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

E/Misc./40767/2016 and E/732/2007

(Arising out of Order-in-Original No. 1/2007 (Revision) dated 16.7.2007 by the Commissioner of Central Excise, Tiruchi)

M/s. L.G. Balakrishnan & Bros. Ltd. Appellant

Vs.

CCE, Tiruchirappalli Respondent

Appearance

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri S. Nagalingam, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **02.01.2017**

Final Order No. 40015/2017

Per D.N. Panda

The precise question involved in this appeal is whether GTA service availed by the appellant prior to 1.4.2008 to deliver the output to the buyer at his place shall be construed as input service.

2. Appellant says that GTA service was liable to service tax in the hands of the recipient of service. Therefore, GTA service availed as above has suffered tax in the hands of appellant-manufacturer who delivered the output at the buyers place

availing GTA service. Accordingly, taxability is not in question but the service tax element involved in respect of receipt of the GTA service whether is eligible to be input credit is in question.

3. On the aforesaid factual background, appellant's submission is that the definition of the term" input service" period 1.4.2008 covered the place of the buyer as the place of removal under rule 2(l) of CENVAT Credit Rules, 2004, which reads as under:

> **"Rule 2(l) of Cenvat Credit Rules, 2004**
>
> (i) "input service" means any service, -
>
> (ii) used by a provider of taxable service for providing an output service; or
>
> (iii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products *from the place of removal,*
>
> and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factor or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation **upto the place of removal;"**
>
> [Emphasis supplied]

4. On the above basis of the law at the relevant point of time, appellant says that this was the consistent view of the three High Courts beginning from the Hon'ble High Court of Karnataka in Commissioner of Central Excise, Banglaore Vs. ABB Ltd. – 2011 (23) STR 97 (Kar.), Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise &

Customs, Excise & Service Tax Appellate Tribunal

Customs Vs. Parth Poly Wooven Pvt. Ltd. – 2012 (25) ELT 4 (Guj.) and Hon'ble High Court of Madras in the case of Commissioner of Central Excise Vs. Borg Warner Morse Tec Murugappa Pvt. Ltd. & Anr. – 2015-TIOL-831-HC-MAD that the above service is input service. More specifically, the self-same question as stated here-in before was before the Hon'ble High Court of Gujarat. That was answered in para 22 of the judgment reported in 2012 (25) STR 4 (Guj.). Hon'ble Court opined that outward transport used by the manufacturer for transporting finished goods from the place of removal upto the place of the purchaser was covered within the definition of input service under Rule 2(l) of CENVAT Credit Rules, 2004.

5. To the above proposition, Revenue says that the order of the authorities below may be upheld for the reasons stated therein.

6. Heard both sides and perused the records.

7. CENVAT Credit Rules, 2004 on the subject as was in force from time to time has been recorded by this Bench in para 2.2 and 2.4 of the reported decision in Commissioner of Central Excise, Chennai – II Vs. Lucas TVS Ltd. – 2016 (43) STR 418 which is reproduced as under for convenience of reading:-

> "**2.2** Appellants submitted that the law relating to "*input service*" as was in force *prior to 1-4-2008* enacted in Rule 2(l) of the Cenvat Credit Rules, 2004 read as under :
>
> **Rule 2(l) of Cenvat Credit Rules, 2004**

Sd/-

(i) "input service" means any service, -

(ii) used by a provider of taxable service for providing an output service; or

(iii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products *from the place of removal,*

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

xxxx xxxx xxxx

2.4 Appellants explains that the concept of "*upto place of removal*" was substituted in Rule 2(l)(ii) of Cenvat Credit Rules, 2004 in place of the term "*from the place of removal*" after 1-4-2008 and such term continues to be in statute book, which reads as under :-

Rule 2(l) of Cenvat Credit Rules, 2004

(l) "input service" means any service, -

(i) used by a provider of taxable 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 modernization, 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;"

[Emphasis supplied]

8. Following aforesaid judicial pronouncements, it may be held that the service of GTA availed before 1.4.2008 shall be input service according to the term upto the place of removal

used in Rule 2(l) of CENVAT Credit Rules, 2004 and appeal is allowed. In view of the disposal of the appeal on the above short point, the miscellaneous application stands dismissed since that was making prayer for extension of the interim order of stay.

(Dictated and pronounced in open court)

05/01/2017 4.1.2017

(MADHU MOHAN DAMODHAR)
Technical Member

(D.N. PANDA)
Judicial Member

Rex/rkp

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