IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 09/07/2018.
DATE OF DECISION: 13/12/2018.

Excise Appeals No. 50809, 50820-50821 of 2017

[Arising out of the Order-in-Original No. ALW-EXCUS-OIO-COM-96/16-17 dated 09/02/2017 passed by The Commissioner, Central Excise & Service Tax, Alwar.]

M/s Honda Motorcycle & Scooter India Pvt. Ltd.]
Shri Sunil Gupta]
Shri Naveen Kumar] Appellants

Versus

CCE & ST, Alwar Respondent

Appearance

S/Shri B.L. Narsimhan and Hemant Bajaj, Advocates – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 53390-53392/2018 Dated : 13/12/2018

Per. C.L. Mahar :-

The brief facts of the matter are that the appellant/ assessee is engaged in manufacture of motorcycles and scooters falling under Central Excise Tariff Heading 87 of 1st Schedule to the Central Excise Tariff Act, 1985. The appellants have been

availing facility of Cenvat credit on inputs, capital goods and input services under Cenvat Credit Rules, 2004. During the period from June 2011 to March 2016, the appellant have been availing input service credits on the services, such as (I) commission paid to agents of print media; (II) services of authorized service stations provided by the appointed dealers of the appellant to the buyers of vehicles under free after sale service and warranty period services ; (III) service tax paid on the rent for common civil infrastructure services availed by the appellant from M/s Honda Siel Car India Ltd. The Department had entertained a view that the appellant have wrongly availed input service credit on the above-mentioned services and a show cause notice demanding reversal of Cenvat credit amounting to Rs. 9,85,38,215/- was demanded vide show cause notice dated 06/07/2016 which has been adjudicated by the learned Commissioner vide his order dated 09/02/2017, wherein the above-mentioned amount of the Cenvat credits have been confirmed under Rule 14 of Cenvat Credit Rules, a penalty of equal amount have also been imposed under Section 11AC (i) (c) of the Central Excise Act, 1944, personal penalty of Rs. 5,00,000/- and Rs. 10,00,000/- has also been imposed on Shri Sunil Kumar Gupta, Manager (Taxation) and Shri Naveen Kumar, Division Head (Finance and Account) of the appellant, respectively. The appellants are before us against the above-mentioned order-in-original. The learned Advocate appearing on behalf of the appellant has contended that repair and

maintenance services received by the appellant from his authorized service stations cannot be denied to them as the scope of input service as mentioned under Rule 3 of the Cenvat Credit Rules and defined under Rule 2 (l) of the Cenvat Credit Rules has a specific mention that the appellant are entitled for credit on all input services used directly or indirectly, in or in relation to manufacture or clearance of final product. It can be seen from the scope of the definition of input service that it not only covers any services used directly or indirectly in relation to manufacture or clearance of the manufactured product, since the free after sale service coupons provided by them to the buyer of two wheelers have already formed part of the assessable value of the two wheelers manufactured and cleared by them and therefore the appellant is entitled for availment of Cenvat credit of input services used by them in this regard.

It has further been elaborated by learned Advocate that :

> (i) the appellant offers 3-4 free service coupons to its customers depending upon the product. The free service coupons entitle the customer to avail free services enumerated overleaf each such coupon such as inspection of fuel line, replacement of engine oil, cleaning of vehicle, inspection of suspension etc. These free service coupons carry a validity period expressed in terms of specified distance coverage or time period. For e.g., appellant grants 4 free service coupons for CB125 Shine SP. The first free service coupon is valid for use within 750 – 1000 km. or within 15 to 30 days from the date of sale, whichever is earlier. The second free service coupon is valid for use

within 3500 – 4000 km. or 105 to 120 days from the date of sale, whichever is earlier.

(ii) That in addition to the above, appellant offers warranty on two wheelers manufactured by it. The two wheelers carry an initial warranty for specified time period or specified kilometers of distance coverage, say for e.g. 24 months from the date of sale or until the vehicle covers 32,000 km., commonly referred to as warranty period. During the subsistence of warranty period, appellant undertakes that two wheeler shall be free from the manufacturing defect. In case of a defect, the appellant through its authorized service station undertakes to replace the defective part free of charge subject to fulfillment of prescribed conditions.

