CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/50038/2014-CU [DB]

[Arising out of Order-in-Original No. 15-16/ST/CB/CCE/Adj/2013 dated 19.08.213 passed by the Commissioner of Central Excise New Delhi.]

M/s. Blue Star Ltd. …Appellant

Vs.

C.S.T.-Delhi-I … Respondent

Appearance:
Mr. S. Sarkar, (CA)for the Appellant
Mr. A. Jain, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.05.07.2017
Date of Decision._06.112017

Final Order No. 57656 /2017

Per S.K. Mohanty:

Denial of cenvat credit of service tax paid on the taxable service namely, Warehouse Charges, Taxi Charges, Bank Guarantee, Insurance charges and Commission charges is the subject matter of present dispute. The adjudicating authority has denied the cenvat benefit to the appellant, on the ground that such disputed services are not confirming to the definition of

"Input Service", defined under the Rule 2(l) of the Cenvat Credit Rules, 2004.

2. The ld. Consultant appearing for the appellant in support of the appeal submitted as follows:

i Bank Charges: The charges are collected by the banks for providing financial service such as, issuance of Bank Guarantee, demand drafts, fund transfer and cash credit etc. such services have been used by the appellant for providing the taxable output service by it. The expression "Financing" has been expressly provided in the inclusive part of the definition. Reliance has been placed on Meghmani Dyes & Intermediates Ltd. 2013 (32) S.T.R. 671 (Tri-Ahmd.).

ii Insurance charges: The appellant insures the goods, which are used for carrying out Works Contract services & other Maintenance & Repair services. Insuring the capital goods are indispensable, without which the output service cannot be provided by appellant. Relied on the decision of this Tribunal in the case of Rotocast Ltd. 2010 (18) S.T.R. 466 (Tri- Del.), KPMG 2014 (33) S.T.R 96 (Tri-Del.) and Beekay Engg. & Casting Ltd. 2009 (16) S.T.R 709 (Tri-Del.) to support the stand that insurance charges should merit consideration as input service.

iii Taxi Charges: the appellant avails Rent-a-cab service for transportation of employees in relation to its business of providing Works Contracts services, Errection Commissioning & Installation service and Maintenance & Repair Services, which are specifically covered within the definition of Input service. Reliance has been placed in the case of J.K. Cements 2012 (277) E.L.T 194 (Tri-Del.), Beekay Engg. & Casting Ltd. 2009 (16) S.T.R 709 (Tri-Del.), Hindustan Zinc Ltd. 2009 (16) S.T.R 704 (Tri-Bang.) and Cable Corporation of India Ltd. 2008 (12) S.T.R 598 (Tri-Mumbai.).

iv Warehousing Service: the appellant pays warehousing rent for storage of material, received from factory on payment of Central Excise Duty. Such storage of goods/ spares parts etc. is essential for the appellant to provide the various output services of Works Contract and Maintenance and Repair Services. Placed reliance on the decision of this Tribunal in the case of Danmet Chemicals P. Ltd. 2013 (30) S.T.R. 308 (Tri-Mum.) and DSCL Sugar. 2014 (34) S.T.R 58 (Tri-Del.).

v Commission Charges: such charges have been paid by the appellant for providing after sales service to the consumers through third party dealers, for which the commission amount has been paid by the appellant to such dealers. Service tax paid on commission charge is eligible for consideration as input service since, such services were used for providing the output service. Placed reliance on the decision in this Tribunal in the case of Zinser Textiles Systems Pvt. Ltd. 2014 (33) S.T.R. 301 (Tri.- Ahmd.)

3. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the disputed services are not specifically defined as input service, service tax paid on such service shall not be available as cenvat credit to the appellant.

4. Heard both sides and perused the case records.

5. The period of dispute involved in this case is from 2006-07 to 2011-12. The definition of input service contained in the Rule 2(l) of the Cenvat Credit Rules, 2004 during the relevant period are extracted here in below:

Upto 28.02.2011

"Input services" means any service,-

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

(ii) 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,

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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

w.e.f. 01.03.2011

(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or (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, and includes services used in relation to modernisation, 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 services,- (A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for- (a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or (B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as

> *Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"*

6. On perusal of the above definition of input service, it reveals that the services used by the provider of taxable service for providing the output service are considered as input service for the purpose of the benefit of cenvat credit. Further under the un-amended definition of input service (effective upto 28.02.2011), the phrase "activities relating to business" was specifically finding place in such definition clause. Since the appellant has availed the disputed services for accomplishing the business activities, the cenvat benefit under the inclusion part of the definition is available to the appellant for consideration as input service on the disputed services. Even under the amended definition of input service w.e.f 01.03.2011, the appellant will also be eligible for cenvat credit benefit on the disputed service, on the ground that the said services are not falling under the excluded category as provided under clause (A), (B) and (C) of the definition of input service. Since the disputed services in this case, were used by the appellant for providing the taxable output service, the same in our view will merit consideration as input service for the purpose of availing the cenvat benefit. We find that the co-ordinate bench of this Tribunal in the referred cases cited by the appellant has held that cenvat benefit on the disputed services should be available as cenvat credit under the head input service.

7. In view of the above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favor of the appellant.

(Pronounced in the open court on 06.11.2017)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi