CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1435 OF 2011

[Arising out of Order-in-Original Appeal No: 27/BR-27/Th-I/2011 dated 24th June 2011 passed by the Commissioner of Central Excise, Thane – I.]

JSW Steel Limited
Village: Vasind, Tal: Shahapur, Dist: Thane – 421 604 …***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor, Navprabhat Chambers, Ranade Road
Dadar West, Mumbai – 400028 ***…Respondent***

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant

Shri NN Prabhudesai, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87551 / 2019

DATE OF HEARING: 11/04/2019
DATE OF DECISION: 11/04/2019

PER: C J MATHEW

This appeal of M/s JSW Steel Limited, against order-in-original no. 27/BR-27/Th-I/2011 dated 24th June 2011 of Commissioner of

Central Excise, Thane-I which has confirmed recovery of CENVAT credit of ₹58,55,434 that was alleged to have been wrongly availed between April 2006 and August 2010, along with appropriate interest under section 11AB of Central Excise Act, 1944, besides imposing penalty of ₹ 58,55,434 under section 11AC of Central Excise Act, 1944, arises from claim of eligibility to credit as the several services provided, and billed, by M/s Jindal Technologies and Management Services Ltd that were held to be unrelated to manufacture, and clearance, of the final products to the place of removal; it is conformity with qualification as 'input service', defined in section 2(l) of CENVAT Credit Rules, 2004, that is in dispute.

2. Learned Counsel submitted that the electricians, helpers, fitters and operators, supplied by the provider of service, were required for running of their plants, that the guards were deployed for security of the plant, that nurses and compounder were essential for emergency station of the factory, that cooks were required for the canteen facility, that maintenance of gardens was essential for clean and healthy environment around the factory and that yoga guru and poojari functioned at the community centre attached to the factory. Reliance is placed by him on the decision of the Hon'ble High Court of Bombay in *Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd [2010 (20) STR 577 (Bom)]* and on the decision of the Hon'ble Supreme Court in *Ramala Sahakari Chini Mills Ltd v.*

Commissioner of Central Excise, Meerut-I [2016 (334) ELT 3 (SC)].

3. We have heard Learned Authorised Representative.

4. It is seen that in *re Ramala Sarkaria Chini Mills Ltd* it has been held that the expression ‘include’

> *‘in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.’*

while considering the scope of ‘input’ in CENVAT Credit Rules, 2002.

5. In *re Ultratech Cement Ltd*, it has been held that

> *‘27. The definition of "input service" as per Rule 2(l) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services. The first category, covers services which are directly or indirectly used in or in relation to the manufacture of final products. The second category, covers the services which are used for clearance of the final products up to the place of removal. The third category, includes services namely;*
>
> *a) Services used in relation to setting up, modernization, renovation or repairs of a factory,*
>
> *b) Services used in an office relating to such factory,*
>
> *c) Services like advertisement or sales promotion, market research, storage upto the place of removal,*

procurement of inputs,

d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition.

28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing .... etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture *of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.*

29. The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2(l) of the 2004 Rules.

30. The Apex Court in the case of Maruti Suzuki Ltd. (supra) has considered the expression `used in or in relation to the manufacture of final product' in the definition of "input" under Rule 2(k) of 2004 Rules and held as follows :-

> *"14. .... Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.*
>
> *16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the*

use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture' have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety."

31. In our opinion, the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra) in the context of the definition of 'input' in Rule 2(k) of 2004 Rules would equally apply while interpreting the expression "activities relating to business" in Rule 2(l) of 2004 Rules. No doubt that the inclusive part of the definition of `input' is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of input *service extends to services used prior to/during the course of/after the manufacture of the final products.*

The fact that the definition of `input service' is wider than the definition of `input' would make no difference in applying the ratio laid down in the case of Maruti Suzuki Ltd. (supra) while interpreting the scope of `input service'. Accordingly, in the light of the judgment of the Apex Court in the case of Maruti Suzuki Ltd.(supra), we hold that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(l) of 2004 Rules.

and, taking into consideration the explanation, as offered by Learned Counsel for each of the services provided by the supplier, we do not find any one of those not to be connected with production activity; on the contrary, the lack of these facilities would be detrimental to optimal functioning of the production facilities.

6. For the above reason, we find that the several services offered by the provider are not inconsistent with the definition of ‘input service’ in CENVAT Credit Rules, 2004. Accordingly, the impugned order a set aside and appeal allowed.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*