(iii) Thus, herein 2 contractual arrangements are at play, viz. one between the appellant and customer for provision of free of charge after-sale services in lieu of free service coupons and during subsistence of warranty policy. Second between authorized service station and the appellant for provision of after-sale services in return of consideration arising from the appellant.

(iv) In terms of the second contractual arrangement referred above, the authorized service stations are obligated to provide after-sale services to customers. In consideration of these services, the authorized service stations raise invoices on the appellant alongwith applicable service tax.

(v) The appellant avails credit on the above mentioned services received from authorized service stations. The Revenue has sought to deny credit on the ground that these services were not received by the appellant".

2. The learned Counsel has relied on the decisions of this Tribunal which support his point of view with regard to the afore-mentioned issue. The case laws referred are as that of **M/s Carrier Airconditioning & Refrigeration Ltd. vs. CCE, Gurgaon – 2016 (41) S.T.R. 1004 (Tri. – Del.), CCE, Nashik vs. Mahindra & Mahindra Ltd. – 2012 (28) S.T.R. 382 (Tri. – Mumbai), Samsung India Electronics Pvt. Ltd. vs. CCE & ST, Noida – 2017 – TIOL – 05 – CESTAT – ALL.** and **Leroy Somer India Pvt. Ltd. vs. CCE, Noida – 2015 (39) S.T.R. 466 (Tri. – Del.)**. The learned Counsel has further added that since the cost of after sale service as well as warranty charges are included in the assessable value of the goods for computation of the excise duty and the services provided by the authorized service stations are in fact on behalf of the appellant and, therefore, the service tax paid by authorized service station has ultimately been incurred and borne by the appellant.

3. With regard to the second point of demand, wherein the Department has alleged that service tax paid by the appellant on the renting of the immovable service in the form of civil infrastructure services taken by them from M/s Honda Siel Cars Ltd. The basic contention of the learned Advocate has been that appellant has been granted a right to use and enjoy the common infrastructural facility developed by M/s Honda Cars for a consideration which is being paid by the appellant and by virtue of which they have obtain a right to use and enjoy the common infrastructural facilities. It is further been added that appellant

cannot undertake manufacturing activity in the absence of infrastructural such as availability of electricity, water, road, the boundary wall for the manufacturing premises for the safety purpose because for making use of the factory premises the common infrastructural facilities are dovetailed with the main manufacturing facility and thus become integral for the purpose of creating manufacturing capability in the factory and, therefore, the services used by them in the form of common infrastructural facility are very much integral to the creation of infrastructural for manufacturing. It has further been added that :-

(i) this service is covered under the 'inclusive' clause of the definition of 'input service', since this is a service in relation to 'procurement of inputs' and 'clearance of the final product'.

(ii) It is further submitted that the appellant's factory premises forms a part of the whole industrial area. The security of appellant's factory premises is intricately connected with the security of the industrial area. Any compromise with the security of the industrial area, including the common infrastructure area, will severely impinge on the security of the appellant's factory premises. The boundary wall forms a necessary measures to prevent encroachment, trespassing, theft etc. Its absence would cause threat to the safety of appellant's premises. Thus, such services are in relation to 'security' as well. Similarly, 'inclusive' clause of the definition of term 'input service' also includes within its ambit services received in relation to 'inward transportation of inputs or capital goods' and 'outward transportation'. Similarly, the appellant is required to gain access to roads, street lighting, drainage ensuring

unclogged roads etc. for outward transportation of the manufactured products.

(iii) that these common infrastructure facilities clearly qualify as input service used in or in relation to the manufacture of final product and the appellant is entitled to credit of the service tax paid by Honda Cars on license fee charged for use of these common infrastructural facilities.

