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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 85036 of 2018

(Arising out of Order-in-Appeal No. PK/47/Appeal Thane/TR/2017-18 dated 29/07/2019 passed by Commissioner (Appeals) Thane GST & C. Excise-Mumbai)

M/s Technocraft Industries India Ltd. .....**Appellant**
Drum Closure Division Plot No.C-5-C-2/C2/2 MIDC AREA MURBAD, THANE-I

VERSUS

Commissioner of Central Excise, Thane-I .....**Respondent**
Navbharat Chambers, Ranade Road, Dadar (W), Mumabi – 400 028.

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87198/2019

Date of Hearing: 21.11.2019
Date of Decision:21.11.2019

Per: S.K. MOHANTY

Denial of Cenvat benefit on various disputed services is the subject matter of present dispute. The authorities below have denied the Cenvat benefit on the ground that the said services are not confirming to the definition of 'Input Service', defined under Rule 2(l) of the Cenvat Credit Rules, 2004.

2. The Ld. Advocate appearing for the appellant submitted a Chart, showing the particulars of the disputed services, the reason for denial of the Cenvat benefit and the submissions of the appellant in support of availment of the Cenvat credit on the said services. By referring to the said chart, Ld. Advocate submitted that the disputed services are well covered within the definition of input service as contained in both the pre-amended as well as post amended definition under Rule 2(1) *ibid*. He has also relied upon various judicial pronouncements to support the stand of the appellant that the credit should be available to it.

3. On the other hand, the Ld. AR appearing for the Revenue submitted that the disputed services by nature of their use cannot be considered as input service and also categorized under the exclusion list provided in the definition and accordingly, denial of the Cenvat benefit by the authorities below is in conformity with the statutory provisions.

4. Heard both sides and perused the records.

5. The chart submitted by the Ld. Advocate for the appellant is relevant for resolution of the present dispute and accordingly, contents in the said chart are extracted herein below:

Sr. No.	**Particulars**	**Findings in OIA**	**Submission**
1.	Air Travel Services (Rs. 1,08,231/-) Prior – Rs. 31,677/- After – Rs. 76,554/-	Thin line of differentiation for the purpose i.e. whether for personal or for the business connected to manufacture.	(i) For booking of air tickets for various executives, officers and directors for attending various meetings and conferences related to procurement of order, operation and development purpose. (ii) Covered specifically under ***'Sales Promotion'***, credit is admissible under Rule 2(l) of CCR, 2004. (iii) Denial of credit merely based on assumption/ suspicion is not sustainable. (iv) Judgements: *(a) ITC Ltd. – 2017-TIOL-1894-CESTAT-BANG*

			(b) SKF India - 2017-TIOL-3313-CESTAT-BANG © *Jaypee Rewa Cement – 2017-TIOL-1719-CESTAT-DEL*
2.	Car Insurance Services (Rs. 5,281/-) After – Rs. 5,281/-	Thin line of differentiation for the purpose i.e. whether for personal or for the business connected to manufacture.	(i) Insured own Car's, which are registered in the name of M/s. Technocraft, which are used for travelling by various executives, officers and directors for attending various meetings and conferences related to procurement of order etc. (ii) Engage Insurance company to insure these Cars, as it is mandatorily required under 'Motor Vehicles Act'. (iii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(I) of CCR, 2004. (iv) Judgements: *(a) Jai Chemicals – 2015 (40) STR 345 (T)* *(b) HEG Ltd. – 2010 (20) STR 312 (T)*
3.	Construction Services (Rs. 82,920/-) After – 82,920/-	"Construction Services" are covered under exclusion clause of definition of input services.	(i) Availed for repairs and maintenance within the factory premises. (ii) covered under the expression ***"renovation, repairs, renovation or repairs of a factory"*** in the definition of input service under Rule 2(I), CCR. (iii) Judgements: (a) *Sundaram Fastners Ltd. – 2017 (51)STR 19 (T)* *(b) Forge India – 2017 (48) STR 246 (T)* © *Mirra & Mirra Industries – 2017 (48) STR 91 (T)* *(d) Maruti Suzuki – 2017 (47)STR 273 (T)*
4.	Courier Services (Rs. 7,01,093/-) Prior–Rs. 1,86,228/- After –Rs. 5,14,865/-	Nexus of service to the business of manufacture has not been established.	(i) For communication and correspondence with various customer, vendors, bankers, government agencies and between the offices for sending various business letters and documents at various locations. (ii) Also used for placing order, filing quotation for procurement as well as

