IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENGH : MUMBAI

Excise Appeal No. 85451 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/354/18-19 dated 03.10.2018 passed by Commissioner of CGST & Central Excise(Appeals), Nashik.)

M/s. Varroc Engineering Private Limited (Plant VII)

(L-4, midc Waluj, Aurangabad,
Aurangabad-431136, Maharashtra)

Appellant (s)

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad
(5, Town Centre, CIDCO, Aurangabad-431030)

Respondent (s)

APPERANCE:
NONE for the Appellant
Shri Anil Choudhary, DC (AR) for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85694 / 2020

Date of Hearing : 17 February 2020
Date of Decision : 06 August 2020

PER P. K. CHOUDHARY:

The appellant is engaged in the manufacture of automobile parts falling under chapters 73 and 84 of the Central Excise Tariff Act, 1985. Pursuant to an audit conducted by the Department, Show Cause Notice dated 22.09.2015 was issued to the Appellant alleging wrongful availment of Cenvat Credit on outdoor catering service for the period from February 2014 to March 2015.

2. The Appellant had contended that the said service had been availed for the employees in light of the provisions of the Factories Act, 1948. Therefore, the said service had a direct nexus to the manufacture of the final product. The Adjudicating Authority did not find force in the submissions made by the Appellant and passed Order-in-Original dated

31.03.2017 confirming a demand of Rs. 3,02,521/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11(A) of the Central Excise Act, 1944 along with interest. An equal amount of penalty was also imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The Appellant filed an appeal before the Commissioner (Appeals) against the said order, which was rejected vide Order-in-Appeal dated 18.09.2018.

Hence, the present appeal before this Tribunal.

3. Heard the learned Authorized Representative for the Revenue and perused the appeal records.

4. On behalf of the Appellant, it is submitted that the service was being availed by the Appellant-company as part of ensuring optimum working conditions for its employees. It is the Revenue's contention that 'Outdoor catering service' has been specifically excluded from the definition of 'input service' as per the amendment to the Cenvat Credit Rules, 2004 w.e.f. 01.04.2011 and therefore, the Cenvat credit availed by the Appellant ought to be held ineligible. He further relied upon the decision of the Larger Bench of this Tribunal in **Wipro Ltd. v. CCE, Bangalore-III** [2018 (363) ELT 111 (Tri.-LB)], wherein it was held that 'Outdoor catering service' is not eligible for Cenvat Credit post the amendment vide Notification No. 03/2011.

5. I find that the period involved in the present case is from February 2014 to March 2015 and therefore, the amended definition of input service (w.e.f. 01.04.2011) is applicable.

6. I find that the "Outdoor Catering service" being availed by the Appellant has a direct impact on the manufacturing process and the cost of the final product manufactured by the Appellant. In the event, the Appellant does not avail the said service, the employees in the Appellant-company would be compelled to step out of the factory premises for refreshments, which would lead to loss of manhours for the Appellant-company. This may *prima facie* seem menial, however, when considered at a larger scale, this translates into an additional cost for the Appellant. Therefore, by availing the said service, the Appellant company attempts to ensure proper working conditions for its employees and reduce loss of manhours.

7. Further, I find that the Hon'ble Rajasthan High Court in **CCE Udaipur v. Mangalam Cement Ltd.** [2018 (9) GSTL 17 (Raj.)] has, in Appeal No. 44/2015, considered the very same issue, as in the present case, for a period post the amendment of the definition of input service (w.e.f. 01.04.2011) and has held that 'Outdoor catering' services are required to be carried out for the process of manufacture and delivery. The appeal filed by the Revenue before the Hon'ble Supreme Court against the said judgment has been dismissed by the Hon'ble Supreme Court vide order dated 06th August 2018. I find that the aforesaid judgment of the Hon'ble Rajasthan High Court was not placed before the Larger Bench of this Tribunal for consideration in the case of Wipro Ltd. (supra).

8. Therefore, in light of the aforesaid judgment of the Hon'ble Rajasthan High Court, which has a binding precedence over the decision of the Larger Bench of this Tribunal, the appeal filed by the Appellant is allowed.

(Pronounced in the open Court on 06 August 2020.)

Sd/

(P. K. Choudhary)
Member (Judicial)

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