CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH - COURT No. III

Excise Appeal No.41630 & Excise Appeal No.41631 of 2016

(Arising out of Order-in-Original No.66-67/2016 dated 30.05.2016 passed by Central Excise, Chennai II Commissionerate, M.H.U Complex Commissioner of GST & Central Excise, Chennai)

M/s. Autotech Industries (I) Pvt. Ltd .... Appellant
S.P. No. 114, SIDCO Industrial Estate
Ambattur
Chennai 600 058

VERSUS

The Commissioner of CGST & Central Excise ... Respondent
Chennai North Commissionerate
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

<u>APPEARANCE :</u>

Shri M. Karthikeyan Advocate, for the Appellant
Shri M. Selvakumar Authorized Representative for the Respondent

<u>CORAM</u> :

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

<u>FINAL ORDER No.41159-41160/2024</u>

DATE OF HEARING: 22.08.2024
DATE OF DECISION:30.08.2024

Per: Ms. Sulekha Beevi. C.S

The issues involved in both these appeals being the same they were heard together and are disposed of by this common order.

2. The appellant is engaged in manufacturer of ICP Engine and Motor Vehicle parts. They are availing Cenvat Credit on inputs, Capital goods and Inputs Services under Cenvat Credit Rules, 2004.

3. During the course of Internal Audit of the accounts of the appellant, it was noticed that appellant who is registered at Ambattur Industrial Estate is also having many un registered premises located in the same Industrial Estate as B-4, C-4, F-5, F-7, H-4, 51-54 etc. The appellant has utilized services from various Man Power supply agencies for the purpose of supply of employees to these places which are other than their registered factory premises. They also availed house-keeping services.

4. The appellant took Cenvat Credit of services tax paid on these services availed for supply of employees to a place other than registered factory premises and utilized the Credit for payment of excise duty on final products.

5. As per rule 2(*l*) of Cenvat Credit Rules, 2004 "Input Service" means " any service –

(i)used by a provider of taxable service for providing an output service, or

(ii)used by the manufacture, whether directly or indirectly, in or in relation to 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 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".

6. As per Rule 3 of the Cenvat Credit Rules, 2004, a manufacturer or producer of final products shall be allowed to take Cenvat Credit of various duties and service tax paid.

7. It appeared that the Services of Manpower recruitment was received by the appellant at locations other than the registered factory and therefore cannot be said to be used in or in relation to the manufacture of final products. The supply of man power services was availed in premises of the job workers which is not registered. Further the House keeping services which was availed by the appellant does not have nexus to the activity of manufacture of final products.

8. It was also noted that the appellant has availed Cenvat Credit in September 2014 on the basis of documents which are beyond 6 months / 1 year and such Credit is ineligible in terms of third Proviso to Rule 4(2) of Cenvat Credit Rules, 2004 inserted vide notification No. 21/2004-CE(NT) dated 11.07.20214 as amended by notification No.6/2015-CE()NT) dated 01.03.2015. From the above, it appeared that the appellant has availed ineligible Credit for the period from February 2012 to March 2016. Show Cause Notice dated 09.06.2015 and later a Statement Of Demand for the subsequent period was issued to the appellant. After due process of law, the Original Authority disallowed the credit on man power supply services and house-keeping services alleging that these services were used in the un-registered premises and confirmed demand of Rs 1,38,41,801/- along with interest. The Original Authority confirmed demand of Rs 2,57,83,373/- being the ineligible credit an account of time bar in terms of 3rd Proviso of Rule 4 of CCR, 2004. The amount of Rs 1,19,41,572/- already paid by the appellant was ordered to be appropriated and the protest letter issued by the appellant dated 13.03.2015 in this regard was vacated. The Original Authority imposed penalties. In respect of the statement of demand No.32/2016 dated 3.03.2016 issued for subsequent period the Original Authority confirmed an amount of Rs.73,00,818 being the Cenvat Credit availed on input services namely, man power supply services and house-keeping services along with the interest and

imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

9. The Ld. Counsel Shri M. Karthikeyan appeared and argued for the appellant. It is submitted that M/s. Autotech Industries (I) Pvt. Ltd. (hereinafter referred to as 'the appellant'), is engaged in the manufacture of ICP Engines and parts of motor vehicles, and have their registered manufacturing premises at SP-114, SIDCO Industrial Estate, Ambattur, Chennai 600 058. The appellant have un-registered premises at B4, C4, F5, F7, H4 and 51-54 (Athipattu), which are in and around the registered premises. From the registered premises of the appellant, their semi-finished goods are removed to these un-registered premises for undertaking various further processes, such as turning, drilling, grinding, etc. and ultimately the final products are cleared to customers from the registered premises on payment of appropriate duty of excise. Hence, these premises could be treated as the appellant's own job working premises and such units are appellant's own units and not different entities.

