CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.ST/87797/2018

[Arising out of Order-in-Appeal No.NVK/87/RGD/2018, dt.28.03.2018, passed by the Commissioner, CGST & C.Ex., Raigad]

M/s Elara Securities (India) Pvt. Ltd **......Appellant**
Indiabulls Finance Centre, Tower 3, 21st Floor,
Senapati Bapat Marg, Elphinstone Road (West),
Mumbai 400 013

VERSUS

Assistant Commissioner (S.Tax), Div.III **......Respondent**
10th Floor, Lotus Info Centre, Near Parel Station,
Parel (West), Mumbai 400 012

Appearance:
Ms. Meetika Baghel, Advocate for the Appellant
Shri Dilip Shinde, AC (AR) for the Respondent

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO.A/85915/2019

Date of Hearing: 22.11.2018
Date of Decision: 16.05.2019

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.NVK/87/RGD/2018, dt.28.03.2018, passed by the Commissioner, CGST & C.Ex., Raigad.

2. Briefly stated the facts of the case are that the Appellants are engaged in providing taxable services under the category of "Stock Broker and Banking & Other Financial Services" during the relevant

period. It is alleged that they have wrongly availed CENVAT Credit amounting to Rs.9,89,340/- on various input services used in 'setting up' of their office premises since fall outside the scope of definition of 'input service'. Accordingly, it is proposed to recover the said credit with interest and penalty by issuance of show cause notice dt.28.10.2016. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. The learned Advocate Ms.Meetika Baghel for the Appellant has submitted that by an agreement with that of Indiabulls of Real Estate Co. Pvt. Ltd, dt.14.12.2012, they have taken office premises on lease and licence basis for a period of 16 months, effective from 14.04.2013. The Appellant, thereafter, carried out certain modifications and renovations of the said office premises as per their requirement. The renovation was broadly comprised of civil and interior works, installation of air-conditioners, electrical works, security systems, interior decoration service etc. The service tax paid by the service providers on these services was taken by them as CENVAT Credit. It is her contention that the Department proposed to deny the credit on the ground that the expression "setting up" has been deleted from the definition of input service w.e.f. 1.4.2011, accordingly, various services received by the Appellant cannot be called as 'input service'. She submits that civil work undertaken by them is renovation and modernisation of the existing premises taken on leave and licence basis and the installation of air conditioner, making furnitures, false ceilings etc. also are in the nature of renovation of the said office, hence, credit

of service tax paid on these services cannot be denied to them. In support, she referred to following judgments:-

(i) ION Exchange (I) Ltd Vs CCE & ST Surat-II
2018 (12) GSTL 302 (Tri-Ahmd)

(ii) Musaddilal Projects Ltd Vs CCE & ST, Hyderabad-I
2017 (4) GSTL 401 (Tri-Hyd)

(iii) CCE Delhi Vs Convergys India Services Pvt. Ltd
2017 (48) STR 173 (Tri-Chan.)

(iv) Carrier Airconditioning & Refrigeration Ltd Vs CCE Delhi-IV
2016 (41) STR 824 (Tri-Chan.)

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. I have carefully considered the submissions advanced by both sides. The limited issue involved in the present appeal for consideration is whether the service tax paid on services received by the Appellant and used in the new office taken on Leave and License basis , is eligible to CENVAT Credit. On going through the invoices enclosed with the appeal paper book and the relevant work order, I find that the Appellant, after taking possession of the office premises against leave and licence agreement with India Bulls Real Estate Co. Pvt. Ltd, carried out certain civil construction/repair work. Also, they have carried out renovation of the premises as advised by the architecture so as to make optimum use of the space and other necessaries like air conditioners, Fire fighting equipment etc. useful for the employees and as per their requirement. The only contention of the Revenue is that after 1.4.2011 since the expression 'setting up' has been deleted from the definition of input service as prescribed u/R 2(*l*) of CENVAT Credit Rules 2004, the

various services received cannot be called as input service. Some of the services undertaken by the Appellant though are in the nature of civil works, but considering with other works it is definitely relate to repair/renovation, modernization of the existing office premises and eligible to CENVAT Credit.

6. Analysing the definition before and after amendment, this Tribunal in ION Exchange (I) Ltd Vs CCE & ST, Surat-II (supra) in , more or less similar circumstances, observed as follows:-

> **"7.** It is the contention of the Revenue that after amendment to the definition of 'input service' all 'construction service' undertaken within the factory premises fall outside the scope of the said definition, accordingly, Service Tax paid on 'construction service' is not admissible to credit. The appellant, on the other hand, submits that on deletion of words 'setting up' from the scope of said definition, new construction undertaken, would no longer be eligible, however, the construction relating to 'modernization, renovation or repair' of the existing plant and machinery inside the factory premises is definitely continued to fall within the ambit of said definition. Consequently, the Service Tax paid on 'construction service' involving modernization, renovation and repair work within the factory is eligible to credit. Before scrutiny of the rival contentions, the relevant old and amended Rule 2(l) of the Cenvat Credit Rules, 2004 are reproduced as below :
>
> **Prior to 1-4-2011**
>
> (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 up to 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;
>
> **From 1-4-2011**
>
> (l) "input service" means any service, -
>
> (i) used by a provider of output service for providing an output service; or

(ii) used by a 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 modernisation, 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 up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

8. A plain reading of the said provisions makes it clear that service utilized in relation to modernization, renovation and repair of the factory are definitely fall within the meaning of 'input service' even though; construction of a building or civil structure or part thereof has been placed under exclusion clause of the said definition of 'input service'. After amendment to the definition of the 'input service', a clarification issued by the Board vide Circular No. 943/4/2011-CX, dated 29-4-2011 whereunder answering to the questions raised on the eligibility of credit of service tax paid on construction service as an 'input service' used in modernization, renovation or repair, it has been clarified that the said services being provided in the inclusive part of definition of 'input service' are definitely eligible to credit. Thus, harmonious reading of the inclusive part of the

> definition and the exclusion clause mentioned at clause (a) relating to construction service of the definition of 'input service', it is clear that the construction service relating to modernization, renovation and repair of the factory continued to be within the meaning of 'input service' and accordingly, the Service Tax paid on such service is eligible to credit. Undisputedly, the appellant carried out modernization/renovation work to meet USA, FDA guidelines for manufacture of their products therefore, the service tax paid on such construction service is eligible to credit. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law."

7. The other judgments cited by the learned Advocate indicate that the service received in relation to installation of air-conditioners, interior work etc. fall within the scope of input service, hence, the service tax on such services is eligible to CENVAT Credit.

8. In the result, the impugned order is set aside the appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on 16.05.2019)

(D.M. Misra)
Member (Judicial)

CBB