IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. E/86520/17

(Arising out of Order-in-Appeal No. PK/129 to 130/M-II/2017 dated 28.04.2017 passed by Commissioner of Central Excise (Appeals) Mumbai)

Larsen & Toubro Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Mumbai II

Appearance:

Shri Nitin Parab, AGM for appellant
Shri Jesu Rayan, Manager

Shri MK Mall, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr CJ Mathew, Member (Technical)

Date of Hearing: 06.10.2017
Date of Decision: 06.10.2017

FINAL ORDER NO. A/92320/2017

Per: CJ Mathew

The appellant, M/s Larsen & Toubro Ltd (Heavy Engineering Division) are in appeal against order-in-appeal no. PK/129 to 130/M-II/2017 dated 28th April 2017 of Commissioner of Central Excise (Appeals) Mumbai which has confirmed recovery of Rs.3,41,935/- for the period from 2011-12 to 2015-16.

2. The appellant had engaged the services of M/s Hilon Ind Tax Consultants for compliance with prescription in Finance Act, 1994 and Service Tax Rules, 1994. It is the contention of the appellant that the original authority has, in the impugned order, wrongly confirmed that these services were availed for discharge of tax liability which has no relation to manufacture and, hence, not eligible to credit.

3. Heard Shri Nitin Parab, Assistant General Manager & Shri Jesu Rayan, Manager representing M/s Larsen & Toubro Ltd and Learned Authorised Representative appearing for Revenue.

4. That the services rendered by the consultant engaged was liable to tax under Finance Act, 1994 is not in dispute. The finding of ineligibility to credit of the tax by the two lower authorities is based upon the presumption of statutory requirement of nexus of the input service with the output/output service. It is well-settled that the credit of tax incidence is a pool that may be utilized for discharge of duty/tax liability and correlation will cease to be relevant or even apparent, in any pool. Hence, eligibility for availment of CENVAT credit of input services is to determined in terms of the definition of input and input services in rule 2 (r) and (l) of CENVAT Credit Rules, 2004, the receipt of goods and services by the assessee as prescribed in rule 3 and the existence of valid documentation as

enumerated in rule 9 of CENVAT Credit Rules, 2004. It is the submission of the appellant that they are in the business of providing 'erection, commissioning and installation of services' and that they have utilized the service provider for ensuring compliance with all legal requirement, is the process of rendering service, the eligibility for availment of credit is exists and, therefore, the tax paid on the input service is entitled to be availed as credit. The possibility that the credit could be used to pay duty on manufacturing goods cannot circumscribe eligibility. The denial of credit is, therefore, not in conformity with law.

5. For the above reason, the appeal is allowed and the impugned order is set aside.

(Operative part of the order pronounced in Court)

(CJ Mathew)
Member (Technical)

nsk