9.1 In such job working premises, the appellant availed the services of various manpower supply contractors and house-keeping agencies and the service tax paid on such services availed at the job working units was availed as cenvat credit in the registered premises of the appellant, as these services are used in or in relation to the manufacture of their final products.

9.2 During the internal audit of the appellant's records conducted by the department, it was observed that the services consumed in unregistered locations would not be entitled for cenvat credit and an objection in this regard was communicated to the appellant, vide O.C. No. 227/2013 Dt. 20.03.2013, by the Superintendent of Central Excise, Ambattur IV Range. The appellant, vide their reply dated 08.05.2013 and 07.08.2013, contended that they are very much entitled for such credit. However, due to continuous pressure by the department, the appellant have not been availing such credit from December 2012 onwards.

9.3 Later, based on the legal opinions obtained by the appellant, they have availed a total cenvat credit of Rs.1,82,65,318 and reflected the same in their ER 1 return for the month of September 2014, which represent the unavailed credit so far. Subsequently also the appellant have been availing such credit. In the meanwhile, vide Notification No. 21/2014 CE NT Dt. 11.07.2014, Rule 4 of CCR, 2004 was amended with effect from 01.09.2014, whereby a time limit of six months from the date of the document has been prescribed for availing cenvat credit. Later, vide Notification 6/2015 CE NT Dt. 01.03.2015 this time limit has been raised to one year, by substituting the words "one year" for "six months".

9.4 The jurisdictional Superintendent, vide his letter Dt. 27.01.2015, has noted the cenvat credit of Rs.1,82,65,318 availed by the appellant in September 2014 is ineligible and directed them to reverse an amount of Rs.1,34,41,937, alleging that documents on which credit availed is more than six months before the date of taking credit. On being pointed out, the appellant identified such invoices which are more than six months old and reversed an amount of Rs.1,19,41,572 under protest and informed the Superintendent accordingly, vide letter dated 30.03.2015.

9.5 With the above background of facts, a show cause notice No. 52/2015 Dt. 02.09.2015 proposing to deny Cenvat credit of Rs.2,57,83,373/- taken on input services namely Manpower supply service and House Keeping service received by the appellant at their un-registered job working units and to deny Cenvat Credit of Rs.1,19,41,572/- taken during September 2014 which is beyond a period of 6 months from the date of invoice. The said credit of Rs.1,19,41,572/- includes an amount of Rs.1,06,09,387/- covered within the above demand of Rs.2,57,83,373/- and the balance of Rs.13,32,195/- relates to Cenvat Credit on input services received at registered premises.

9.6 Subsequently, another Statement of Demand bearing No. 32/2016 Dated 30.03.2016 has been issued to the appellant, proposing to demand cenvat credit of Rs.73,00,818 availed during March 2015 to February 2016, in respect of the manpower supply and house-keeping services availed in the job work premises, along with proposals for demand of interest and imposition of penalties. The appellant replied to the above notices, vide their replies dated 05.11.2015 and 25.04.2016, respectively.

9.7 After due process of law, the Commissioner of Central Excise, Chennai II passed the impugned common Order in Original bearing Nos. 66 & 67/2016 Dt. 30.05.2016 wherein he has held that the appellant is not entitled for cenvat credit in respect of the services consumed at the job working unit; he further held that the extended period of demand could be invoked in this case; with regard to the credit availed beyond the prescribed time limit, he has held such credit is not eligible. Aggrieved by the impugned order, in so far as the denial of cenvat credit, demand of interest and imposition of penalties, the appellant has filed the appeal on the following grounds:-

9.8 **Availment of cenvat credit in respect of input services consumed in the unregistered job working premises and not consumed in the registered premises:** In terms of Rule 3(1) of the CCR, it is clear that in respect of inputs and Capital goods, there is a clear mandate that the goods should be received within the manufacturing unit. In the contrary, in respect of input services, there is no such requirement and it is sufficient if the input services have been received by the manufacturer. In the instant case, in respect of Man power services received by the appellant, they have discharged service tax under RCM as service recipient which would establish that such services have been received by the appellant. As such they are entitled to avail cenvat credit of tax paid on such these received by the appellant even though the said services have been consumed in their job working units.

9.9 In this connection, it is submitted that the said units, where the services were used are also falling within the same entity and they are not different entities. The term "manufacturer" used in the definition of input service would include not only the appellant's registered premises but also the other places (their own units) where part of the manufacturing process is carried out on job work basis. Rule 3(1) also provides for the credit of tax paid on input services received by the Job worker. Accordingly, the manpower supply services and house-keeping services have been used by the appellant, who is the manufacturer of the final product. There is no requirement under CCR, 2004, that the input services have to be used within the registered premises of the manufacturer only.

In support of the above contention, the appellant relies on the following case laws wherein cenvat credit has been allowed on the input services received by the manufacturer at the job workers premises or other un-registered premises outside the manufacturing unit.