			marketing, dispatch instructions, issuing cheques for procurement, sending stock transfer documents to depots, receiving dispatch instructions from marketing/depots/Head office etc. (iii) Covered under the expression ***"in or <u>in relation</u> to manufacture"*** in the definition of input service under Rule 2(l), CCR. (iv) Judgements: *(a) Apar Industries - 2010 (20) S.T.R. 624 (Tri. - Ahmd.)* *upheld by Gujarat High Court - 2011 (23) S.T.R. J194 (Guj.)* *(b) Indo Shell Mould Ltd. - 2016 (43) STR 307 (T)* *© Radical Instrument – 2016 (46) STR 631 (T)* *(d) HEG Ltd. - 2010 (18) S.T.R. 446 (Tri. - Del.)*
5.	Courier for Sample Services (Rs. 1,382/-) After – Rs. 1,382/-	Nexus of service to the business of manufacture has not been established.	(i) Delivery of samples of their products like drum closures (small) for approval to their customers. (ii) Covered under the expression ***"in or <u>in relation</u> to manufacture"*** in the definition of input service under Rule 2(l), CCR. (iii) Judgements: *(a) Piramal Glass – 2017 (49)STR 167 (T)* *(b) HEG Ltd. - 2010 (18) S.T.R. 446 (Tri. - Del.)*
6.	Dismantling of Old Crane & Power Press Services (Rs. 19,663/-) Prior – Rs. 19,663/-	Not able to establish nexus, with their manufacturing ctivity, as held by Hon'ble Bombay High Court in the case of Manikgarh Cement-2010 (20) STR 456 (Bom).	(i) old/obsolete cranes and power press, replaced by in form of renovation by installing new cranes and power press. (ii) Covered under the expression ***"<u>renovation</u>, repairs renovation or repairs of a factory"*** in the definition of input service under Rule 2(l), CCR. (iii) Judgements: *(a) Carrier Airconditioning & Refrigeration – 2016 (41) STR 824 (T)*

			(b) Paradise Plastics Enterprises Ltd. – 2015 (39) STR 889 (T) *© Bajaj Hindustan – 2014 (33) STR 305 (T)* (iv) In *Manikgarh's own case*, after distinguishing the earlier high court judgement, appeal has been allowed – 2017-TIOL-3832-CESTAT-MUM (v) *Manikgarh (relied on Maruti Suzuki (SC) overruled by Ramala Sahakari Chini Mills - 2016-TIOL-20-SC-CX-LB*
7.	Estate Consultancy Services (Rs. 10,300/-) Prior – Rs. 10,300/-	Not able to establish nexus, with their manufacturing ctivity, as held by Hon'ble Bombay High Court in the case of Manikgarh Cement-2010 (20) STR 456 (Bom).	(i) Hired offices at different locations on rent. Various internal departments like secretarial, finance, accounting, commercial, human resource, administration etc., are being handled from the office. (ii) Covered under the expression ***"in or on relation to"*** in the definition of input service under Rule 2(l), CCR, 2004. (iii) Judgements: *(a) Delta Engineering Systems Ltd. – 2013 (31) STR 684 (T)* *(b) WNS Global – 2016 (44) STR 454 (T)* *© Adani Port & Special Economic Zone – 2016 (42) STR 1010 (T)*
8.	Fixing of Roofing Cladding Sheet Services (Rs. 56,800/-) Prior – Rs. 56,800/-	Covered under exclusion list	(i) Cladding sheets became old/obsolete, and they are required to carry renovation by fixing new cladding sheets. (ii) Covered under the expression ***"renovation, repairs renovation or repairs of a factory"*** in the definition of input service under Rule 2(l), CCR. (iii) Judgements: *(a) Carrier Air-conditioning & Refrigeration – 2016 (41) STR 824 (T)* *(b) Paradise Plastics Enterprises Ltd. – 2015 (39) STR 889 (T)* *© Bajaj Hindustan – 2014*

