# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# CHENNAI

REGIONAL BENCH - COURT No. III

## Service Tax Appeal No.42156 of 2014

(Arising out of Order-in-Appeal No.144/2014 (M-III) dt. 07.07.2014 passed by Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034)

**M/s. Lakshmi Automatic Look Works Ltd. … Appellant**
Post Box No.4,
Hosur Industrial Complex,
Hosur 635 126.

*VERSUS*

**The Commissioner of CGST & Central Excise … Respondent**
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

**APPEARANCE :**

Shri M.V. Vishal Sundar, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

## FINAL ORDER No.40359/2024

DATE OF HEARING : 27.03.2024
DATE OF DECISION : 27.03.2024

**Per: Ms. Sulekha Beevi. C.S**

Brief facts are that the appellant is engaged in the export of textile machineries and is registered with the Central Excise Department as well as the Service Tax Commissionerate. During the course of verification of accounts, it was noticed that they have availed cenvat credit of the service tax paid towards charges on erection and commissioning of machines carried out in China and Italy based on invoices / debit notes raised by M/s.Voltas Ltd., Coimbatore who were engaged by appellant for the said purpose. The department was of the view that as the erection and commissioning of machineries was carried out in foreign country and is not related to the manufacture of finished product of the appellant, the credit of service tax paid on said services is not eligible as per the definition of "input services" under Cenvat Credit Rules, 2004. Show cause notice was issued for the period 2008-09 and 2011-12 (upto November 2011) proposing to deny the credit to the tune of Rs.1,35,102/- and to recover the same along with interest and for imposing penalty. After due process of law, the original authority denied the credit and confirmed the demand along with interest and imposed penalty. On appeal, Commissioner (Appeals) upheld the same. Hene this appeal.

2. The Ld. Counsel Sri M.V. Vishal Sundar appeared and argued for the appellant. It is submitted that as per the show cause notice itself it is clear that the credit availed is for the period prior to 01.04.2011 only. During the said period, the definition of "input services" was wide enough as it included the words "*activities relating to business*". The appellant is eligible for credit as the services have been availed in relation to the business of manufacture by the appellant. Even though the services have been carried out outside India, the department cannot deny the credit as the definition of input services does not restrict that the service has to be availed within India or within the

factory only. It is submitted that the department has denied the credit alleging that the services are rendered for post-manufacturing activities. The appellant has outsourced the activities of erection and commissioning through M/s.Voltas Ltd. The said value of expenses incurred by appellant has gone into the cost of goods exported by them. The machines sold by the appellants cannot be put to use without service of erection and commissioning which has been carried out by appellant or on behalf of the appellant. The services are therefore in relation to the activity of manufacture of the goods. Therefore, the department ought not to have denied the credit. It is prayed that the appeal may be allowed.

3. Ld. A.R Sri M. Selvakumar appeared and argued for the Department. The finding in the impugned order was reiterated.

4. Heard both sides.

5. The issue that arises for consideration is whether the appellant is eligible for credit of service tax paid on erection and commissioning services. In para-3 of the SCN dt. 30.12.2011 the period involved and the credit availed by the appellant is given in table. It shows that the appellant has availed credit in regard to services only upto 01.04.2011. As rightly argued by the learned counsel for appellant that during the period prior to 01.04.2011, the definition of 'input services' was wide enough as it included the words "*activities relating to business*". Undeniably, the services are related to the business of manufacture of the appellant. For this sole reason, the appellant is eligible for credit. Further, as argued by the appellant, the erection

and commissioning has been outsourced by appellant through M/s.Voltas Ltd., Coimbatore. The agreement between the appellant as well as the foreign buyer shows that the appellant has to do erection and commissioning of the machines sold at the buyer's premises. Therefore, the cost incurred by the appellant to M/s.Voltas Ltd. has gone into the cost of the machines sold/exported by the appellant. For this reason also, we hold that the appellant is eligible for credit.

6. After appreciating the facts and evidence placed before us, we are of the view that the denial of credit is not justified. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

sd/-

**(VASA SESHAGIRI RAO)**
Member (Technical)

sd/-

**(SULEKHA BEEVI. C.S)**
Member (Judicial)

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