CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

HYDERABAD

REGIONAL BENCH – COURT NO. – IV

Excise Appeal No. 50801 of 2020 [DB]

[Arising out of Order-in-Original No. 02/COMMR/DDN/2020 dated 28.02.2020 passed by the Commissioner of Central Goods & Service Tax , Dehradun]

M/s. Delta Electronics India Pvt Ltd. **...Appellant**
Plot No. 11B, 12, 13A & 78B,
Sector-5, Sidcul, Pantnagar,
Uttarkhand - 263145

VERSUS

Commissioner of C.G.ST., Dehradun **.... Respondent**
E-Block, Nehru Colony,
Haridwar Road, Dehradun,
Uttarakhand-248001

APPEARANCE:

Shri Kamal Sawheny and Shri Deepak Thakur, Advocates for the Appellant

Shri Sanjay Kumar Singh, Authorised Representatives for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 10.05.2023
DATE OF DECISION: **30.06.2023**

FINAL ORDER No. 50800/2023

DR. RACHNA GUPTA

Present is an appeal against Order-in-Original No. 02/Commr./DDN/2020 dated 28.02.2020. The brief facts of the case are as follows:

The appellant is engaged in the manufacture of Telecom Power Solution, Uninterrupted Power System, Wind Power Generating System, Solar Power Generating System. For the purpose of manufacturing these goods the appellant utilizes various inputs, capital goods and input services and had availed Cenvat credit of the tax paid for these goods and services during the

relevant period. During the course of audit for the period April 2014 to June 2017, vide letter No. V(1) Audit/Cir-HLD/Gr-02/35/Delta/2017 dated 25.01.2018, a query was raised by the Assistant Commissioner (Audit), CGST, Audit Circle-Haldwani in respect of the availment of Cenvat credit of Service Tax paid to ASP for warranty support services provided to the end customers of the appellant. In furtherance of this query the appellant replied vide letters dated 25.01.2018, 17.05.2018 and 20.07.2018. However, department observed that services provided by the ASPs have been rendered after the clearance of the final products.Therefore, the services are not covered in the first part of the definition of input services. In the second part of the definition there is no mention of the services of Free Warranty anywhere, thus, the services does not fall in this part as well. The ASPs are independent entities which provide this service to the customers of the appellant. The said customers are independent service recipient of service provided by the ASPs, although under the directions of the appellant, the ASPS were at the liberty to raise bill on the customers as well. This service rendered by the APSs, during the warranty period, are classified as "Business Auxiliary Service" by courts of law which do not qualify as input service for the manufacturer in as much as such service are ordinarily rendered beyond the place of removal. Department thus opined that the appellant has availed Cenvat credit on the sole grounds of judicial pronouncement involving identical issue covering the period prior to 01.04.2011 despite the fact that the same has never been defined as input service under the Credit Rules. Finally observing that the availment of Cenvat credit related to free service rendered by third party/sub-

contractors on behalf of the party did not appear proper and accordingly the audit team raised objection on the admissibility of such Cenvat credit as input service. The Show Cause Notice No. 13/2019/233 dated 26.04.2019 was issued proposing the recovery of the Cenvat credit amounting to Rs.4,18,07,164/- availed during the period April 2014 to June 2017 along with interest under Rule 14 of the Credit Rules read with Section 11AA of the Act. Penalty was also proposed to be imposed upon them under Rule 15 of the Credit Rules read with Section 11AC of the Act read in juxtaposition. The proposal has been confirmed vide Order-in-Original No. 02/2020 dated 28.02.2020.

2. We have heard Shri Kamal Sawhney and Shri Deepak Thakur, Advocates for the appellant and Shri Sanjay Kumar Singh, Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that in the instant case, appellant provided repair and maintenance for the products covered under warranty on a free of cost basis. The repair and maintenance of the in-warranty products requires provision of service as well as of supply of parts. Hence appellant has entered into an agreement with Authorized Engineers to provide after sale services to the customer. The Authorized Engineers raise the bills after charging of service tax for the provision of after sale services to the customers on behalf of appellant. Input tax credit for service tax paid against the invoices raised by the authorized service Engineers with reference to the Cenvat Credit Rules has been taken by the appellant. Learned counsel relied upon the definition of

