IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/76278/17

(Arising out of Order-in-Appeal No. 195/CE/RKL/2017 dated 31.03.2017 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

Commissioner of Central Excise & Service Tax, Rourkela

Appellant (s)/Appellant (s)

Vs.

M/s. Larsen & Toubro Ltd. Respondent (S)

Appearance:
Shri D. Haldar, A. C. (A. R.) for the Revenue
Shri Avra Majumdar, Advocate for the Appellant (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -26.04.18
Order No. FO/76520/2018

PER SHRI P.K.CHOUDHARY

The Respondent is engaged in the business of manufacture of machinery and machinery parts classifiable under Chapter 72, 73, 84 & 85 of the Central Excise Tariff Act, 1985. A Show Cause Notice dated 26/04/11 was issued for alleged wrong availment of Cenvat Credit on Service Tax during the period 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 (Upto December 2010).

2. The Adjudicating Authority disallowed Cenvat Credit amounting to Rs.47,89,026/- along with interest and also imposed penalty of equal amount and dropped the proposed demand of Rs.9,00,468/-.

3. On appeal, the Ld. Commissioner (Appeals) allowed the appeal by setting aside the Adjudication Order.

4. Revenue is in appeal before the Tribunal against the Order passed by the Commissioner (Appeals), who allowed the credit of Service Tax paid for services received by the respondent-assessee.

5. I find that the Respondent-Assessee has availed Cenvat Credit of Service Tax paid on input services. The quantum of Service Tax and the business exigencies for following services are detailed in the table below:-

	Nature of Service	**Service Tax with Education Cess + S Cess (Rs)**	**Remarks**
1	Banking and other Financial Service	1,425,953/-	The charges were incurred towards executing Bank guarantee, performance Bank guarantee, letter of credit etc., in relation to the management of cash flow to the factory operation. The service tax charged by the bankers have been treated as input services and availed cenvat credit as per statute.
2	Courier Service	94,714 /-	As the factory premises is situated in a remote place around 20 kms. away from the city of Rourkela. We are fully depend on the Courier services to receive documents like Project Drawings from clients / Head quarters at Chennai related to the manufacture of goods in the factory premises are being received through Courier services.
3	General Insurance	1,945,705/-	Insurance charges incurred towards premium paid on Transit insurance taken for dispatch of finished goods to customers on FOR basis and Inward goods on Ex-Works basis.The service tax charged by the insurance companies are taken into cenvat credit account and availed the credit.
4	Group Health Insurance Service	8,115 /-	This amount paid towards premium on Group Health Insurance policy taken for staff to cover the risk of health hazards. As the operation of factory involves handling of heavy machines and various manufacturing process, the responsibility lies on the company to maintain goods health of their staff. The service tax charged by the insurance company is related to the manufacturing of goods and well applied to the definition of Input Services.
5	Cleaning/House Keeping Service	216,193/-	Cleaning & Housekeeping services availed towards cleaning and maintenance of various work places like Machine Shop, Fabrication yard and Assembly Shop etc., in a clean environment and to comply to the provisions of Factories Act.The service tax charged by the contractors are considered as input services directly involved in the manufacture of goods and availed cenvat credit accordingly.

6	Gardening /Vegetable Lawn	679,689 /-	As per the statutory direction/provision of Odisha State Pollution Control Board, we have to maintain garden inside the factory premises. The charges paid for such maintenance of gardening is related to the manufacture of goods in the factory premises and the cenvat credit is taken as per statute.(Copy of the Direction is enclosed herewith & marked as Letter "A")
7	Maintenance and Repair service School & colony	170,777 /-	The subject Plant is situated in the Tribal district Sundergarh, which is far reach to the main city of Rourkela, Odisha. We have provided the basic needs of the Tribal such as Education facility, Health services etc., and availed cenvat credit.
8	Maintenance and repair service colony	247,880 /-	We have provided the housing facility for the workmen and staff who have been migrated from other parts of the country. To commute and to maintain proper attendance to the factory to perform their contractual obligations, the company had provided housing facility in a colony and the amount paid towards maintenance of such colony for proper living condition and cenvat credit availed on the service paid on such input services.
	TOTAL	**4,789,026**	

6. Ld. Advocate appearing on behalf of the Respondent-Company made the Bench go through the entire case records and both the orders of the Lower Authorities. Further, he explained the difference between the definition of "input" and "input service" and stated that in the case of input service related to business activity, it would be eligible for Cenvat Credit on any services which is in relation to their business activity.

7. The Ld. DR reiterates the order of the Adjudicating Authority.

8. Heard both sides and perused the appeal records.

9. The issue involved in this case is regarding the availment of Cenvat Credit of the Service Tax paid on various Services which were utilized for the appellant's business activities. It is the case of the Revenue that such credit is incorrectly availed by the assessee. The appellant's claim is that having included expenses for the cost of

production, they are entitled to avail Cenvat Credit. I observe that the Hon'ble Supreme Court, Hon'ble High Courts and the Tribunal in various decisions have specifically held that any expenditure incurred by an assessee, if it forms part of the price of the final product, on which Excise Duty is paid, Cenvat Credit must be allowed on the said Service Tax, if the manufacturer can demonstrate that the said expenses are in relation to the manufacture of final product. The Central Excise Duty paid by the appellant on their finished goods is on ad-velorom which has been arrived at after considering all the expenses that had gone into manufacturing of the finished goods. In so far as the present facts of the case is concerned, it is not in dispute that the credit of Service Tax has been availed on services such as Banking and other Financial Service, Courier Service, General Insurance Service, Group Health Insurance Service, etc. which were received and used by the assessee for the purpose of manufacture of the final product and these cost formed part of the excisable value on which Excise Duty was discharged.

It is relevant to note here that factories are generally set up at remote location which are several hundred kilometers away from big towns and cities. Given this fact, most companies are compelled to create an integrated township within the factory, either in the same campus of the factory or at some distance so that they are able to attract and retain qualified personnel as also workmen at such remote locations. Without Such townships, these companies would find it virtually impossible to conduct their business operations as they would not be able to arrange for the required personnel for undertaking the business operations. In fact, in many locations, where a factory is located, in extremely remote location, such townships also have in house schools, hospitals etc. and there can be no denying the fact that such townships are set up in relation to ultimate activity of manufacturer as without such townships in place, competent personnel will not be available for operation of the manufacturing activity. The appellant has also filed a certificate from the Chartered Accountant which is reproduced as under:-

<u>TO WHOMSOEVER IT MAY CONCERN</u>

This is to certify that M/s Larsen & Toubro Limited (hereinafter referred as "Company"), Kansbahal Works, Sundergarh under the Central Excise registration No. AAACL0140PXM003, engaged in the manufacturer of machineries and machinery parts falling under chapter heading 84 and 85 as well as service tax registration No. AAACL0140PST004.

The said Company have incurred expenditure for the following services under the heads of Banking and other financial service, Courier service, Group Health Insurance, Cleaning service of colony, Housekeeping, Gardening and maintenance service, Maintenance & repair service electrical and civil work etc., the details of which are annexed herewith & provided in "Schedule-1" for the period from 2006-07 to 2010-2011 for Rs.20,53,13,522.00.

That the said factory premises is situated in the Tribal Sundergarh District around twenty five kilometers away from Rourkela City in the state of Odisha.

We further certify that we have obtained all information and explanation, which to the best of our knowledge and belief were necessary for the purpose of carrying out verification of relevant records for issuing the certificate. The facts stated herein are based on the records maintained by the company and explanations given to us in the course of our verification.

For M/s Anil Sharma & Co.
Chartered Accountants

Date:- 20.03.2018
Place:- Rajgangpur

(CA. ANIL SHARMA)
Membership No. 066720
ICAI FRN NO. 326606E

STATEMENT SHOWING THE HEAD OF EXPENDITURE BOOKED IN PROFIT & LOSS A/C DURING THE FINACIAL YEAR

SCHEDULE 1 OF CERTIFICATE

YEAR	INSURANCE	REPAIRS TO PLANT & MACHINERY	CLEANING CHARGES (MCO ACTIVITY)	HOUSE KEEPING MCO ACTIVICY (OTHER REPAIRS MAINTENANCE)	INSURANCE	COURIER EXPENSES	BANK CHARGES	ESTATE MAINTENAN CE	CLEANING CHARGES	HOUSEKEEPING (OTHER RREPAIRS)	TOTAL
2006-07	2615927	20,869,172	701,839	110,366	2826616	365,214	1,959,100	2,112,242	2,198,379	1,627,272	35,386,127
2007-08	2053315	20,646,018	195,343	173,162	3245415	442,949	2,092,573	2,237,128	2,418,796	1,213,219	34,717,918
2008-09	920649	25,039,629	433,034	213,746	4091686	394,251	2,072,050	3,057,510	2,822,279	1,328,517	40,373,351
2009-10	982365	32,606,296	1,656,600	157,066	5208668	440,504	1,375,712	3,426,221	3,044,049	853,314	49,750,795
2010-11	1010696	27,359,980	1,979,078	105,218	4373923	775,641	1,046,453	5,763,432	1,920,132	750,778	45,085,331
TOTAL	7582952	126,521,095	4,965,894	759,558	19746308	2,418,559	8,545,888	16,596,533	12,403,635	5,773,100	205,313,522

10. I find from the records that the maintenance and repair service of various civil and electrical work, carpenter work has been availed at the school, colony and the club maintained by the appellant for its employees. However, it is my considered view, that Cenvat Credit of Service Tax Paid on service availed at the club premises cannot be allowed.

11. I have considered the rival submissions made before me. The period involved is prior to 01/04/2011, when the definition of input service during the relevant period had wide ambit as it included the

words "activities related to business". The definition which included these words has been discussed in detail by various High Courts.

12. In view of the above discussions, I hold that the respondent-assessee is eligible for availing credit of Service Tax paid on the Services availed for the purposes of its business activities except the services availed in respect of the club premises.

13. In view thereof, the appeal filed by the appellant Revenue is thus partly allowed.

(Operative part of the order was pronounced in the open court.)

(P.K. Choudhary)
Member (Judicial)

Pooja