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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.70701 of 2013

(Arising out of Order-in-Original No.CCE/BBSR-I/03/2013 dated 28.01.2013 passed by Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Visa Steel Limited
(At-Kalinga Nagar Industrial Complex, P.O.-Jakhapura, Dist.-Jajpur-755026, Odisha.)
...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I
.....Respondent
(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

Shri Satyanarayan Gupta & Ms. Pritha Sarkar, both C.A. for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO 77561/2023

DATE OF HEARING : 23 November 2023
DATE OF DECISION : 23 November 2023

Per : K. ANPAZHAKAN :

The present appeal has been filed by the Appellant M/s Visa Steel Limited against the impugned Order-in-Original dated 28.01.2013, passed by Commissioner of Central Excise & Service Tax, Bhubaneshwar –I.

2. Briefly stated facts of the case are that the Appellant has availed Cenvat credit on various input services during the period May 2008 to March 2011. Some of these services were used in the manufacturing plant and some services were used in the guest house and Employee Township. The department issued show cause Notice dated 24.07.2012,

wherein it was proposed to disallow Cenvat credit amounting to Rs 54,79,017/- on the ground that the said services were not 'input services' as defined under Section 2(l) of the Cenvat Credit Rules, 2004. The Notice was adjudicated by the Commissioner vide impugned order, wherein he disallowed the Cenvat credit amounting to Rs.54,79,017/- He also demanded interest and imposed penalty equal to the credit disallowed. Aggrieved against the impugned order, the Appellant has filed the present appeal.

3. The nature of services for which the credit was disallowed and the place where the services are utilized are furnished in a tabular form below:

Sl. No.	Nature of Service	Plant (Amount involved)	Guest House / Employee Township (Amount involved)	Total (Amount involved)
A	Catering services	3,46,523	68,479	4,40,140
B	Housekeeping services	5,00,770	4,27,281	9,21,363
C	Housekeeping & Catering services	7,41,853	9,77,978	17,19,831
D	Interior Decoration services	4,96,946	62,345	5,58,84
E	Garden Maintenance services	20,600	-	20,600
F	Construction services	-	14,12,040	14,12,040
G	Consultancy service for construction of Guest House and Township	-	3,14,463	3,14,463
H	Repair & Maintenance services	-	26,917	26,917
I	Supply of Manpower services	37,151	45,671	82,822
Total		**21,43,834**	**33,35,174**	**54,79,017**

4. Regarding the credit availed on services such as Catering Service, House Keeping services, Interior decoration services and Garden maintenance service, the Appellant submits that the said services were used in the manufacturing plant. Hence, Cenvat credit availed on these services amounting to Rs.21,43,834/- used in relation to business activities cannot be denied. In respect of the remaining Rs.33,35,174/-, the Appellant submits that the input services in these cases were used in the guest house and Employee Township. It is their submission

that these services were also used in relation to business activities and accordingly, they contended that the credit availed cannot be denied. They submitted various decisions of the Hon'ble High Courts and Tribunals in support of their contentions. Accordingly, they prayed for allowing the credit.

5. The Ld. D.R. reiterated the findings of the adjudicating authority in the impugned order.

6. Heard both sides and perused the appeal documents.

7. We observe that the issue to be decided in the present appeal is whether the Appellant is eligible for the Cenvat credit availed in respect of input services such as Catering Service, House Keeping services, Interior Decoration services and Garden Maintenance services used in the manufacturing plant and services such as Catering Service, House Keeping services, Interior decoration services and Garden maintenance service, Construction Service, Repair and maintenance service etc used in guest house and Employee Township. Before going into the merits of the appeal, we would like to discuss the definition of 'input services' as it existed during the relevant period.

8. The definition of Input Service in terms of rule 2(l) of CENVAT credit Rule, 2004,as applicable during the captioned period goes as given below –

> 2(l) ***"input service"*** 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, up to 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 up to the place of removal.

9. We observe that the definition of ***"input service"*** read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which are integrally connected with the business of the manufacturer. Thus, the definition of 'input service' has a wide ambit and extends to all ***services used in relation to the business / activities relating to business***.

10. In the instant case, we observe that the housekeeping services, catering services and interior decoration services are availed at the plant/factory and hence denial of the credit in respect of the said services is not justified for the reasons explained herein below:

(i) Housekeeping services: These services are very necessary and vital for keeping the factory in good condition. Hence the expenses incurred towards housekeeping services qualify as ***'input service'*** under CENVAT credit Rules, 2004. In this regard, the Appellant placed their reliance on the following judicial pronouncements:

(a) Balkrishna Industries Ltd. Versus Commissioner of C. Ex., Aurangabad [2010 (18) S.T.R. 600 (Tri. - Mumbai)], wherein the Tribunal held that –

6….

*(c) With regard to **plant housekeeping service**, the argument of ld. SDR is that the plant can run without housekeeping of the plant. In other terms without toilet and water facilities a plant can run. The argument of the SDR has no force, as providing the facilities of toilet and*

water are the basic requirement to run the factory and non-providing these facilities may affect the production, hence maintenance of house keeping service is essential and are related to the manufacturing activity.