Input service, as defined under Rule 2(l) of the Credit Rules, to impress upon that if *inter alia* means any service used by a provider of output service for providing an output service or any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal. Further, the definition of input service also contained an inclusive clause and an exclusion clause listing the services specifically included and excluded from the definition of input service. Decision is **M/s. Samsung India Electronics Pvt. Ltd. Vs. Commissioner of Customs, Central Excise and Service Tax, Noida** is relied upon wherein it was held that the amount charged for warranty is included in the price actually paid or payable for the goods sold and such price charge in transaction value. Therefore, the service tax paid on the expenses incurred for providing warranty services qualifies for Cenvat credit of input service. Learned counsel also relied upon the decision of **Commissioner of Central Excise, Nashik Vs. Mahindra and Mahindra Ltd.,** wherein the definition of transaction value was interpreted to include the value of warranty in the scope of the transaction value in Section 4(3) of the Central Excise Act. Further in the case of **Carrier Air-conditioning & Refrigeration Ltd. Vs. CCE, Gurgaon,** It was held that the services provided by dealers to the assessee to further provide the repair and maintenance services to the customers under warranty, were Business Auxiliary Services which have to be treated as an input service for the assessee, being used in or in relation to manufacture of their final products, as free warranty repair and maintenance during warranty period, has enriched the value of the goods. Therefore, Cenvat credit was

available to the assessee selling air-conditioning, the cost of which included the cost for providing the warranty services.

3.1 Finally it is submitted that extended period of limitation under Section 11A is not invocable. Reliance is placed on the decision in the case of **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC)**, where the Hon'ble Supreme Court held as under:

> *"4. Section 114 empowers the Department to re-open proceedings if thelevy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority toexercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

Accordingly, order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these submissions, learned DR mentioned that after amendment of the definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004 w.e.f. 01.04.2011, the rules specifically

provided that only the services upto the place of removal were eligible for taking of credit, and that services used after the place of removal were excluded from the scope of definition of input service. Credit is available in respect of specific activities that would have been used upto the place of removal. Activities such as advertisement, sales promotion, marketing research, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition and legal services are in the inclusive part of the definition of inputs. It therefore clearly follows that other services which not so specifically included but are clearly identifiable as having being used after the place of removal, no credit could be admissible thereon. It is impressed upon that in view of the specific exclusion of services being utilized after the place of removal, it has rightly been held by the adjudicating authority that any interpretation that would render a provision of law otiose or redundant should be avoided. The decision of Hon'ble Supreme Court in the case of **Bhavnagar University Vs. PalitanaSugar Mill Pvt. Ltd. reported as AIR 2003 (SC) 511** is mentioned to have been rightly relied upon by the adjudicating authority wherein it was held that warranty service is a service which would relate only to a time and place after removal and hence if the intent was to allow benefit on input credit on such warranty service, then it would have specifically been included along with the other services mentioned therein. The appeal is accordingly prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records of this appeal, we observe that following is the issue to be adjudicated:

"Whether the after-sale services provided by the Authorized Engineers on behalf of appellant to their customers, will qualify as input services and whether the consideration received for those warranty services was part of transaction value."

6. Foremost it is necessary to look into the definition of Input Service as defined in Rule 2(l) of the Credit Rules. The definition of 'input service' is reproduced as under:

"input service" means <u>any service</u>,

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

<u>(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,</u>

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;

but excludes, -

(A)……

(B)…….

(C).....

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis

Upon reading of the aforementioned definitions of "input service" under Rule 2(l) of the Credit Rules, it is seen that such services have been classified under the following three main heads:

i. The first part of the definition provides, inter alia, that "input service" means any service 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:

ii. The second part of the definition comprises of the inclusive part which expands the scope of the first part of the definition and covers services such as advertisement or sales promotion, market research and auditing, financing, security, etc. The list is illustrative only; and

iii. The last part of the amended definition comprises of the specific exclusions made to the definition of input services.

