IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/58280/2013 [SM]

[Arising out of Order-in-Appeal No.25/2013 dated 29.03.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, New Delhi]

M/s.HPL Electric & Power Pvt. Ltd. ...Appellant

Vs.

C.C.E., LTU, New Delhi ... Respondent

Present for the Appellant : Ms.Sukriti Das, Advocate
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 12/10/2017

FINAL ORDER NO. 57383/2017

PER: S.K. MOHANTY

Denial of Cenvat benefit on Service Tax paid on outward freight (GTA Service), rent & security service and courier service is the subject matter of present dispute. The authorities below have denied the Cenvat Credit on the ground that those services are not confirming to the definition of input service contained in Rule 2 (l) of the Cenvat Credit Rules, 2004.

2. The ld. Advocate appearing for the appellant submits that though the period involved in dispute is from 2005 to August, 2011, but with regard to GTA service, the said service

was availed by the appellant prior to March, 2008. She submits that under the un-amended definition of input service, the cenvat benefit was available on the GTA service for outward movement of goods. In this context, she relies on the judgment of Gujarat High Court in the case of CCE vs. Parth Poly Wooven Pvt. Ltd. – 2012 (25) STR 4 (Guj.). With regard to rent and security services, she submits that the said services were utilized in the rented premises, where warranty obligation in respect of goods of the appellant was discharged. As regards the courier service, she submits that the same is an input service and the Tribunal in the case of CCE & C, Vapi vs. Apar Industries Ltd.-2010 (20) STR 624 (Tri.-Ahmd.) has allowed the Cenvat benefit.

3. On the other hand, the ld. D.R. appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since the disputed services are not utilized within the factory of manufacture of final product, the Cenvat benefit on those services should not be available to the appellant.

4. Heard both sides and perused the case records.

5. In regard to service tax paid on outward transportation of goods, I find that the said services were availed by the appellant prior to March, 2008. Since under the un-amended definition of input service (effective upto 31st March, 2008) the phrase "from the place of removal" finding place, irrespective of the place of transportation, since the goods originated from the factory should be considered as input service. I find that

the Hon'ble Gujarat High Court in the case of Parth Poly Wooven Pvt. Ltd.(supra) has extended the Cenvat benefit on the identical situation. With regard to rent and security service, I find that the said services were utilized at the premises, other than the factory of the appellant. Further, I also find that relying on the decision of the Tribunal in the case of CCE, Trichi vs. Grasim Industries Ltd. – 2011- TIOL-172-CESTAT – MAD and Adani Enterprises Ltd. vs. CCE, Ahmd. – 2012 (27) STR 13 (Tri.Ahmd.), the ld. Commissioner (Appeals) has denied the Cenvat benefit to the appellant on rent and security services. Therefore, I do not find any infirmity in the impugned order in denying the Cenvat benefit on such taxable service. With regard to courier service, I find that this Tribunal in the case of Apar Industries Ltd. (Supra) has extended the Cenvat benefit on such service. Thus, the Cenvat Credit in this case should be available to the appellant.

6. In view of above, the impugned order is set aside and the appeal is allowed except the Cenvat benefit on rent and security service. However, no penalty shall be imposed on the ground that the issue involves interpretation of the statutory provisions. The appeal is disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita