the original authority who shall verify whether the appellants are within the purview of the said Act and dispose the issue. Accordingly, the impugned orders are set aside and the appeals are allowed by way of remand to the original authority who shall afford reasonable opportunity of hearing to both sides before passing a reasoned order.

(Dictated and pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

प्रमाणित प्रति/Certified True Copy
10/11
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पाद शुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/CHENNAI

Customs, Excise & Service Tax Appellate Tribunal