7. We observe that the first part of the definition, covers services which are used by the 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. We opine that the phrase *'in or in relation to'* used in the definition of 'input

service widens the scope of the said definition. We rely on the judgment of the Hon'ble Supreme Court in **Collector of Central Excise Vs. Rajasthan State Chemical Works 1991 (55) E.L.T. 444 (S.C.),** wherein it was observed as under:

> *"12. Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to, manufactured product emerges.*
>
> *Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.*
>
> *13... There is nothing in the natural meaning of the word process to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture."*

The above case was followed and referred to in **Union of India v. Ahmedabad Electricity Co. Ltd., 2003 (158) E.L.T. 3 (S.C.).**

8. This Tribunal also in the case of **Pipavav Shipyard Ltd. v. CCE & ST, Bhavnagar, 2016 (41) STR 151** has interpreted Rule 2(l)(i) of the Rules, observing that the expression "any service"

read with "for providing an output service" would cover wide encompass of the definition of input service. Tribunal relied upon the judgement of the Hon'ble Supreme Court in the case of **Indian Chamber of Commerce v. CIT West Bengal II, Calcutta, AIR 1976 SC 348,** wherein the Hon'ble Supreme Court interpreted the term 'for' as under:

> *"For used with the active participle of a verb means 'for the purpose of (See judgment of Westbury C, 1127). 'For' has many shades of meaning. I connotes the end with reference to which anything is done. It also bears the sense of appropriate' or 'adapted to': 'suitable to purpose'- vide Black's Legal Dictionary"*

9. We further observe that the second part of the definition is the inclusive part, which further widens the ambit of the definition of 'input service'. We opine that all taxable services without which the providing of output service/manufacture of final products would be impossible or commercially inexpedient, would be covered herein. Thus we hold that any service, which either has any nexus to the activity of manufacturing or if it is in relation to the business of manufacture of goods would get covered under the definition of input service. We also observe that the value of such service is included in their assessable value, it follows that the credit thereon is admissible as per intent of Cenvat Credit Scheme. Thus we hold that service in question of providing warranty and after sales services is the input service eligible for Cenvat.

10. Now coming to the aspect as to whether the warranty charges forms part of the assessable value of the final product on which

Central Excise duty is paid by the Noticee. As already observed that the cost of the disputed services forms part of the assessable value of the final products and on same applicable service tax has already been discharged as and when due. The Hon'ble Supreme Court in **Union of India v. Bombay Tyres International, 1983 (14) ELT 1896 (S.C.),** has held that all the elements which enrich the value of the excisable goods and contribute to its marketability, must form part of the manufacturing cost of the goods. The relevant portion of paragraph 49 of the said judgment is reproduced herein:

> *"49. We shall now examine the claim. It is apparent that for purposes of determining the value, broadly speaking both the old Section 4(a) and the new Section 4(1)(a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old Section 4(a) or under the new Section 4(1)(a) is not ascertainable, the price is determined under the old Section 4(b) or the new Section 4(1)(b). Now, the price of an article is related to its value (using this term in a general sense), and into that value how poured several component, including those which have enriched its value and given to the article is marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value upto the date of sale, which apparently would be the date of delivery, are liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee upto the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after-sales service and marketing and selling organisation expenses including*

advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after-sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee upto the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery.

Relying on the above observation the Hon'ble Supreme Court in the case of **Collector of Central Excise, Chandigarh v. Eicher Tractors Ltd., 2004 (164) ELT 129 (SC),** has held that the labour charges for repair during the warranty period compulsorily collected from the customers has to be included in the assessable value of the final products. Thus, the cost of warranty forms part of the assessable value and this is no longer *res integra*.

11. Based on these decisions, we hold that the intent of Cenvat Credit scheme is to reduce the cascading effect of taxes by preventing the build-up of taxes in the cost of products. Therefore, a manufacturer should be entitled to avail Cenvat credit of Service Tax paid on all those services, the cost of which is getting included in the assessable value of the final product. By not allowing the Cenvat Credit on such services would be against the intent of Cenvat Credit scheme. These decisions have been followed in

Commissioner v. Relpol Plastic Products Ltd., 2016 (42) S.T.R. J274 (Bom.) and **CCE, Bangalore-II v. Millipore India Pvt. Ltd., 2012 (26) S.T.R. 514 (Kar.)**

