CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 11.05.2017

Excise Appeal No. 1469 of 2012-SM

(Arising out of order-in-appeal No. 48/BPL/2012 dated 12.03.2012 passed by the Commissioner (Appeals) Central Excise, Bhopal).

M/s Birla Corporation Limited Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Ms. Rinky Arora, Advocate for the appellant
Ms. K. V. Kumar, AR for the Respondent

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53289/2017

Per: **B. Ravichandran**:

The appellant is aggrieved by the order dated 12.03.2012 of Commissioner (Appeals) Bhopal. The appellant are engaged in the manufacture of cement and cement clinker liable to Central Excise duty. They were availing credit of duty paid on inputs and capital goods and also service tax paid on input services under Cenvat Credit Rules. The dispute in the present appeal relates to their eligibility to avail credit on service tax paid towards cleaning service utilised by the appellant at the residential premises of their employees. The lower authorities denied the credit of Rs.5,28,539/- availed by them during the period November, 2009 to March, 2010.

2. Ld. Counsel for the appellant submitted that on identical set of facts regarding cleaning service availed by the appellant –assessee in respect of quarters of the employee, the Hon’ble A.P. High Court allowed the credit in ***CCE, Hyderabad-II vs. ITC Limited – 2012 =TIOL-199-HC-AP-SC***. Reliance was also placed on the decision of Hon’ble Bombay High Court in ***CCE, Nagpur vs. Ultratech Cement Limited – 2010 (20) STR 577(Bom.***) which was followed by various decisions of the Tribunal.

3. Ld. AR reiterated the finding of the lower authorities.

4. On perusal of the impugned order, I note that the Commissioner (Appeals) found that the cleaning service availed for residential premises of the employee cannot be considered as an input service in terms of Rule 2(l) of Cenvat Credit Rules, 2004. He heavily rely on the decision of the Hon’ble Supreme Court in ***Maruti Suzuki Limited - 2009 (240) ELT 641 (SC)***. On perusal of the discussion in the impugned order, I find, that the findings of the Commissioner (Appeals) to the effect that the reasoning and ratio of Hon’ble Supreme Court decision with reference to “input” could be made equally applicable to “input service”, is not legally tenable. The scope of application of the terms of “input” and “input service” are not identical. The Hon’ble Bombay High Court examined this aspect in detail in ***Ultratech Cement*** (supra). The High Court also noted the decision of the Supreme Court in ***Maruti Suzuki Limited***. The High Court held that the expression “activities in relation to business” in the definition of input service postulates activities which are integrally connected with the business of the assessee. The Hon’ble A. P. High court in ***ITC Limited*** held as below:

> “9. *The Commissioner’s order-in-appeal dated 27.05.2008 reflects that he accepted that the efficiency of the employees of an organisation*

would be dependent on various factors, one such being the provision of a housing colony. He further conceded that these facilities would contribute to the enhancement of the productivity of the organisation. Having stated so, the appellate authority surprisingly took the view that maintenance of the residential colony by the respondent company was only an obligatory activity owning to situational exigencies and was not connected either directly or indirectly to the manufacture of its final products. This inherent contradiction in the order-in-appeal was noted by the CESTAT, which opined that if accommodation was not provided by the respondent company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a colony to the employees was not directly or indirectly connected with the manufacturing activity of the respondent company was therefore not borne out on facts. The staff colony, provided by the respondent company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc. necessarily had to be considered as 'input services' falling within the ambit of Rule 2(l) of the Cenvat Rules, 2004".

5. As the issue involved in the present appeal is squarely covered by the above decision, the appeal is allowed by setting aside the impugned order.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Pant