(iv) It has further been argued that the Commissioner has erred in holding that the impugned services are excluded from the definition of 'input service' vide Rule 2 (l) (A) of the Cenvat Credit Rules. From a perusal of exclusion clause, it reveals that exclusion has been carved out with respect to works contract and construction services which are taxable under Section 66E (b) of the Finance Act. In the instant case, services are taxable under Section 66E (f) and not under Section 66E (b) of the Finance Act.

(v) It is submitted that construction services imply that the activity of construction is undertaken for someone else. This requires that the construction is undertaken by the service provider and the constructed structure is owned by the service recipient.

(vi) As already submitted, the ownership rights in the common infrastructural facilities vest in Honda Cars and not the appellant. The same is duly evidenced by various provisions of License Agreement. In such circumstances, construction activity undertaken by Honda Cars is for itself. The appellant was merely granted license to use and enjoy these common infrastructural facilities. The grant of license cannot be equated with construction and works contract excluded from the definition of input service.

(vii) Further, reliance is placed on the following decisions, wherein credit has been allowed on such services:

- **John Deere India Pvt. Ltd. vs. CCE, Pune – III, 2016 (41) S.R. 990 (Tri. – Mumbai)**
- **CCE, Raigad vs. Heidelberg Cement India Ltd., 2017 (6) GSTL 473 (Tri. – Mumbai)**

(viii) In light of the above, it has been submitted that the appellant has rightly availed Cenvat credit on these services and the impugned order is incorrect and unsustainable and is liable to be set aside".

4. The learned Advocate assailing the denial of Cenvat credits of the service tax paid by them on getting arranged the advertisements in the print media. It is contended that the learned Commissioner has erred in holding that the appellant are not entitled for the service tax paid by them on the commission charges charged by print media agents for providing the advertisement services to them from print media service providers. The learned Advocate has tried to explain that the Indian Newspaper Society (INS) being the Central Organisation for Indian Press and they were for 14 National newspapers for obtaining orders for printing of various kind of advertisement in these National newspapers. The INS charges a paltry commission of around 2% from the persons who are interested in getting the advertisement published in the National newspapers. The service tax paid on this commission, the Department has denied them the Cenvat credit which is legally not sustainable in the sense that the commission paid is for the purpose of advertisement and not for any other purpose, and since the cost of advertising is

integral part of the cost of their finished product, the services availed and any service tax paid on such services need to form a part of the cost of their finished product and they have actually included such cost into the price of their finished product namely two wheelers motorcycle/scooters and thus they are very much entitle for taking credit of such cost. The learned Advocate had also tried to explain the entire exercise, as follows : that

> "(i) As already submitted, these accredited agencies or agents receive various benefits, like higher credit period, incentives, discounts etc., which they generally pass on, wholly or partly, to the entities placing advertisements through these agents. This is evident from a reading of the copy of invoice of the print media agent.
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> (ii) A perusal of the invoice would reveal that the basic cost of placing the advertisement is Rs. 42,174/-. From this an amount of Rs. 6326.10 has been reduced towards 15% commission received by the agent from the print media and passed on to the appellant. After allowing this deduction, the agent has charged 2% commission on the amount of Rs. 42,174/- from the appellant, for the service rendered by them to the appellant, for booking the advertisement. The service tax has thereafter been charged on this 2% commission charged by the agent from the appellant.
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> (iii) From the above, it is evident that there are actually two commissions, as reflected in the invoice of the print media agent, (i) commission of 15% received by the print media agent from the print media and passed on to the appellant by way of deduction from the bill amount. It only goes towards reducing the cost of the advertisement placed by the appellant and no service tax is charged on this amount; (ii) the second commission of 2% has been

charged by the print media agent from the appellant for the service of booking advertisement provided by them to the appellant, and service tax has been charged on this 2% commission only.

(iv) Therefore, it is evident that the service tax in question pertains to the 2% commission charged by the print media agent from the appellant for the service of booking advertisement through them, provided by the agent to the appellant and it does not pertain to the 15% commission received by the agent from the print media and passed on to the appellant, as has been erroneously assumed by the learned Commissioner, in the impugned order.

