

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Bench - SMB
Court – I

Appeal No. E/31329/2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-MD-AP2-041-17-18
dated 30.08.2017 passed by Commissioner of GST & Central Excise
(Appeals-II), Hyderabad)

Mane India Private Limited

.....Appellant(s)

Vs.

**Commissioner of Central Tax, Central
Excise & Service Tax, Medchal – G S T**

.....Respondent(s)

Appearance

Shri K. Chandra Sekhar, Consultant for the Appellant.

Shri Dass Thavanam, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

**Date of Hearing: 21/05/2018
Date of Decision: 21/05/2018**

FINAL ORDER No. A/30602/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. HYD-
EXCUS-MD-AP2-041-17-18 dated 30.08.2017.

2. Relevant facts that arise for consideration are the appellants are the manufacturers of Fragrances and Flavoring Essences. They registered with the Central Excise Department vide CER No. AACCM1243JXM001. They are availing credit of duty paid on inputs and input services under the provisions of CENVAT Credit Rules, 2004 and utilizing the same for payment of duty on final products. Their accounts were audited by the Central Excise staff during January, 2015, covering the period from April, 2013 to September, 2014 and observed that the appellants has –

a) Irregularly availed CENVAT credit of Rs. 28,75,157/- on the input services which were utilized exclusively in R & D unit located at Mumbai.

b) Irregularly availed CENVAT credit of Rs. 9,393/- on ineligible input service.

2.1 On being pointed out by the audit, the appellant has paid part amount of Rs. 11,26,813/- pertaining to credit taken on one Works Contract Service, in respect of element (a) above but they did not pay the corresponding interest & penalty payable. They admitted the objection mentioned at (b) above and paid Rs. 9,393/- along with interest of Rs. 2,849/- and penalty of Rs. 1,931/-. A show cause notice was issued on 18.09.2015 covering the objection at (a) above. It was viewed that the appellant are neither manufacturing nor providing any taxable services at their R& D Unit but they are willfully availed the ineligible CENVAT credit of service tax on the services

received at R& D unit and utilized the same for payment of excise duties with intent to evade payment of excise duty in contravention of CENVAT Credit Rules. It was also viewed that the contravention of provisions and evasion of duty is unearthed only on the departmental intervention, meriting recovery of duty for the extended period under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1994. The notice was adjudicated in the impugned order, culminating in the instant appeal, wherein the proposals were confirmed as follows:

a) Confirmed the demand of Rs. 28,75,157/- being the irregular CENVAT credit availed under Rule 14 of CENVAT Credit Rules read with Section 11A(10) of Central Excise Act, 1944.

b) Appropriated Rs. 11,26,813/- already paid by them against above demand.

c) Confirmed the interest applicable under Rule 14 of CENVAT Credit Rules read with Section 11AA of Central Excise Act.

d) Confirmed the demand of interest on the above amounts under Section 75 of Finance Act, 1994.

e) Imposed penalty of Rs. 28,75,157/- under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act.

Aggrieved by such an order, an appeal was preferred before the First Appellate Authority. The First Appellate Authority, after following due process of law, rejected the appeal on merits as well as on limitation.

3. Learned Consultant draws my attention to the facts of the case and also various records, submits that the premises situated at Mumbai are used for administration, sales and marketing and as also R&D wing activity. It is his submission that the denial of CENVAT credit of the service tax paid on Renting of Immovable Property Services, Security Services, Cleaning Services, Internet Services and Business Auxiliary Services is incorrect as these services are received at Mumbai office it is utilized by the appellants for selling and marketing purposes and also R&D wing activity which are manufacturing activity of the appellant. It is his submission for both the lower authorities recorded that the research conducted in the appellant's premises at Mumbai office has not resulted in any commercial activity and ineligible to avail CENVAT credit. It is his submission, as a specimen case in one item they were research was conducted and commercial production was undertaken. As regards the Central Excise duty paid on works contract service, it is his submission that the work contracts service which is awarded for modernization of the office premises. He is draws my attention, works order nothing but modernization and the CENVAT credit of service tax is correctly availed as the modernization of the office is not excluded eligibility to avail CENVAT credit. He relied upon the judgment of the Tribunal in the case of *Ahmednagar Forgings Ltd.*, [2017 (6) G.S.T.L. 54] and *Heidelberg, Cement India Ltd.*, [2017 (6) G.S.T.L. (473)] for the proposition that CENVAT credit can be availed for the services rendered at Hyderabad office.