- L & T Ltd. Vs CCE - 2015 (38) STR 863 Tri-Mum
- MRF Ltd. Vs. CCE – 2013 (31) STR 689 (Tri. – Chennai)
- Murugappa Morgan Thermal Ceramics Ltd. Vs. CCE – 2016 (44) STR 111 (Tri. – Mad)
- Tata Motors Ltd. vs. CCE, Jamshedpur – 2017 (50) STR 28 (Tri. – Cal)
- Larsen & toubro Ltd. Vs. CCE, Mumbai – 2018 (15) GSTL 66 (Tri. – Bom.)

- Fives Cail KCP Ltd. Vs. CCE, Chennai – I – 2018 (363) ELT 1082 (Tri. – Mad.)
- Deepak Fertilizers And Petrochemicals Corporation - 2013 (4) TMI 44 - BOMBAY HIGH COURT
- Ashok Leyland Ltd. - 2019 (1) TMI 430 - MADRAS HIGH COURT
- India Pistons Ltd. - 2022 (11) TMI 42 - CESTAT CHENNAI
- Dakshin Foundry Pvt. Ltd. - 2017 (5) TMI 137 - CESTAT BANGALORE

9.10 **Availment of cenvat credit beyond six months from the date of the document**: It is the appellant's case that the proposal to deny the credit availed in September 2014, on the ground that the credit was taken beyond six months from the date of invoice is not at all sustainable. Relying upon the decision of the Hon'ble Supreme Court in the case of **Eicher Motors Ltd. VS UOI - 1999 (106) ELT 3 SC** the appellant submits that the benefit of cenvat credit which has been extended to a manufacturer under Rule 3 of the CCR, 2004 cannot be curtailed on the ground of time bar. There was no restriction of time for availing credit prior to 01.09.2014. Following the decision in the case of Eicher Motors Ltd supra, in the following cases, it has been categorically held that credit cannot be denied for the invoices issued prior to 01/09/2014 on which date the time limit for availing the Cenvat Credit was came into force.

- Global Ceramics Pvt. Ltd. [2019 (5) TMI 1432 - DELHI HIGH COURT

- Aalidhra Textool Engineers Pvt Ltd - 2020 (1) TMI 1617 - CESTAT AHMEDABAD
- Roquette Riddhi Siddhi Pvt. Ltd. - 2022 (3) TMI 358 - CESTAT BANGALORE
- Bharat Aluminium Company Limited - 2019 (7) TMI 1084 - CESTAT NEW DELHI

9.11 Notwithstanding the above, relying upon the case laws CCE Vs Fosroc Chemicals (I) Pvt. Ltd. - 2015 (318) ELT 240 Kar, the appellant contends that when the credit was availed in September 2014, by considering the time limit for availing credit as "one year" with retrospective effect from 01.09.2014, the credits pertaining to invoices dated prior to September 2013 alone would be of more than one year and the credit pertaining to invoices dated on or after 01.09.2013, would be within the time limit. Thus the appellant would be entitled to a credit of Rs.54,38,675. Further, even assuming that the credit availed based on the invoices which were dated more than six months old as on September 2014 are not eligible for credit, when such credit was availed in September 2014, as soon as the time limit is extended to one year on 01.03.2015, such credit availed in September 2014 becomes eligible, in so far as the invoices which are within one year as on September 2014.

9.12 **<u>Invocation of extended period of demand:</u>** The show cause notice has alleged that the appellant has not disclosed in the ER 1 return that the services were utilised in other unregistered premises. In this connection, it is submitted that there is no provision in the ER 1 return to indicate the place of consumption of the input services. Accordingly, the appellant submits that, in the absence of any of the ingredients like fraud, suppression of facts, intention to avail any irregular credit, the demand to the above extent by invoking extending period of limitation is not at all sustainable.

9.13 **Interest and penalty:** In as much as the demand itself is not sustainable, there is no occasion for demand of any interest or imposition of any penalty. Further, the appellant also wish to submit that none of the ingredients required for imposition of penalty under Section 11 AC of the Act are present in this case as explained above. In the absence of any malafide intention on the appellant's part, the imposition of various penalties are not sustainable.

9.14 Accordingly, the appellant prays before the Hon'ble Tribunal to set aside the impugned order with consequential relief, and allow these appeals.

10. The Ld. AR Shri M. Selvakumar appeared for the department.

10.1. The first issue is Credit availed on man power supply services and house-keeping services. The appellant has consumed the services in the job working premises and not in the registered premises of the appellant. The definition of input service under Rule 2(l) of CCR, 2004 was referred by the Ld. AR to argue that Input services means any service used by "Manufacturer". In the instant case, the input services were not received by the manufacture in his registered premises but were received and used in their un-registered premises. The basic requirement of Rule 3(1) of CCR, 2004 has not been complied.