8. From the above discussion, I am also of the view that no plant can run without proper maintenance of plant housekeeping services. With these observations, I allow Cenvat credit on ***garden maintenance and plant housekeeping services***

(b) Commissioner Of Central Excise, Delhi-III Versus Pricol Ltd. [2016 (41) S.T.R. 649 (Tri. - Del.)], wherein the Tribunal held that –

5…..said service has been used for ***keeping the factory premises neat and clean****, which is a statutory requirement of Section 11 of the Factories Act, 1948. Thus, said services has the nexus with the manufacture of final product, because without compliance with the provisions of the Factories Act, manufacturing activities are not possible…….Thus, the disputed services* ***should qualify as 'input service'*** *for the purpose of getting the Cenvat benefit. The case laws cited by the respondent squarely apply to the facts of the present case for taking of Cenvat credit on the disputed services*

(ii) Catering services: We observe that the factory of the Appellant is in the remote area and thus the Appellant had to supply food to the workers. Therefore, the service of catering as availed by Appellant is in relation to manufacturing activity, since without food it will not be possible for the employees to work in the factory. In this regard, the

Appellant placed their reliance on the following judicial pronouncements –

(a) Commissioner of C. Ex., Nagpur Versus Ultratech Cement Ltd. [2010 (20) S.T.R. 577 (Bom.)], wherein the Hon'ble High Court held that –

> *"…in the present case, the assessee carrying on the business of manufacturing cement by employing more than 250 workers is mandatorily required under the provisions of the Factories Act, 1948 to provide canteen facilities to the workers. Failure to do so entails penal consequences under the Factories Act, 1948. To comply with the above statutory provision, the assessee had engaged the services of a* ***outdoor caterer****. Thus, in the facts of the present case, use of the services of an outdoor caterer has nexus or integral connection with the business of manufacturing the final product"*

(b) M/s.Tata Steel Ltd. Vs. Commissioner of Central Excise & Service Tax, Jamshedur [ORDER NO.FO/A/75306-75307/2016-CESTAT-Kol], wherein the Tribunal held that –

> *3…..It is observed from the relied upon case laws that the issue is no more res integra and credit on* ***'Canteen Services'*** *and* ***'House Keeping/Cleaning Services'*** *has been held to be admissible. Respectfully following the ratio of the case laws relied upon by the Appellant it is opined that CENVAT Credit on* ***'Canteen Services' and 'House Keeping/Cleaning Services'*** *has been correctly availed by the Appellant. Accordingly, Appeals filed by the Appellant are allowed*

(iii) Interior decoration services: The appellant has incurred expense towards interior decoration of various office buildings & canteen within the factory premise which is essential for smooth carrying of day to day business activities. Thus, we hold that such expenses incurred by the company also qualify as 'input service' under CENVAT credit Rules, 2004.

(iv) Garden maintenance services: In the instant case the Appellant had availed services for maintenance of garden which is essential for the proper functioning and efficiency of a factory, and hence we hold that they are eligible for credit as input services. In this regard, the Appellant placed their reliance on the following judicial pronouncement -

- **Balkrishna Industries Ltd. Versus Commissioner of C. Ex., Aurangabad [2010 (18) S.T.R. 600 (Tri. - Mumbai)]**, wherein the Tribunal held that –

  6….
  *(b) With regard to the **garden maintenance service**, I find that this Tribunal has held in the case of I.S.M.T Ltd. (supra) that a garden creates a better atmosphere and environment which increases the working efficiency of the factory. In that event, credit is entitled to the appellant. Further the reliance placed by the ld. SDR in the case of Chemplast Sanmar Ltd. (supra), has not considered in the order passed by the Hon'ble Bombay High Court in the case of Coca Cola and in the case of decision of I.S.M.T Ltd. has discussed the decision of the Hon'ble High Court of Bombay in the case of Coco Cola in detail and following the decision this Tribunal has held in the case of I.S.M.T Ltd. that the appellants are entitled to garden maintenance service. Moreover, in this case the credit is denied only*

> *holding that the same is not covered under the definition of Rule 2(1) of the CENVAT CREDIT RULES, 2004. Hence, I do not find any force in the arguments of ld. SDR. Accordingly, I allow the Cenvat credit on garden maintenance service.*

(v) Manpower services: In the instant case the Appellant had availed services for manpower service which is essential for the cleaning, organizing canteen of workers, work related to dispensary within the factory to provide instant medical treatment to the worker when required etc. Thus, we hold that these activities certainly have nexus with the business of manufacture. In this regard, the Appellant placed their reliance on the following judicial pronouncement:

(a) Jaypee Sidhi Cement Plant Versus Commissioner of Central Excise, Bhopal [2014 (310) E.L.T. 808 (Tri. - Del.)], wherein the Tribunal held that –

> *5. Providing of first-aid facilities to the workers, whether in the factory or in mines is the requirement of the Factories Act, 1948 and also the Mines Act, 1952 and if a manufacturer wants to carry on manufacturing activities, he has to comply with the provisions of the Factories Act and the Mines Act. In view of this, the* ***availment of service for maintenance of the first-aid facilities for the workers*** *has to be treated as the service used in or in relation to the manufacture of final products. I find that the same view has been taken by the Hon'ble Gujarat High Court in the case of Ferromatik Milacron India Ltd. (supra).*

11. We observe that the decisions cited above are squarely applicable in this case. By following the decisions cited above, we hold that the *impugned order denying the Cenvat credit availed on the 'input services'* Catering Service, House Keeping services, Interior Decoration services and Garden Maintenance services used in the manufacturing plant, *is not sustainable.*

12. Regarding the Cenvat credit availed on the input services used in relation to the guest house and township situated within the factory premises, We observe that the Appellant incurred the expenses on account of construction of guest house and township for their employees within the premise of the plant. Due to location of the plant, they are under statutory obligation to provide a colony to the workers of the factory, to maintain the continuity of activity of manufacturing. Thus, having colony within the factory premise became indispensable. Similarly, to accommodate business delegates, consultants who used to visit time to time for verification and inspection of the plant, the guest house facility became necessary. We observe that the Appellant availed Cenvat credit of the service tax paid on various services acquired by them in relation to this guest house and employee township such as consultation on construction and construction of the residential colony provided for the employees and guest house, repairs and maintenance, interior decoration of guest house etc. Thus, we observe that the Cenvat availed by the Appellant were not related to any services acquired for its employees' personal use, instead those were availed by the Appellant for proper functioning of the factory. We find that the following decisions cited by the Appellant supports the view that the Appellant is entitled for the credit availed on these input services:

(i) The Commissioner of Customs & Central Excise, Hyderabad-III Commissionerate Hyderabad Vs M/S ITC Limited, Paper Boards & Specialty Papers Division Sarapaka, Khammam District [2012-TIOL-199-HC-AP-ST] wherein the Hon'ble High Court held that –

> *"9….that if accommodation was not provided by the respondent Company to its employees at this remote location, it would not be feasible for it to carry on its manufacturing activity. The finding of the Commissioner that providing a **colony to the employees** was not directly or indirectly connected with the manufacturing activity of the respondent Company was therefore not borne out on facts. The staff colony, provided by the respondent Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for **maintaining the staff colony, such as lawn mowing, garbage cleaning**, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., **necessarily had to be considered as input services' falling within the ambit of Rule 2(l) of the CENVAT Rules, 2004**………*

(ii) M/S Ultratech Cement Ltd Vs Commissioner of Central Excise, Jaipur II [2014-TIOL-656-CESTAT-DEL], wherein the Tribunal held that –

> *"……**construction of residential colony near the factory** as also of **cleaning services** obtained for the **residential colony and guest house** would be cenvatable input services or not. I find that the issue stand covered by the decision of Hon'ble High Court of Andhra Pradesh in the case of CCE vs. ITC reported as - 2012-TIOL-199-HC-AP-ST. The said decision stand also followed in the appellants own case vide Final Order No. 1680/2012-SM(Br) dated 21.12.2012.*

2. By following the said decision, I set aside the impugned order and allow the appeal with consequential relief to the appellant"

(iii) M/S. Dhampur Sugar Mills Ltd vs CCE, Meerut II [Final Order No.A/FO/55373/2013 (Tri – New Delhi)], wherein the Tribunal held that –

*"4….I find that the issue is no more res integra. The Hon'ble High Court of Andhra Pradesh in the case of CCE,Hyderabad vs. ITC Ltd. [2012-TIOL-199-HC-AP-ST] has held that staff colony meant for theemployee and maintenance of the same as an input services. By applying the same analogy to **guesthouse, which is located in the factory it has to be held as having nexus with the business activity** ofthe assessee. Accordingly, I allow the Cenvat credit."*

13. By relying on the decisions cited above, we hold that *the Appellant is eligible for the Cenvat credit availed on the input services* such as Catering Service, House Keeping services, Interior decoration services and Garden maintenance service, Construction Service, Repair and maintenance service etc used in guest house and Employee Township *situated within the factory premises. Accordingly, we hold that the impugned order denying such credit to the Appellant is not sustainable.*

14. The Appellant also submits that the demands confirmed in the impugned order are barred by limitation of time. They submit that the demand has been raised for the period from May 2008 to March 2011 vide SCN dated 27.07.2012, which is beyond the normal period of one year. In the instant case they have been regularly filing their monthly ER – 1 returns and paying their taxes, thus there was no suppression of facts on their part with an intent to evade payment of duty . In this regard, we agree with the submission of the Appellant. The department has not brought in any evidence to substantiate the allegation of suppression. Accordingly, we hold that the demands confirmed in the impugned order by invoking extended period of limitation is not sustainable.

15. In view of the above discussion, we hold that the Appellant is eligible for the Cenvat credit availed on the 'input services' which are disputed in this appeal. Accordingly, the demand confirmed in the impugned order is set aside. Since the demand itself is not sustainable, the question of charging interest and imposing penalty does not arise.

16. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Tushar