(v) It is submitted that Rule 3 of the credit rules stipulates the eligibility criteria for availment of credit. It mandates a manufacturer to avail credit on input services received. It is noteworthy that the provision employs the term 'received'. In the present case, the appellant requests the print media agents for facilitation in booking advertisements. In simple terms, the print media agents undertake the booking activity only at the behest of appellant, and not the print media. Further, the appellant is liable to pay consideration for such services to the print media agents. Accordingly, the appellant is clearly service recipient in this transaction".

5. The learned Advocate has also relied upon the decisions of this Tribunal as well as High Court on the issue in case of **CCE, Bangalore – II vs. Millipore India Pvt. Ltd. – 2012 (26) S.T.R. 514 (Kar.)** and **Indian Oil Corporation Ltd. vs. CCE, Mumbai – II – 2014 (36) S.T.R. 833 (Tri. – Mum.)**.

6. The learned Advocate has also contended that demand is barred by extended period of limitation as none of the elements as provided under Section 11A (4) are present for invoking the larger period of limitation. It has further been added that basic ingredients required for invoking the extended time proviso namely suppression, fraud, collusion, mis-representation with intend to evade central excise duty are not present in their case. It can be seen that the issue at hand is purely of interpretation of the law and all the facts regarding availment of Cenvat credit on all the three counts have always been available with the Department. The learned Advocate has also relied upon various decisions of this Tribunal as well as High Courts. A summary of such decision is given here below :-

- **Prolite Engineering Co. vs. Union of India – 1995 (75) E.L.T. 257 (Guj.)**
- **Accurate Chemicals vs. Union of India – 2015 (324) E.L.T. 453 (All.)**
- **BCH Electric Ltd. vs. CCE, Delhi – IV – 2013 (31) S.T.R. 68**
- **Petropol India Ltd. vs. CCE, Jaipur – 2016 (9) TMI 125**
- **BSNL vs. CCE & ST, Chandigarh – I – 2014 – VIL – 325 – CESTAT – DEL – ST**

The learned Advocate has also argued that learned Commissioner has travelled beyond the provision of the law in imposing a personal penalty on the employees of the company under Rule 26 of the Central Excise Rules, 2002 and has submitted that since the demand itself is not sustainable the

grounds of imposition of personal penalty under Rule 26 are non-existent in their case.

7. We have also heard learned Departmental Representative who has agreed that so far as denial of service tax on after sale service and warranty services are concerned same is covered by a various decision of this Tribunal and, therefore, he has agreed that the appellant are entitled for Cenvat credit on such services availed by them. The learned DR, however, has vehemently opposed the learned Advocate's argument with regard to admissibility of Cenvat credit on other two issues namely the service tax paid by them on the commission charged by agents of print media and the service tax paid on rent of civil infrastructure services taken by the appellant from M/s Honda Siel Car Ltd.

8. We have heard both the sides and perused the record of the appeal. We feel that so far as the credit on services received by appellant from their authorized service stations with regard to free after sale services and repairs etc. of warranty period, the matter is no longer res-integra as this Tribunal in the case of **Carrier Airconditioning & Refrigeration Ltd. vs. CCE, Gurgaon – 2016 (41) S.T.R. 1004 (Tri. – Del.)** has already held that services provided by the authorized representative/ service stations are on behalf of the manufacturer and the service tax paid on availment of such services by the manufacturer, they are entitled for Cenvat credit of such input

services. The relevant extract of the above decision is reproduced here below :-

> "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 Cenvat credit demand is also not sustainable and has to be set aside".

9. Accordingly, we hold that since the value of free after sale services and the warranty period repairs and maintenance are already included in the assessable value of the two wheelers, the service tax paid on availment of such input services by the manufacturer from their authorized representatives the appellant/assessee is entitled for credit of such input services.