12. We further observe that SCN has alleged that w.e.f. 01.04.2011 the definition of 'input services, as the phrase 'activities relating to business has been removed", does not include the services in question. It is submitted that the types of input services covered for the purpose of allowing credit of Service Tax paid are indeed quite wide in both the periods, i.e. pre and post 2011. The scope apparently has widened not only because of the use of expressions "directly or indirectly" and "in or in relation to", but also because of several other activities specifically mentioned in the inclusive part of the said definition. Further, the inclusive clause also starts with "services used in relation to". In this regard, reliance is places on the case of **Carrier Airconditioning and Refrigeration Ltd. v. C.C.E, 2016, [41] S.T.R. 1004 (Tri.-Del),** wherein the Hon'ble Tribunal while dealing with the same issue allowed the Cenvat credit for the period July 2005 to March 2012 and made the following observations:

> *"10. The Cenvat credit demand of Rs. 9,82,03,090/- is in respect of the service received from the dealers who had provided repair and maintenance service during warranty period on behalf of the appellant to the customers. The sale price of the air conditioners sold by the appellant to their consumers during the period of dispute included the warranty charges. There is no dispute that Central Excise duty had been paid on the value which included the warranty charges. During the warranty period, the appellant were under obligation to provide free repair and maintenance services to the consumers, who had purchased the air conditioners from them. However, instead of providing the free repair and maintenance service directly in discharge of their obligation the*

appellant roped in the dealers who provided free repair and maintenance to the consumers on their behalf and the dealers for providing this service on behalf of the appellant, received the payment from the appellant and on that amount, they paid the service tax. The point of dispute is as to whether the service provided by the dealers to the appellant is an input service and whether the appellant would be eligible for Cenvat credit in respect of the same. The service received by the appellants from their dealers is Business Auxiliary Service which has to be treated as an input service for the appellant used in or in relation to manufacture of their final products, as free warranty repair and maintenance during warranty period, has enriched the value of the goods. This issue stands decided in favour of the appellant by the Tribunal's judgment in the case of Danke Products (supra) and Gujarat Forgings (supra) and also in the case of Zinser Textile Systems Pvt. Ltd (supra), in view of this, this Cervat credit demand is also not sustainable and has to be set aside."

13. Thus, we conclude that the Cenvat credit was allowed for both the period prior to and post the amendment of 2011 on the ground that the warranty charges were included in the value of goods sold to the customers and Central Excise duty was paid on this value. Further, the assessee was under an obligation to provide free repair and maintenance services and instead of directly providing these services they had engaged dealers to provide them to the customers. It is thus clear that it is the consistent view that the services provided to fulfil warranty obligation would be eligible as input services being a service in relation to manufacture. The said clause remains same post 2011 and is not impacted by the amendment made in 2011. Learned Commissioner is held to have wrongly construed the amendment in definition of input which was merely clarificatory as only an explanation has been inserted. The insertion of this explanation cannot be used to interpret tht only credit of inputs used for warranty can be availed and not of input

services. Therefore, the Cenvat credit in relation to warranty services, value whereof is included in the assessable value of final product is available to the appellant as it contributes to the marketability of the product.

14. Coming to invocation of extended period of limitation while issuing show cause notice, we observe that all the facts in the present case were in the knowledge of the Department as the appellant had regularly filed the statutory returns and the Department had conducted audits of the appellant on a regular basis. The appellant always co-operated with the Department in their proceedings and had always provided the details asked for by the Department. It is settled law that extended period cannot be invoked when the department was aware of all the facts. In the case of **Anand Nishikawa Co. Ltd. v. CCE, 2005 (188) ELT 149 (SC),** the Hon'ble Supreme Court held as under:

> *"27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.....*

15. Similarly, in the decision in the case of **Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC)**, the Hon'ble Supreme Court held as under:

> "*4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression*."

Thus we hold that extended period has wrongly been invoked by the department while issuing the show cause notice.

16. In the light of above discussion, the issue/s as framed above stand decided in favour of the appellant. Consequent thereto, we hereby set aside the order under challenge. Resultantly, the appeal stands allowed.

[Order pronounced in the open Court on **30.06.2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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