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/51818/2017 [SM]**

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-005-013-17-18 dated 16.08.2017 passed by the Commissioner (Appeals-I), Customs, Central Excise & Service Tax, Indore]

**M/s.Rajratan Global Wire Ltd. ...Appellant**

**Vs.**

**C.C.E., Ujjain, M.P. ... Respondent**

Present for the Appellant : Mr.Manish Saharan, Advocate
Present for the Respondent: Mr.Harish Saini, D.R.

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

**Date of Hearing/Decision: 27/02/2018**

**FINAL ORDER NO. 50908 /2018**

**PER: S.K. MOHANTY**

Brief fact of the case are that the appellant is engaged in the manufacture of different types /grades of wires, classifiable under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. The appellant availed Cenvat Credit of Central Excise duty paid on inputs and capital goods and service tax paid on the input services. During the period April, 2004 to May, 2015, the appellant had availed cenvat credit of Service Tax paid on the mobile phone service, insurance and maintenance of vehicles and in respect of input service received in another unit, situated elsewhere from the factory of the appellant. Taking of Cenvat credit on those taxable services was disputed by the Department and accordingly, 9 show cause notices were issued to the appellant. The show cause notices were adjudicated by order dated 08.03.2016, wherein Cenvat credit was disallowed to the appellant and also penalties were imposed. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 16.08.2017 has dropped the demand/disallowance of Cenvat credit upto the period 01.04.2011 and upheld the adjudged demand confirmed for the period from 01.04.2011 to May 2015. For upholding the adjudged demand, the ld. Commissioner (Appeals) has observed that the phrase "activities relating to business" is not finding place in the definition of input service with effect from 01.04.2011 and thus, the disputed services cannot be considered as input service for the appellant under the amended definition.

2. Ld. Advocate appearing for the appellant submits that the services availed by the appellant towards telephone, insurance and maintenance of vehicle are integral part of the manufacturing activity and accordingly, falls under the definition of input service for availment of Cenvat credit. To support such stand, the ld. Advocate has relied on the Final Order No.50541/2018 dated 05.02.2018 passed by this Tribunal in the case of appellant itself, wherein Service Tax paid on telephone service was allowed to the appellant. With regard to input service received in another unit, which is located at a place away from the factory, the ld. Advocate

submits that the services availed by the appellant were used in the wind mill located outside the factory premises. He submits that since as per the technological requirement, the wind mill has to be established at a higher altitude and that the electricity generated therefrom is used captively within the factory of manufacture of the final product, the appellant should get the benefit of Cenvat credit of service paid on the taxable services used therein. In this context, the ld. Advocate has relied on the decision of this Tribunal in the appellant's own case, reported in 2012- TIOL- 469 – CESTAT-Del.

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that the amended definition of input service with effect from 01.04.2011 has specifically provides that the input service used in or in relation to manufacture of final product, should only be eligible for Cenvat benefit. Thus, he submits since the appellant, in this case, has not confirmed to the definition of input service, it is not entitled for availing the Cenvat benefit on the disputed services.

4. Heard both sides and perused the records.

5. The services availed by the appellant from the service provider of mobile phone and for insurance and maintenance of vehicles are integral part of the manufacturing activity inasmuch as, without such service, the appellant cannot smoothly transact its business of manufacturing as well as

selling of its goods. Since the said services have nexus with the purpose, for which the appellant has setup its manufacturing unit, the same should be considered as input service under the amended definition of input service effective from 01.04.2011. I find that this Tribunal vide order dated 05.02.2008 (supra) in the case of appellant, has extended the cenvat benefit on telephone service, holding that such service is an integral part of the manufacturing activity. Therefore, I do not find any merits in the impugned order in disallowing the cenvat credit on such taxable services.

6. With regard to utilization of services in the wind mill, which is located outside the factory premises, I find that such wind mill is a captive mill dedicated entirely for supplying the electrical energy to the appellant for accomplishing its manufacturing activity. It is only for the technological requirement that the wind mill should be located at a place in the higher altitude; the appellant had installed such mill outside its factory premises and used generated electricity there from for its manufacturing activity. Thus, I am of the considered view that service tax paid on the taxable service used in the wind mill cannot be denied to the appellant. I find that this Tribunal in the case of appellant itself, vide order dated 12.10.2011 (supra), has extended the cenvat benefit, holding as under:-

> ***"4.*** *There is no dispute about the fact that if the inputs are used or in input services are availed in respect of a captive power plant situated within the*

*factory or adjacent to the factory, Cenvat credit would be available. But if the captive power plant happens to be wind power generator, it may not be always possible to locate the same in the close vicinity of the factory, as the wind power Generators have to be located at the places where the wind with sufficient speed is available throughout the year. In this case, though the factories of the appellant are located at Raipur and Pitampur, since they have chosen to use electricity generated by their captive wind power generators, the wind mills are situated in Dewas. These wind mills have been established with the permission of the M.P. State Electricity Board and from the permission given by the M.P. State Electricity Board it is seen that the wind mills are mentioned as for captive use by the appellant. Since, the wind mill are located far away from the factories, the power cannot be transmitted directly and the appellant would necessarily have to enter into an agreement with the State Electricity Board for its transmission. In both these cases, it is seen that the appellants had entered into the agreements with the M.P. State Electricity Board for transmission of power under which the electricity generated by the wind mills is first transferred to the M.P. Electricity grid and, thereafter, the M.P. State Electricity Board supplies 98% of that power to the appellants after deducting 2% power as wheeling charges. In view of this, I hold that the wind mills in this case have to be treated as captive power plant and hence the services of erection, installation, commissioning, repair and maintenance and insurance used in respect of the wind mills would be eligible for Cenvat credit. Moreover one of the main factors for deciding the question as to whether Cenvat credit is available in respect of the service used by a manufacturer is as to whether the service received has nexus with the manufacture of the final product or* *with the business of manufacture and in this case, I find that there is clear nexus as the electricity generated by the wind mills has been used for running of the factories of the appellant and just because the electricity has not been directly supplied, but has been supplied through M.P. Electricity grid, it cannot be said that the wind mills are not captive power plant. I find that same view has been taken by the Tribunal in the case of Maharashtra Seamless Ltd. v. C.C.E., Raigad (supra) and Endurance Technologies Pvt. Ltd. v. C.C.E., Aurangabad (supra). In the first judgment, the Tribunal has also discussed the judgment of Tribunal in the case of Rajhans Metals Pvt. Ltd. v. C.C.E., Rajkot (supra), where a contrary view had been taken and has observed that view taken in that judgment is not correct. In view of judgment of Bombay High Court in the case of C.C.E. v. Ultratech Cement Ltd. (supra). In view of the above discussion, I hold that the services, in question, received by the appellants have to be treated as input services eligible for Cenvat credit. The impugned orders, therefore, are not correct. The same are set aside. The appeals are allowed."*

7. In view of above, I do not find any merits in the impugned order in denying the cenvat benefit to the appellant. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

Anita