CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 87697 of 2018

[Arising out of Order-in-Appeal No.PK/172/APPEAL THANE/BW/2017-18 dated 22.12.2017 passed by Commissioner (Appeals), Thane GST & Central Excise, Mumbai]

Mirc Electronics Ltd. .....**Appellant**
Onida House, GI MIDC, Mahakali Caves Road, Andheri East,
Mumbai - 400 093.

VERSUS

Commissioner of CGST, Thane .....**Respondent**
Ranade Road, Navbharat Chambers,
Dadar (West),
Mumbai – 400 028.

Appearance:

Shri Vivek Halwai, Advocate for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86455 /2021

Date of Hearing: 19.07.2021
Date of Decision: 19.07.2021

PER : S.K. MOHANTY

Heard both sides and perused the records.

2. Briefly stated, the facts of the case are that the appellant herein is engaged *inter alia*, in the manufacture of Colour Television Sets, Washing Machines etc., falling under Chapter heading Nos. 85.28, 84.50 and 84.15 of the Schedule to the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit of Central Excise duty

paid on the inputs and service tax on the input services. During the disputed period, the factory of the appellant was audited by the department under E.A. 2000. During the course of audit, it was observed that the appellant had availed Cenvat Credit of Service Tax paid on the input services namely Rent-a-Cab, Insurance, Membership Fees, Travel Expenses (Foreign). Such Cenvat Credit was denied by the department on the ground that the disputed services are not confirming to the definition of 'input service' provided under Rule 2(l) of the Cenvat Credit Rules, 2004. The show cause notice issued by the department was adjudicated vide order dated 28.02.2017, wherein the original authority had confirmed the cenvat demand of Rs.9,80,675/- along with interest and also imposed equal amount of penalty. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 22.12.2017 has upheld the adjudged demands confirmed on the appellant. Hence, the appellant has preferred this appeal before the Tribunal.

3. Both sides agree that the period of dispute involved in this case is prior to April 2011. Considering the period of dispute, the case of the appellant falls under the definition of "input service", as defined under Rule 2(l) of the Cenvat Credit Rules, 2004 (effective up to 31.03.2011). The un-amended definition of 'input service' among other taxable services, has included the phrase "activities relating to business", for consideration as 'input service', for the purpose of availment of Cenvat benefit on the service tax component paid by the assessee. The said phrase finding place in the inclusive part of definition is very broad and takes within its ambit and purview the services used or utilised by the assessee for accomplishing its business purpose/activities. I find that the learned Commissioner (Appeals) at paragraph 8 in the impugned order has considered the submissions of the appellant that the disputed services were used or availed by it for meeting the requirement of the business. Further, the learned counsel appearing for the appellant also contended that the cost of disputed services along with the service tax element thereon were considered as business expenditure in the books of

accounts maintained by the appellant. Thus, considering the facts of the case, I am of the firm view that the disputed services in this case should merit consideration as 'input service' for the purpose of entitling an assessee to avail the Cenvat benefit.

4. However, on examination of the case records, I find that the appellant did not submit the documentary evidences either before the original or first appellate authority to demonstrate that it is entitled to avail the Cenvat credit on some of the disputed services. In this context, the learned AR appearing for Revenue also stated that the appellant did not submit the invoices or other documents before the authorities below to show that the disputed services namely, Rent-a-Cab and Travel expenses (Foreign) were actually used for carrying out the business purpose. The learned Counsel appearing for the appellant also fairly concedes the facts regarding non-submission of proper documents for verification by the lower authorities. Since, the onus lies with the appellant for proper substantiation of the fact regarding availment of Cenvat credit on the disputed services viz., Rent-a-Cab and Travel expenses (Foreign) has not been fulfilled, I am of the considered opinion that denial of Cenvat benefit on such services in the impugned order cannot be faulted with and accordingly, sustain for judicial scrutiny.

5. I find that the learned original authority had invoked the provisions of Section 11AC of the erstwhile Central Excise Act, 1944 read with the erstwhile Rule 15 of the Cenvat Credit Rules, 2004 for imposition of equal amount of penalty on the appellant. In this case, it is an undisputed fact on record that the appellant had maintained the statutory records, reflecting therein the particulars of availment of Cenvat credit on the entire disputed services and that the above irregularities were observed by the audit wing of department during the course of scrutiny of the records. Under such circumstances, it cannot be said that there is element of suppression in defrauding the Government revenue by the appellant. Thus, invocation of the penal

provisions for imposition of penalty on the appellant, without proper corroboration of facts, will not meet the ends of justice.

6. In view of above discussions, the appeal is partly allowed and the impugned order is set aside to the extent it has upheld confirmation of demand of Cenvat credit along with interest on the services viz., Insurance, Membership fees and Travel Foreign Ticket. With regard to the other services viz., Rent-a-Cab and Travel Expenses (Foreign), the impugned order sustains and the appellant is liable to pay the adjudged Cenvat demand along with interest. Insofar as confirmation of imposition of penalty is concerned, the impugned order is set aside and the appeal to such extent is allowed in favour of the appellant.

7. In the result, the appeal is allowed partly in favour of the appellant.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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