10. With regard to second point of demand, wherein the service tax paid on the commission for procuring the advertisement services has been denied, the learned Advocate has taken us through the system how the advertisements are being placed by the appellant in various leading newspapers. It is clear that the commission paid to the print media agents is for availment of services of advertising the requisite advertisement in the newspapers and for which a commission is paid by the appellant to the a middleman which is called a print media agency. For the purpose of convenience to understand the submissions made by learned Advocate are again reproduced here below :-

> (i) A perusal of the invoice would reveal that the basic cost of placing the advertisement is Rs. 42,174/-. From this an amount of Rs. 6326.10 has been reduced towards 15% commission received by the agent from the print media and passed on to the appellant. After allowing this deduction, the agent has charged 2% commission on the amount of Rs. 42,174/- from the appellant, for the service rendered

by them to the appellant, for booking the advertisement. The service tax has thereafter been charged on this 2% commission charged by the agent from the appellant.

(ii) From the above, it is evident that there are actually two commissions, as reflected in the invoice of the print media agent, (i) commission of 15% received by the print media agent from the print media and passed on to the appellant by way of deduction from the bill amount. It only goes towards reducing the cost of the advertisement placed by the appellant and no service tax is charged on this amount; (ii) the second commission of 2% has been charged by the print media agent from the appellant for the service of booking advertisement provided by them to the appellant, and service tax has been charged on this 2% commission only.

(iii) Therefore, it is evident that the service tax in question pertains to the 2% commission charged by the print media agent from the appellant for the service of booking advertisement through them, provided by the agent to the appellant and it does not pertain to the 15% commission received by the agent from the print media and passed on to the appellant, as has been erroneously assumed by the learned Commissioner, in the impugned order.

11. Thus, it is clear that for getting access to the agency who is actually going to undertake advertisement of the material provided by the appellant, services of a print media agent are being availed and a commission of 2% is being paid on which service tax is being charged by the print media agent. The appellant is taking credit of such service tax. We are of the view

that the activity of hiring of print media agent for ultimate purpose of advertising is very much part of advertising service and since the advertisement charges forms the part of assessable value of the appellants finished product any cost incurred and services availed in this regard form the part of assessable value and thus the appellant is entitled for credit of such input services. The above view have also been taken by this Tribunal in its earlier decision in the case of **Indian Oil Corporation Ltd. vs. CCE, Mumbai – II – 2014 (36) S.T.R. 833 (Tri. – Mum.)**. The relevant extract is reproduced here below :-

> "6. We have gone through the copies of sample invoices produced by the applicant, issued by Times Global Broadcasting Co. Ltd. In the invoices it is specifically mentioned that the advertiser is Indian Oil Corporation Ltd. (applicant). Further, we find that the advertising agencies while discharging the service tax liability have not taken into consideration the expenses in respect of the advertisement in the electronic media as clarified by the Board in the circular, dated 1-11-1996. For ready reference, the relevant portion of the Board's Circular is reproduced below :-
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> > "4. It is further to be clarified that in relation to advertising agency, the Service Tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the

making or preparation of advertisement or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. Newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV Channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of Service Tax. The commission received by the advertising agency would, however, be includible in the value of taxable service."

7. We observe that there is no dispute in the present case that the broadcasting of advertisement has been done on behalf of the appellant and the bills have also been raised on the appellant and the appellant has borne the incidence of Service Tax on the broadcasting service. Further, while passing the order, dated 30-9-2013, the adjudicating authority has caused verification of the transactions undertaken by the appellant in respect of broadcasting services and advertising agency services. After verifying that the appellant had availed both the services and has also borne the incidence of Service Tax, he came to the conclusion that the appellant is rightly eligible for the benefit of the Cenvat credit of the Service Tax paid on broadcasting service. The same ratio shall apply for the previous period also. Therefore, we do not find any merit in the impugned order. Accordingly, we set aside the same and allow the appeal with consequential relief, if any, in accordance with law".

12. Thus, we are of the view that appellant are legally entitled to avail input service credit of the service tax paid by them on

the commission charged by the print media agent for advertising their advertisement material into various newspapers.

