CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Service Tax Appeal No.52601 of 2018 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-23-2018-19 dated 12.04.2018 passed by the Commissioner (Appeals), Central Tax, Central Excise, Customs & Service Tax, Raipur]

M/s. Vandana Global Ltd. **Appellant**
Phase-II, Industrial Growth Centre,
Siltara, Raipur (CG).

VERSUS

Commissioner of Central Goods & Service Tax, **Respondent**
Central Excise and Customs,
Central GST Bhawan,
Tikrapara, Dhamtari Road,
Raipur (C.G.).

<u>APPEARANCE</u>:

Ms. Surabhi Sinha, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51589/2021

DATE OF HEARING:08.03.2021
DATE OF DECISION:23.06.2021

ANIL CHOUDHARY:

The facts in brief are that the appellant is engaged in manufacture of Sponge Iron, M.S. Ingots, M.S. Billets and dolachar falling under the Central Excise Tariff 1985. During the course of audit by Auditor General, Raipur, it was noticed that the appellant have availed cenvat credit of Rs.8,96,050/- on various services during the period April, 2012 to March, 2016, by treating them as input service. It appeared to Revenue that services in question like Association Membership fees, constructions services, rent-a-cab services, general insurance services of vehicles, repair services, catering services, civil work, etc. are not input service. It further appeared that the appellant have suppressed availment of such credit from the Department in order to avail wrong credit. Accordingly, show cause notice dated 11.01.2016 was issued proposing to recover cenvat credit amounting to Rs.8,96,050/- along with interest and further penalty was proposed under Rule 15 of Cenvat Credit Rules read with Section 11 AC (1)(c) of Central Excise Act.

2. The show cause notice was adjudicated on contest by the Asstt. Commissioner, who was pleased to allow cenvat credit in part but was pleased to disallow part of the cenvat credit of Rs.79,835/- availed on insurance of car, repair and maintenance of motor vehicles. Further, penalty was also imposed of equal mount under Rule 15 of CCR.

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) on the ground that cenvat credit of Rs.47,267/- is on insurance of motor vehicles and Rs.1,568/- towards repair and maintenance of the vehicle totalling Rs.48,835/- has been wrongly disallowed and [further Rs.31,000/- is attributable to mathematical error and thus tit to be deleted]. It is also evident as per Annexure enclosed with the show cause notice and at paras 7.11 and 7.13 of the written submissions. In spite of cogent explanation, disallowance has been made without proper reasoning by non-speaking order. Moreover, the Adjudicating Authority disallowed the cenvat credit of more amount than the actual cenvat credit. The appellant explained in detail the nature of input service, but without finding explanation untrue, disallowance has been made by a non-speaking order. It was further urged that the Adjudicating Authority has erred in mis-interpreting the definition of input service, in holding that the

service of insurance of motor vehicles and repair and maintenance of motor vehicles is excluded from the scope of Rule 2(l) of CCR. The expression used in Rule 2 (l) "in relation to" in the inclusive portion of the "input service" so as to cover all services used in the business of manufacturing of final product. Admittedly, the credit in question with respect to input service has been used indirectly for the activity of the manufacturing by the manufacturer. Motor vehicles are required for both transportation of men and materials for the purpose of running and maintaining the manufacturing activities. Rule 2 (l) includes both the input services whether used directly or indirectly in or in relation to the manufacture of final dutiable products. It is also urged that the vehicles in question are owned and registered in the name of the appellant company. Further, the facts in question were in the knowledge of the Department and it is wrong to say that the same were discovered in the audit only. Hence, the allegation of suppression is bad and the demand is also barred by limitation.

4. Ld. Counsel further urges that the vehicles in question have been used by the Directors, Managing Staff of the appellant company for the business purposes. Such contention has not been found untrue and accordingly, disallowance is bad. Further, there is also arithmetical mistake as on the disallowed heads, total of cenvat credit is Rs.48,835/-, whereas the disallowance of part cenvat credit has been made for Rs.79,835/- (Rs.31,000/- is excess due to arithmetical error).

5. Ld. Commissioner (Appeals) observing that the Adjudicating Authority has recorded sufficient grounds for disallowance held that there is no reason

to interfere with the impugned order and accordingly dismissed the appeal.

6. Being aggrieved, the appellant is before this Tribunal.

7. Ld. Counsel for the appellant reiterates the submissions before the court below that motor vehicles /car in question were used for physical survey of the market for procurement of raw materials and also for sale of the finished products. Any expenditure in relation to the procurement of input and /or for sale of finished products is allowable as business expenditure and accordingly, any expenditure in relation to repair and maintenance of the motor vehicles/car is covered by the definition of input service. Further, motor vehicles in question are covered by the definition of capital goods under Rule 2 (a)(c) of CCR 2004. It is an admitted fact that the appellant is paying central excise duty on its final product. It is further urged that the service of insurance of motor vehicles relating to the period 6th Jan., 2013 to 23.08.2014 was received prior to insertion of clause 3 (A) by Notification No.28/2012-CE (NT) dated 20.06.2012. It is further urged that the cenvat credit has been disallowed only on erroneous observation that the motor vehicle is not a capital goods, which is incorrect in view of the definition of motor vehicles, being capital goods.

8. As regards limitation, it is urged that central excise records of the appellant are regularly audited by the Audit Department, particularly in 2013, July, 2014 and July, 2016. This fact is also mentioned in the report of the Auditor General. So the disallowance of cenvat credit is bad and the impugned order is fit to be set aside on this score alone.

9. Ld. Authorised Representative, Ms. Tamnna Alam for Revenue relied on the impugned order.

10. Having considered the rival contentions, I find that it is an admitted fact that records of the appellant were audited regularly as mentioned in the Audit Report of the Auditor General mentioned hereinabove by the ld. Counsel and also mentioned in para 3.1 of the grounds of appeal. In view of the fact, the audit had been regularly conducted by the Audit Authority, of the books of accounts of the appellant for the period in April, 2013, July, 2014 and also July, 2016, it is evident that the affairs of the appellant regarding taking of cenvat credit were also in the knowledge of the Department. As such, invocation of extended period of limitation is not available to the Revenue. Accordingly, the ground with regard to limitation is allowable. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

[Pronounced on 23.06.2021.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.