11. Rule 9 of Central Excise Rules provide that a manufacturer has to obtain registration of every premises where he carries out manufacture, warehousing of excisable goods. The appellant having utilized services in the un-registered premises, the Credit is ineligible. This is because the service being intangible it cannot be verified whether the service has been actually received by the appellant and gone into the cost of production of the product. The department was not aware of the receipt of such services in the unregistered premises till the Audit Officers visited the unit. For this reason, the service received at location other than the registered factory cannot be said to be used in relation to the manufacturer of final product. Though invoices are raised in the name of the appellant showing the registered premises, the services having been consumed in the un-registered premises. The appellant cannot avail the Credit.

12. As per Rule 9 (6) of CCR, 2004, the manufacturer of final product has to maintain proper records for the receipt and consumption of input services. The details regarding the value of service, tax paid, Cenvat Credit taken and utilized, the details of the provider of the service has to be maintained. As per Rule 9(2) of CCR, the jurisdictional Assistant Commissioner should be satisfied

that the goods / service covered by invoices have been received and accounted in the books of account before allowing the Credit. The units in the un-registered premises do not follow proper excise procedures as set out in the relevant notification of job workers. It would therefore be impossible for department to verify whether the input services have been utilized in the un-registered premises and whether they have been used for manufacture of the final products of the appellant. The appellant having violated these provisions is not eligible to avail Credit on man power recruitment and supply services as well as house-keeping services.

13. The second issue is with regard to the availment of Cenvat Credit beyond the period of 6 months / 1year. During September 2014, on the basis of documents beyond 6 months / 1 year from the date of invoice, the appellant has availed Credit. Such Credit is ineligible. As per amendment to Rule 4(1) of CCR, 2004 the time limit for availing Cenvat Credit was limited to 6 months by notification No: 21/2014 dated 11.074.2014. Later this time was increased to 1 year from the date of invoice with effect from 01.03.2015. This means the Credit availed by the appellant on the basis of document prior to 01.09.2014 are not eligible. The Credit availed on invoice dated prior to 01.09.2014 has been correctly disallowed by the Adjudicating Authority. The appellant though reversed part of the Credit (Rs 1,19,41,572/-) had done so under protest. The Adjudicating Authority has therefore confirmed demand and ordered for vacation of the protest. It is submitted that the

demand confirmed on this ground to the tune of Rs 2,57,83,373/- requires no interference.

14. The above infractions would not have to come to light but for the Audit conducted by the officers of the department. The appellant has suppressed facts with intend evade to payment of duty. The Show cause Notice issued invoking extended period is therefore legal and proper. The Ld. AR prayed that the appeal may be dismissed.

15. Heard both sides.

16. The first issue is the demand confirmed alleging that input service credit has been taken on services availed in unregistered premises. In the Show Cause Notice the allegation is that the Credit has been taken for services availed in the unregistered premises. In the impugned order this unregistered premises is considered to be that of job workers permises. On perusal of the reply to Show Cause Notice it is seen that the appellant has put forward a contention that the unregistered premises is to be considered as job working premises. In para 17.4 the adjudicating Authority has noted that even if these unregistered premises are to be considered as job workers premises, the credit is not admissible on input services used by the job workers for the reason that the procedure in the notification No.214/86-CE dated 25.03.1986 has not been followed. The relevant para of the impugned order reads as under.

> "17.4 The case laws cited by the unit are distinguishable from the present case on hand in the sense that the unit had not followed any of the procedures

set out for job workers. The unit has stated that as per Rule 3(1) of CCR, 2004, credit shall also be admissible for the input services, used by a job worker, who avails exemption under Notification 214/86-CE dated 25-3.86, as amended. The assessee Kas stated that the inputs were removed to the job worker premises under challans, but the procedures set out in the said notification were not followed. The unit had not informed the Assistant Commissioner of Central Excise having jurisdiction over the factory of the job worker as contemplated in the said Notification 214/86-CE dated 25.3.86, as amended. The service provider had raised the invoices in the name of M/s. Autotech Industries (India) Private Limited, Chennai - 58 but the said services were received at the unregistered premises and the input service tax credit has been availed at the registered unit. If, the assessee had wanted to avail the benefit of a notification, it is incumbent on their part to conform to the procedures set out in the said notification. Though, it has been claimed that the unregistered premises could be treated as job working premises, they had not followed the procedures set out in the Notification No.214/86-CE dated 25.3.1986 as amended."