13. Now coming to the question whether the appellant are entitled for Cenvat credit of the service tax paid by them on renting of infrastructural facilities from M/s Honda Siel Car Pvt. Ltd. or not. We feel that the basic argument of the learned Advocate in this regard is that common infrastructural facilities are vital for undertaking manufacturing activity and without such infrastructural facilities, such as, road, supply of water, boundary wall for safety of the premises the appellant cannot undertake the manufacturing activity and therefore they are very much entitled for the Cenvat credit of service tax paid by them on the component of the rent paid by them for availing such infrastructural facilities. The learned Advocate has also held that the Adjudicating Authority has erred in saying that the inclusion clause under Section 66E (b) of the Finance Act, 1994 makes it mandatory that work contract and construction services are not entitled for Cenvat credit, however, the learned Advocate has argued that the type of the services availed by them are covered under Section 66E (f) and not under Section 66E (b) of the Finance Act.

14. We feel that common facilities such as road, water supply facility, boundary wall infrastructure for supply of electricity etc. are absolutely essential for making the manufacturing facility to work. For example without ‘road’ inside their factory premises, it

is absolutely unthinkable to as to how the raw material, manpower and finished goods are going to have movement. We also feel that common facilities availed by the appellant on rent basis are in 'relation to the manufacture of goods' and then on integral part of overall activity of manufacturing. We also feel that since the charges of rent/license fee paid by the appellant must have been included in the cost of the finished product manufactured by the appellant as per the provisions of Cenvat Credit Rules they are entitled for credit of service tax paid by them as the facilities were in relation to manufacturing of their finished product. In this regard we are relying on the decisions of this Tribunal's in case of **CCE, Raigad vs. Heidelberg, Cement India Ltd. – 2017 (6) G.S.T.L. 473 (Tri. – Mumbai)**. The relevant extract of this decision is reproduced here below :-

> "1. The fact of the case is that the respondent entered into rent agreement with M/s. Ispat Industries Ltd. for use of the road owned by M/s. Ispat Industries Ltd. as per the agreement the appellant are paying the rent along with service tax to the lessor i.e. M/s. Ispat Industries Ltd. In respect of the service tax paid on renting of immoveable property of M/s. Ispat Industries Ltd., the respondent availed the cenvat credit. The original authority has disallowed the cenvat credit in respect of renting of immoveable property service in respect of road used by the appellant on the ground that the road located outside the factory of the respondent and it is not used in or in relation to the manufacture of final product. Being aggrieved by the order-in-original the respondent filed appeal before the Commissioner (Appeals) who allowed the appeal therefore the Revenue is before me.
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> …….

> 4. I have carefully considered the submissions made by both the sides. I find that even though the road is located outside the factory premises but the service of renting of immoveable property is received and used by the respondent. The road is used for transportation of goods which is directly related to the manufacture of final product in their factory. As regard the input service, even though it is used outside the factory, but if it is used in or in relation to the manufacture of final product and overall business activity, the credit in respect of such service is admissible in terms of Rule 2(a) of Cenvat Credit Rules, 2004. On going through the judgment cited by the rivals, I conclude that the service of renting of road to the respondent is an input service and the credit is admissible. The impugned order is upheld. The Revenue's appeals are dismissed".

15. Accordingly, we hold that the appellant has rightly availed Cenvat credit of service tax paid on rent of infrastructural facilities.

16. We feel that since all the material facts have always been available with the Department and the appellant have been audited by the Department on the regular intervals during the period of demand we therefore feel that the necessary element for invoking the extended time period of 5 years for demanding reversal of the Cenvat credit are not available in the present case. We therefore feel that the demand is also barred by period of limitation. The penalties imposed under Rule 26 of the Cenvat Credit Rules on the appellants who are paid employees of the main appellant is not warranted.

17. In view of above, we hold that the appeals succeed on all the counts and we set aside the order-in-original being without any merit.

18. The appeals are accordingly allowed.

(Order pronounced in open court on 13/12/2018.)

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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