			(33) STR 305 (T)
9.	Flooring of Factory Services (Rs. 2,72,671/-) Prior–Rs. 2,72,671/-	Covered under exclusion list	(i) Heavy inputs and final products handled, hence have installed special flooring, within the factory. (ii) Flooring became old/obsolete, and they are required to carry renovation by fixing new flooring. (iii) covered under the expression ***"<u>renovation</u>, repairs renovation or repairs of a factory"*** in the definition of input service under Rule 2(I), CCR. (iv) Judgements: *(a) Carrier Air-conditioning & Refrigeration – 2016 (41) STR 824 (T)* *(b) Paradise Plastics Enterprises Ltd. – 2015 (39) STR 889 (T)* *© Bajaj Hindustan – 2014 (33) STR 305 (T)*
10.	Hyundi Car Insurance Services (Rs. 1,290/-) Prior – Rs. 1,290/-	Thin line of differentiation for the purpose i.e. whether for personal or for the business connected to manufacture.	(i) Insured own Car's, which are registered in the name of M/s. Technocraft, which are used for travelling by various executives, officers and directors for attending various meetings and conferences related to procurement of order etc. (ii) Engage Insurance company to insure these Cars, as it is mandatorily required under 'Motor Vehicles Act'. (iii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(I) of CCR, 2004. (iv) Judgements: *(a) Jai Chemicals – 2015 (40) STR 345 (T)* *(b) HEG Ltd. – 2010 (20) STR 312(T)*
11.	Insurance of Vehicle Services (Rs. 4,931/-) Prior – Rs. 4,931/-	Thin line of differentiation for the purpose i.e. whether for personal or for the business connected to manufacture.	(i) Insured own Car's, which are registered in the name of M/s. Technocraft, which are used for travelling by various executives, officers and directors for attending various meetings and conferences related to procurement of order etc.

			(ii) Engage Insurance company to insure these Cars, as it is mandatorily required under 'Motor Vehicles Act'. (iii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(l) of CCR, 2004. (iv) Judgements: *(a) Jai Chemicals – 2015 (40) STR 345 (T); (b) HEG Ltd. – 2010 (20) STR 312 (T)*
12.	Internet Telephone Services (Rs. 1,88,701/-) Prior – Rs. 29,871/- After– Rs. 1,58,830/-	Exclusive use for business needs to be established.	(i) Broadband connection for communicating with various customer, vendors, bankers, government agencies through e-mails and communication between registered office, manufacturing factory and office of the factory for efficient functioning. (ii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(l) of CCR, 2004. (iii) Dept. has not brought any evidence to prove that use for personal use. (iv) Judgements: *(a) Arm Embeded Technologies – 2016 (45) STR 133 (T)* *(b) Xilinx India Tech. Services – 2016 (44) STR 635 (T)* *(c) Adani Ports & Special Economic Zone Ltd. – 2016 (42) STR 1010 (T)*
13.	Maintenance& Repair Services (Rs. 9,480/-) After – 9,480/-	Not established the nexus and use of the same for the business of manufacture.	(i) Contracts with various service provider agencies for providing scheduled maintenance (i.e. yearly or monthly maintains as the case may be) as well as breakdown maintenance (maintenance/repair on breakdown of any machine) services to be carried out on various plant & machinery equipment used for manufacturing their final products. (ii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(l) of CCR, 2004.

			(iii) Judgements: *(a) Cadila Healthcare – 2013 (30) STR 3 (Guj)* *(b) Adani Ports & Special Economic Zone Ltd. – 2016 (42) STR 1010 (T)* *(c) Lupin Ltd. – 2012 (285) ELT 221 (T)*
14.	Management Consultancy Services (Rs. 2,34,072/-) Prior – Rs. 11,052/- After– Rs. 2,23,020/-	Not established the nexus and use of the same for the business of manufacture.	(i)Management consultancy service from various service providers in the field of business management and project management for effective and efficient management of port operations and developments. (ii) scope of services included within business management the services of consultancy services to define the desired process model for capital projects, review existing processes, establish gaps in coverage and content, design to be business processes, define functional requirements for IT enablement of designed business processes, program-manage implementation of designed business processes and provide subject matter expertise in program managing, IT implementation for capital project management. (iii) Covered under ***'in or in relation'***, credit is admissible under Rule 2(l) of CCR, 2004. (iv) Judgements: *(a) Cadila Healthcare – 2013 (30) STR 3 (Guj)* *(b) Sai Life Sciences – 2017 (51) STR 55 (T)* *(c) Bioplus Life Sciences – 2017 (49) STR 505 (T)*
15.	Share Transfer Services (Rs. 55,461/-) Prior – Rs. 43,943/- After – Rs. 11,518/-	Not established the nexus and use of the same for the business of manufacture.	(i) Listed company on National Stock Exchange (NSE) & Bombay Stock Exchange (BSE), needs to comply with various regulatory agencies like SEBI, ROC & Stock Exchange rules &

			regulations as well as Companies Act and for compliances of all such acts, rules &regulations and Share Transfer Registry maintains shares transfer etc. (ii) ***"Share Registry"*** specifically included in third part of the definition of Input Service defined under Rule 2(1) of CENVAT Credit Rules 2004. (iii) Judgements: *(a) Adani Ports & Special Economic Zone Ltd. – 2016 (42) STR 1010 (T)*
16.	Stock Exchange Services (Rs. 1,32,863/-) Prior – Rs. 15,530/- After – Rs.1,17,333/-	Not established the nexus and use of the same for the business of manufacture.	(i) Listed company on National Stock Exchange (NSE) & Bombay Stock Exchange (BSE), need to comply with SEBI, ROC & Stock exchange regulations as well as Companies Act, whom M/s. Technocraft pay annual listing fees. (ii) ***"Share Registry"*** specifically included in third part of the definition of Input Service defined under Rule 2(1) of CENVAT Credit Rules 2004. (iii) Judgements: *(a) Adani Ports & Special Economic Zone Ltd. – 2016 (42) STR 1010 (T)*
17.	Telephone Services (Rs. 3,12,449/-) After Rs. 3,12,449/-	Not established the nexus and use of the same for the business of manufacture.	(i) Telephone lines have been installed at M/s. Technocraft factory as well as office of the factory for communication. (ii) Covered under ***'in or in relation to'*** manufacture, credit is admissible under Rule 2(l) of CCR, 2004. (iii) Judgements: *(a) Ultratech Cement – 2010-TIOL-686—HC-MUM-ST* *(b) Facor Alloys – 2017 (48) STR 491 (T)* *(c) India Cement – 2016 (44) STR 124 (T)*
18.	Testing & Analysis Services	Not covered under the	(i) Quality purposes are engaging the services of

	(Rs. 17,062/-) After – Rs. 17,062/-	inclusive definition of "input services"	testing & analysis agencies. (ii) Covered under ***'in or in relation to'*** manufacture, credit is admissible under Rule 2(l) of CCR, 2004. (iii) Judgements: *(a) Cadila Healthcare – 2013 (30) STR 3 (Guj)*
19.	Xerox & Copier Services (Rs. 25,016/-) Prior – Rs. 12,709/- After – Rs. 12,307/-		(i) For taking photocopy of production documents, purchase documents, indents, drawings, sales orders etc.. (ii) Installed in the factory is also used for taking photocopies of drawings and sketches which is provided to the manufacturing staff. (iii) Covered under ***'in or in relation to'*** manufacture, credit is admissible under Rule 2(l) of CCR, 2004. (iv) Judgements: *(a) Cadila Healthcare – 2013 (30) STR 3 (Guj)*
20.	Services provided by bank (Rs.11,449/-) Prior – Rs. 11,449/-	Details of Service tax paid, can be verified by the jurisdictional Central Excise officers, is not acceptable.	(i) Paid for various bank charges and finance charges related to day to day operations like opening of Letter of Credit (LC), buyers credit for bill acceptance, Letter of undertaking charges (for import of material), swift charges for fund transfer, LC commission and ECB (external commercial borrowings) related bank charges like upfront fees, commitment fees, agency fees, arrangement fees, process agent fees & legal fees for such payment. (ii) Undisputed that the said services were provided by Bank of India and were utilized for processing of letter of credit etc. (iii)Procedural irregularities cannot be made the basis for denying the Cenvat credit. (iv) Judgements: *a) Imagination Technologies . - 2011 (23)*