4. Learned Departmental Representative on the other hand submits that, the premises at Mumbai are used only for R&D wing activity. It is his submission that R& D activity in itself the CENVAT credit on services rendered to such premises cannot be availed by the appellant. There is nothing on record to show that the products which were researched were commercially produced in Hyderabad. It is his further submission that the appellant should have taken centralized registration or ISD registration further at Mumbai premises in order to avail the CENVAT credit of the services rendered. As regards the works contract services, it is his submission that it is very clear from the orders in the lower authorities, it is correctly denied post April, 2011 CENVAT credit availed on service tax paid on construction services CENVAT credit excluded. He relied upon the order of Tribunal in the case of *Mangalore Refinery & Petrochemicals* [2013 (30) STR 475] for the proposition that the Mumbai office having not been registered as input service distributor, appellant factory at Hyderabad unit cannot be availed the CENVAT credit of the service tax paid on renting of immovable property service, security services, cleaning service, internet service and business auxiliary services and relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case of *Maruthi Suzuki India Ltd.*, [2016 (336) ELT 266] for the proposition that nothing used in R&D activity, CENVAT credit cannot be availed as R&D activity it is excluded itself.

5. On careful consideration of the submissions made by both sides and perused the records. On perusal of records, as correctly put forth by both sides, the issue is regarding eligibility to avail CENVAT credit of the service tax paid on renting of immovable property service, security services, cleaning service, internet service and business auxiliary service has also works contract service which was rendered to appellant's premises situated in Mumbai.

6. As regards the works contract service, I find that the appellant is not eligible to avail CENVAT credit of the service tax paid on works contract services. On perusal of works order issued, I find the works order has been issued to service provider for setting up of entire facility of R&D, sales division along with administration in order to start functioning at Mumbai. It would mean that the entire activity is for setting up of premises from where appellant was conducting activities as mentioned herein above. Post 01.04.2011 the definition of input services specifically excludes credit of tax paid on works contract services, if they are rendered from setting up factory. On this ground, the arguments put forth by the Learned Counsel, are devoid of merits, and needs to be rejected and I do so. The CENVAT credit availed on this amount is correctly denied by the lower authorities having done so.

7. As regards the service tax credit of other services availed, I find that these services are rendered by the service providers at the

Mumbai premises which was used by the appellant for the sales related activity, marketing and research of the few products. I find that the lower authorities are denying the CENVAT credit to the appellant on the ground that the products which were researched at Mumbai, nevertheless, were not in relation to manufacturing activity, were not commercially produced. In my view these findings are acceptance of fact that seems R & D activity was undertaken at Mumbai as there cannot be any dispute that it is in interest of the business, research and development is a primary requirement. I find that the lower authorities have stated in the orders that if the appellant should have obtained registration under input service distributor, which would indicate that services rendered at Mumbai, were in relation to the activity of manufacturing done at Hyderabad. In my view, the plea of the appellant they have centralized accounting at Hyderabad and entire payment to the service providers either in Hyderabad or Mumbai is done from Hyderabad, was not appreciated by the Lower Authorities in its correct perspective. If centralized accounting is done at Hyderabad, in my view getting an ISD registration in Mumbai may not be of any relevance, further there is nothing on record to show that the appellant had units in different places. In my view, the Judgment of the order of the Tribunal in the case of Ahmednagar Forgings Ltd., & Heidelberg, Cement India Ltd., which considered various decisions of the Tribunal, supports the appellant's case and it has to be held that the appellant is eligible to avail CENVAT credit of service tax for the Renting of Immovable

Property, Security Services, Cleaning, Internet, Works Contract Services. To that extent, the appeal filed by the appellant needs acceptance.

8. As regards the demand of CENVAT credit being time barred on the question of limitation, I find that the demand is raised on audit objection, wherein, Audit party, has specifically stated that CENVAT credit cannot be availed and this is first audit of the assessee. In my view, case on the limitation for the setting aside demand of CENVAT credit on the works contract services, is devoid of merits and is rejected.

9. As regards the penalty imposed on the appellant under various provisions, as regards confirmation of demand on works contract services appellant is correctly penalized under the provisions by the lower authorities for the amount of tax liability which has been upheld by the adjudication authority as ineligible.

10. In sum, the appeal is partly allowed and partly rejected as indicated herein above.

(Order dictated & pronounced in open court)

**M.V. RAVINDRAN
MEMBER (JUDICIAL)**

Lakshmi....