17. Our endeavor would be to analyse whether the credit on Input Services is eligible even if the manufacturer has availed the services outside the registered premises. At the outset it is to be stated that Cenvat Credit Rules does not say that credit has to availed only after obtaining registration of premises. The Hon'ble High Court of Karnataka in the case of m-Portal India Wireless Solutions (P) Ltd 2011 (9) TMI 450 Karnataka High Court has held that there is nothing in CCR, 2004 to restrict taking of credit on services without registration. In the case of CST, Chennai Vs Verizon Data Services India (P) Ltd 2013 (12) TMI 741 – Cestat – Chennai, it was held that by not getting registered, a person does not cease to be a service provider. On a simple reading of the definition of input service and Rule 3 of CCR, 2004 there is no precondition that credit can be availed only after taking registration. If there is violation of not taking registration, the issue has to be adjudicated as per provisions

for taking registration. Denying the credit is not the proper course in such situations.

18. If the input services are used in or in relation to the manufacture of the final products the credit is eligible. In the present case, apart from the allegation that the Credit has been availed in their unregistered premises there is no whisper in the Show Cause Notice that appellant has not used such unregistered premises for carrying out activities relating to their manufacturer of final products. In other words the Show Cause Notice itself states that the appellant has a registered premise at SP-114 Ambattur Industrial Estate and also many unregistered premises adjacently in the very same Industrial Estate. This means the activity carried out in unregistered premises is also administrated and controlled or in some way connected to the manufacturing activity of appellant. These unregistered premises are claimed to be job working premises by the appellant. The department has sought to allege these as unregistered premises and cannot be considered as job working premises as they have not followed the procedure as per notification no. 214/86. It is clear that goods are cleared from these unregistered premises to the appellant's premises by challans / invoices. The duty on final products is paid by appellant. These being the facts it cannot be said that the input services availed at job workers premises has no nexus with manufacturing activity of appellant. The invoice for availing the services has been issued in the name of the appellant mentioning the address of their registered

premises. Rule 9 provides that in case of any doubt with respect to amount, or tax paid or particulars mentioned in the invoices the AC / DC can conduct verification and if satisfied can allow Credit.

19. In the Show Cause Notice or in the impugned order there is nothing to show that the activities carried out in the unregistered premises are totally unrelated activities. The Ld. Counsel for the appellant has been at pains to argue that though to avail credit on inputs, such inputs have to be received in the factory, there is no condition in the definition of input service or in Rule 3 that input services have to be received in the factory itself.

20. To support the above argument, the Ld. Counsel has adverted to the decision rendered by the Hon'ble High Court of Bombay in the case of M/s. Deepak Fertilizers and Petrochemicals Corporation Ltd. factory and Versus CCE 2013 (4) TMI 44 - Bombay High Court. The Hon'ble High Court after analysing the definition of inputs, Capital goods and Input Services held that though there is restriction in the case of Inputs and Capital goods that such goods should be received in the factory of the manufacturer of final products, there is no such restriction imposed in the CCR in regard to Input Services. It is merely stated in the Rule that Input Services should be received by the manufacturer of the final products. The definition of the expression 'Input Services' covers services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. If the Input Services have been received by the manufacturer in or in relation to the manufacture of

final products the Credit would be admissible. The relevant paras of the judgment in the case of M/s. Deepak Fertilizers and Petrochemicals Corporation Ltd. reads as under:-

> **"5.** Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit *inter alia* of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories *viz.* for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is *ex facie* contrary to the provisions contained in Rule 2(l). The first part of Rule 2(l) *inter alia* covers any services used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(l). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the

> final product. This must be read with the broad and comprehensive meaning of the expression ‘input service’ in Rule 2(l).The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process.”

21. In the case of Tata Motors Limited Versus CCE Jamshedpur, 2017 (50) S.T.R 28 (Tri. – Kolkata) the issue considered was similar. The assessee in the said case had availed services of some 3rd party processors, who process the raw materials sent to M/s. H.V Axles Limited and M/s. H.V. Transmission Limited, on behalf of the appellant and send those processed raw materials to these companies for further use in the manufacture of axles and gear boxes which were used by the assessee in the manufacture of Motor Vehicles. The assessee paid service tax to these 3rd party processors under Business Auxiliary Services. They availed credit of the service tax paid. Show Cause Notice was issued alleging that the Credit availed on these services was not eligible. The Tribunal after analysing the issue held that the Cenvat Credit Rules makes a distinction between Input and Input Services where by it is made mandatory to receive Inputs in the factory, for credit to be eligible; whereas, there is no such condition to avail Cenvat Credit on Input Services. The relevant part of the decision of the Tribunal reads as under:-

> **“3.** The appellants have also availed services of some 3rd party processors, who process the raw materials/inputs sent to HVAL and HVTL, on behalf of the appellants and send those processed inputs/raw materials to HVAL and HVTL for further use in the manufacture of axles and gear boxes which are used by the appellants in the manufacture of motor vehicles. The contract of services rendered by the 3rd party

> processors is between the appellants and the 3rd party. Copy of the purchase order placed by the appellants on the 3rd party is available on page 36 of the appeal paper book. The appellants have paid processing charges to the 3rd party processors along with applicable service tax under the 'Business Auxiliary Services' in terms of Section 65(19) read with Section 65(105)(zzb) of the Finance Act, 1994. Accordingly, the appellants have taken credit of the service tax paid since the said services were used in the manufacture of axles and gear boxes, which are used in the manufacture of final products manufactured by the appellants. Show cause notices were issued and after due process of law, a demand of Rs. 1,21,64,153/- was confirmed under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and a penalty of Rs. 10,000/- was imposed under Rule 15(3) of Cenvat Credit Rules, 2002 vide the impugned order. Hence, the present appeal before this Tribunal.
>
> … … …..
>
> **7.2** Respectfully following the above decisions of the Hon'ble High Court and the Coordinate Bench of the Tribunal, we hold that the appellants are the receiver of the services rendered by the 3rd party job worker and the said services have been used directly or indirectly in or in relation to the manufacture of motor vehicles chassis. Hence, the appellants are entitled to credit of service tax paid on the input services. The definition of input services is very clear; that the receiver of service does not mean receiver of inputs. The Cenvat Credit Rules itself recognize the distinction between input and input services according to which it has been made mandatory to receive inputs in the factory of production to avail Cenvat credit on inputs. There is no condition to avail Cenvat credit on input services that services availed should be received by the service receiver/manufacturer in the registered premises. In the case on hand, the goods, on which services were provided, instead of coming to the appellants factory were dispatched to another job worker of the appellants, i.e., HVAL/HVTL. As already emphasized definition of input services does not specify that the services should be received in the factory of the manufacturer. The condition to avail Cenvat credit on input service is that it should be used in or in relation to the manufacture of final products. In this case the service was used in the manufacture of motor vehicle chassis directly or indirectly. It is also a fact that the service charge paid by the appellant to the job worker is included in the assessable value of the final products."

22. The Tribunal in the case of Fives Cail KCP Ltd., Versus CCE Chennai 2018 (363) E.L.T. 1082 (Tri. – Chennai) while analyzing similar issue considered the definition of Input Services and held that it is not necessary that the Input Services should be availed in the registered premises itself. The relevant para reads as under:-

> "**[Order]. -** M/s. Fives Cail KCP Ltd., the appellants herein in both these appeals, are engaged in manufacture of machineries required for sugar industry, viz. centrifugal machine and boiler parts. The appellant undertook manufacture of some of the machineries while the other goods are manufactured by the job workers on the basis of drawing supplied and are directly despatched to the customers and some items are bought out goods. On perusal of the balance sheet, it appeared to the department that percentage of manufactured goods to total turnover of appellants worked out to not more than 4%. Department therefore took the view that appellants have availed ineligible input service credit of tax paid attributable to non-manufacturing activities mainly in respect of sales commission and other input services like, advertisement charges, audit fees, bank charges, cleaning charges etc. Accordingly, show cause notice dated 1-9-2009 and 9-9-2009 were issued to the appellants proposing a cumulative demand of service tax of Rs. 1,90,07,947/- along with interest thereon and imposition of penalties under various provisions of law. These show cause notices were adjudicated vide a common Order-in-Original (impugned order) dated 12-4-2010 disallowing input service credit of Rs. 96,92,975/- with interest in respect of the SCN dated 1-9-2009 and Rs. 93,14,972/- with interest in respect of SCN dated 9-9-2009. Penalties were also imposed under Rule 15(3) of CCR, 2004 and also under Rule 25 of the CER, 2002. Hence these appeals.
>
> … … ….
>
> "**4.** Heard both sides and have gone through the facts. There is no dispute that the goods manufactured by the job workers are done only on the basis of design and drawings provided by the appellants and they are manufactured on their behalf. There is also no allegation in the SCNs that the goods sent out directly from such job worker are not being sent out on behalf of appellants and not on behalf of job worker themselves. SCN in para-3 indicates that these goods have been supplied on the basis of contracts for supply of sugar machinery procured by them. For procuring such orders and also for other business activities, they have appointed a commission agent to whom they pay sales commission. They also availed other input service credits which are necessarily for their business/manufacturing activities like advertisement charges, audit fees, bank charges, etc. It cannot be then said that these goods manufactured by the job workers are not being done on behalf of the appellant. Rule 3 of Cenvat Credit Rules to which Ld. AR alluded, also clearly indicates, *inter alia*, that Service Tax credit in respect of services used in the manufacture of products by a job worker can also be availed. It is very common that part of the manufacture is given to the job worker on the basis of design and drawing supplied, as in this case. Job workers are not responsible for the marketing or sales of the goods, that has to be looked after by the appellants only. Hence input services like sales commission etc. are very much eligible input services in terms of Rule 2(l) of CCR during the period under dispute. This being so, we find that there cannot be any denial of input service credits availed by the appellant, for which reason, the impugned order cannot sustain and will have to be set aside, which we hereby do. Appeal is allowed with consequential relief, if any, as per law."

23. The Hon'ble Jurisdiction High Court in the case of CCE and ST Versus M/s. Ashok Leyland Ltd., 2019 (1) TMI 430 – Madras High Court held that the definition of "input service" has to be widely construed, and in terms of Rule 3, which allows the manufacturer of final products to take Credit, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of final products. It was held that the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd Versus CCE, Delhi-III, 2009 (24) E.L.T. 641 (S.C) is not applicable in the case of input services. The relevant para reads as under:-

> "**21.** In *Deepak Fertilizers & Petrochemicals Corporation Ltd.* (supra), which has been quoted in *Endurance Technology Pvt. Ltd.* (supra), the contention advanced by Mr. A.P. Srinivas, was taken note of and it was held that the input services were directly or indirectly in or in relation to the manufacture of final products.
>
> **22.** The decision in the case of *Endurance Technology Pvt. Ltd.* (supra) was followed by a Larger Bench of the Tribunal, in the case of *Parry Engg. & Electronics P. Ltd.* v. *C.C.E. & S.T., Ahmedabad-I, II, III*, 2015 (40) S.T.R. 243 (Tri. - LB).
>
> **23.** We are informed that there is a Larger Bench's decision of the Tribunal, which also has not been appealed and the said decision has attained finality.
>
> **24.** The decision in the case of *Maruti Suzuki Ltd.* (supra) cannot be applied to the facts of the present case, as it was a case where the Court was considering as to whether electricity can be construed as an input. The facts in the case would be very important because, the allegation against the assessee therein was that they had generated electricity in their factory and wheeled out portion of the electricity to its joint ventures and the question was whether the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc., would be admissible for Cenvat credit, as it is cleared for a price. This question was answered against the assessee. However, the facts of the case on hand are totally different and therefore, the Revenue would not be justified in referring to the observations of the Hon'ble Supreme Court in the said judgment about the concept of generation of electricity, as we have to test the correctness of the impugned order on the given facts and circumstances of the case.
>
> **25.** As already pointed out, there is no dispute that the electricity generated by the windmills are exclusively used in the manufacturing unit for final products, there is no nexus between the process of electricity generated and manufacture of final products and there is no necessity for the windmills to be situated in the place of manufacture. Further, as already noticed, the definition of "input service" is wider than the definition of "input". Furthermore, if one takes a look at the Rules, more particularly Rule 2(k), as it stood prior to 1-4-2011, which defines "input", the following has been specifically inserted.
>
> "within the factory of production".

> However, these words are physically missing in Rule 2(l), which defines "input service" and it would mean any service used by a provider of taxable service for providing an output service or 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. Though the definition of "input service" has to be widely construed, and in terms of Rule 3, which allows the manufacturer of final products to take the credit of service tax inputs or capital goods received in the factory of manufacture of final products, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of final products. Therefore, this would be the correct manner of interpreting Rule 2(l) of the Rules.
>
> **26.** In the light of the above, we are of the considered view that the decision in the case of *Ellora Times Ltd.* (supra) does not lay down the correct legal position and we agree with the decision of the High Court of Bombay in *Endurance Technology Pvt. Ltd.* (supra), which has been followed by the Larger Bench of the *Tribunal in Parry Engg. & Electronics P. Ltd*."

24. After appreciating the facts and following the above decisions we are of the considered opinion that the disallowance of Credit alleging that the Credit has been availed in unregistered premises requires to be set aside. Order accordingly.

25. The second issue is with regard to time bar in availing credit. Third Proviso to Rule 4 of Cenvat Credit Rules which was introduced in 2014 and later amended in 2015 provides that the Credit has to be availed within 6 months / 1 year from the date of the invoice. The appellant has availed Credit on invoices issued to them prior to September 2014. The question is whether the Credit can be disallowed for invoices issued prior to September 2014. It has to be noted that when duty is paid on inputs and service tax paid on input services a right accrues for availing Credit. All the invoices have been issued prior to September 2014. This means that invoices on which Credit has been availed have been issued before the introduction of the restriction limiting the time for availing the Credit.

Nothing in the provision says that the 3 proviso to Rule 4 would have retrospective effect. The very same issue was considered by the Hon'ble High Court of Delhi in the case of Global Ceramics Pvt. Ltd. reported in 2019 (5() TMI 1432 – Delhi High Court. While analyzing the issue as to whether the Credit can be availed on Countervailing Duty (CVD) paid by the appellant for imports that took place prior to the amendment to Rule 4 (1) of Cenvat Credit Rules prescribing the time limit, the Hon'ble High Court held that the said provision cannot be made applicable retrospectively and that the importer would be eligible to avail Credit for the imports prior to the date of introducing the time limit. The relevant para reads as under:-

> "**21.** The Gujarat High Court in *Filco Trade Centre Pvt. Ltd.* v. *Union of India* (decision dated 5th September, 2018 in SCA No. 18433/2017) [2018 (17) G.S.T.L. 3 (Guj.)] followed the dictum of the Supreme Court in *Jayam & Co.* v. *Assistant Commissioner* (supra) and reiterated that the input tax credit could not be denied on the basis of an amendment, which is prospective. The question dealt with by the High Court was whether Section 140A(3)(iv) of the CGST Act, which declined the Cenvat credit in relation to goods purchased prior to one year from the appointed date, could be given retrospective effect. In answering the question in the negative, the Gujarat High Court held as under :
>
> "30. To sum up we are of the opinion that the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of Sub-Section (3) of Section 140A such right has been taken away with retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of "in order to co-relate the goods or administrative convenience" prevailed even under the Central Excise Act and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year."
>
> **22.** Consequently, in the present case, the Court is satisfied that the Amendment to Rule 4(1) CCRs prescribing a time limit for claiming Cenvat Credit will not apply to the consignments in the present case where the import took place prior to the date of the amendment and the deemed manufacture took place when the MRP was altered, which also happened prior to the

amendment. In other words, the CVD paid by the BRCPL will have to be permitted to be adjusted against the CE duty settled as will the service tax paid on the input services.

23. That apart, it is indeed true that the CCESC which heard the settlement application of the GCPL comprised of three members. Therefore, an order passed by just two of them, would obviously be unsustainable in law.

24. For all of the aforementioned reasons, this Court sets aside the impugned order dated 23rd June, 2016 passed by the CCESC in the case of GCPL and permits the adjustment of the CVD in the sum of Rs. 2,80,42,411.00 and service tax to the tune of Rs. 16,51,695.00 against the admitted settled duty liability of Rs. 3,69, 76,139.00. Further, the penalty amount of Rs. 60 lacs is reduced to Rs. 1 lac, as in the case of BRCPL. W.P.(C) No. 6706/2016 is disposed of in the above terms."

26. The said decision was followed by the Tribunal in the case of Roquette Riddhi Siddhi P Ltd Versus C.C.E. – Ahmedabad, 2024(1) TMI 1210 – Cestat Ahmedabad. The Tribunal set aside the demand which was confirmed alleging that the limitation of 6 months for availing Cenvat Credit introduced in terms of 3rd proviso to Rule 4 of Cenvat Credit Rules, 2004 would be applicable to duty paid documents issued prior to September 2014. The relevant part of decision is as under:-

"5. As regard the issue A on the fact there is no dispute that all the invoices were issued prior to 18.09.2014. Therefore, the 3rd Proviso to Rule 4 of Cenvat Credit Rules, 2004 inserted with effect from 18.09.2014 shall not apply in respect of the invoices issued prior to 18.09.2014. Accordingly, on that basis the Cenvat credit could not have been dis-allowed. This issue is covered by the following judgment:-

a) In the case of Roquette Riddhi Siddhi Pvt. Ltd. (supra) CESTAT Bangalore has passed the following decision:-

"6.3. The second issue arises in Appeal No. E/20044/2017 is that whether the appellant can avail cenvat credit on the invoices issued prior to 01/09/2014 within six months after the issuance of the Notification No. 21/2014 CE (NT) dated 11/07/2014 or not? The said issue has been settled by this Tribunal in the case of Bharat Aluminium Company Limited wherein this Tribunal has observed as under:

> 5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions;
>
> (i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad]
>
> (ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore]
>
> (iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi] (iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai]
>
> (v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore]
>
> (vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473CESTAT New Delhi] <u>Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date</u>. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions. 6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given" (emphasis supplied).

27. After appreciating the facts and following the above decisions we have no hesitation to conclude that the demand raised alleging that the appellant has availed Cenvat Credit on invoices issued prior to September 2014 contravening Rule 4 of CCR, 2004 cannot sustain and requires to be set aside. Ordered accordingly. The Ld. Counsel has argued on the ground of limitation also. The Show Cause Notice for the period February 2012 to August 2013 has been issued invoking the extended period. Though it is alleged that the appellant has suppressed facts, there is no evidence adduced by the department to establish any positive act of suppression on the part of the appellant. The issues are purely interpretational in nature. In

regard to the issue whether Credit can be taken on input services received in unregistered premises, the litigation has travelled upto Hon'ble High Court. In regard to the second issue whether the time limit introduced by Rule (2) would apply to invoices issued prior to the date was considered by various forums. All these would show that both these issues were debatable. For these reasons, the invocation of extended period cannot sustain. The issue on limitation is answered in favour of the assessee and against the Revenue.

28. In the result, the impugned orders are set aside. The appeals are allowed with consequential reliefs, if any

(Order pronounced on 30.08.2024)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

vl