			S.T.R. 661 (T) *b) Meghmani Organics Ltd. - 2016 (42) S.T.R. 81 (T.)*
21.	Excess service tax credit availed on works contract service (Rs. 1,19,398/-) Prior–Rs. 1,19,398/-	Credit on materials supplied by the provider has been taken by M/s. Technocraft and hence, the service would not be covered under the aforesaid head of works contract.	(i) Service contract for goods and material, and accordingly, paid service tax accordingly to paid service tax under the head works contract service. (ii) Service are being provided by the service provider, tax has been paid to the ex-chequer. (iii) Officer having jurisdiction over provider of service and not by officer-in-charge of input/input services recipient would have jurisdiction for change in classification/ assessment: *a) Sarvesh Refractories (P) Ltd. – 2007 (218) ELT 488 (SC)* *b) MDS Switchgear Ltd. – 2008 (229) ELT 485 (SC)* *c) Purity Flexpack Ltd. – 2008 (9) STR 125 (Guj)*
22.	Ocean Freight	Services availed beyond the port of export.	Final products are on FOB Basis, place of removal is shifted to port of export. – Jain Irrigation – 2016 (41) STR 837 (Tri).

6. The period of dispute involved in the present case is from April 2009 to March 2015. For ascertaining the eligibility for cenvat credit in respect of the disputed services, the definition of 'input service', provided under Rule 2(l) *ibid* is relevant for consideration. The case of the appellant falls under both pre as well as post amended definition of input service. Under the pre-amended definition of input service (effective up to 31.03.2011), the scope and ambit of input service was very broad and comprehensive inasmuch as the phrase "activities relating to business" was specifically finding place in the inclusive part of such definition. The effect of such expression is that any services availed by a service provider for accomplishing the purpose of its business, should be considered as input service. The scope of input service was also widespread under the amended definition of input service (w.e.f. 01.04.2011) inasmuch as the expression "any service used by a provider of output service for providing an output service" was incorporated in such definition clause. Further, the inclusive part of definition has also widened the scope and ambit, meaning thereby that all most all the services used by a service provider were recognized as input service for the purpose of availment of Cenvat benefit. However, certain excluded category of services were provided in the definition clause, which would not be considered as input service in the case of a service provider. Thus, for ascertaining eligibility of cenvat benefit on the disputed services, I am of the view that proper examination of the contract, documents, invoices etc. are required. Since, the disputed case to case issues cannot be effectively examined at this stage, I am of the view that the matter should be remanded to the original authority for a proper fact finding, whether the disputed goods should be considered as input service for the purpose of availment of the Cenvat benefit.

7. Therefore, the impugned order, to the extent it denied the Cenvat benefit to the appellant is set aside and the matter is remanded to the original authority for proper finding on the issues, whether the disputed services should be considered as input service both under the un-amended as well as amended

definition of input service. For the said purpose, the original authority should examine the submissions made by the appellant including the judicial pronouncements delivered by the judicial forums. Further, the submissions made by the appellant as extracted hereinabove in the tabular form should also be considered for a proper finding, whether the benefit of Cenvat credit should be available to the appellant or not. Needless to say, that the opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

8. In the result, the appeal is allowed by way of remand to the original authority.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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