CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST REGIONAL BENCH
MUMBAI

Appeal No. E/1856 & 1893/2012

(Arising out of Order-in-Appeal No. BR (151-152) TH I/2012, dt. 07.09.2012, passed by CCE Thane-I, Mumbai)

M/S VE Commercial Vehicles Ltd **Appellant**
S.V. Road, Chitalsar Manpada,
Thane 400 607 (Maharashtra)

VERSUS

Commissioner Of C.Ex., Thane-I **Respondent**
4th Floor, Navprabhat Chambers, Ranade Road, Dadar (West),
Mumbai 400 028

Appearance:

Shri Rajesh Ostwald, Advocate for the Appellant
Shri P K Acharya, Supdtt. (AR) for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85563-85564/2023

Date of Hearing:02.03.2023
Date of Decision:02.03.2023

PER: SANJIV SRIVASTAVA

This appeal is filed against Order-in-Appeal No. BR (151-152) TH I/2012, dt. 07.09.2012, passed by the Commissioner Central Excise (Appeal), Mumbai –I. By the impugned order appeals filed by the appellant against order in original denying CENVAT credit on various input services claimed by them has been denied and ordered to be recovered along with interest, penalty has been imposed under section 11AC.

2. Appellants are engaged in the manufacture of Motor Vehicle Parts and Gear Boxes falling under Chapter 87 and 84 of Central Excise Tariff Act, 1985, During the period September 2009 to August 2010, they had availed CENVAT Credit of Rs.11,06,154/- + Rs 9,36,227/- on various input services viz. Export Handling Charges, Bank Charges, Canteen Service, Courier Services, Security Services, Telephone Services, Brokerage charges, Garden Maintenance Charges, Insurance Services, Car Hire Charges, Travel Services, Fire Services, Pest Control Services, Crane Hire Charges, Canteen Services, Erection & Commissioning Charges, