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

APPEAL NO: E/85992/2013

[Arising out of Order-in-Appeal No: BR(372)/ThI/2012 dated 5th December 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Fine Organic Industries …***Appellant***

versus

Commissioner of Central Excise
Thane – I …***Respondent***

Appearance:

Shri Bhushan Jain, Chartered Accountant for appellant

Shri Sanjay Hasija, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**12/06/2017**
Date of decision:	**12/06/2017**

ORDER NO: A/ 92306 / 2017

Appeal of M/s Fine Organics Industries against order-in-appeal no. BR(372)/ThI/2012 dated 5th December 2012 of Commissioner of Central Excise (Appeals), Mumbai Zone – I challenges the recovery of CENVAT credit of ₹ 2,90,243 under rule 14 of CENVAT Credit Rules, 2004, along with interest thereon, and imposition of penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 read with section 11AC of Central Excise Act, 1944 confirmed by the original authority and upheld in the impugned order. The availment of credit of tax paid on certain input services during March 2009 was denied on the ground of absence of nexus with the manufacture and clearance of final product, *viz.*, bread improvers.

2. According to the lower authorities eleven services covered in the impugned order are not among those enumerated to qualify the expression 'activity relating to business' in the inclusive portion of the definition in rule 2(l) of CENVAT Credit Rules, 2004 whereas it is the contention of the appellant that these services are undoubtedly used in the business activity.

3. Heard Learned Chartered Accountant appearing on behalf of the appellant and Learned Authorized Representative.

4. It is seen that each of the services that were disallowed as eligible to be availed CENVAT credit had been considered by the Tribunal and various High Courts in various decisions. Learned Chartered Accountant has submitted that for 'courier services', *John Deere India Pvt. Ltd. v. Commissioner Central Excise, Pune-III [2016 (41) STR 990 (Tri- Mum)]* and *Commissioner v. Apar Industries Ltd. [2011(23) STR J194 (GUJ.)* would support them, for 'telephone service', it is *Keltech Energies Limited v. Commissioner Central*

Excise, Mangalore [2008(10) STR 280(Tri Bang.)], for air ticket booking service, *Dr. Reddy's Lab Ltd v. Commissioner Central Excise, Hyderabad [2010 (19) STR 71 (Tri-Bang)]* and *Commissioner Central Excise, Nagpur v. Indorama Synthetics (I) Ltd [2014 (35) STR 96 (Tri-Mum)]* is in their favour, for maintenance of xerox machine & air conditioners *Nirma Limited v. Commissioner Central Excise, Vadodara [2015 (39) STR 145 (Tri-Ahmd)]* and *Bry Asia Pvt Ltd v. Commissioner Central Excise, Delhi –III [2012 (26) STR 333 (Tri - Del)]* were cited, for housekeeping it is *Balkrishna Industries Ltd v. Commissioner Central Excise, Aurangabad [2010 (254) ELT 301(Tri-Mum)]*, and for parcels *Commissioner Central Excise, Nagpur v. Ultratech Cement Ltd. [2010 20 (STR) 577 (Bom)]* is in their favour.

5. It would appear that the summary disposal of the issue without ascertaining the applicability of the above cited decisions has caused detriment to the appellant. It is necessary that the law laid down in these decisions be complied with. To enable that to be done, the impugned order is set aside and the matter remanded back to the original authority for a decision on the eligibility of each of the services in the light of the decisions referred to.

6. Appeal is allowed by way of remand.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*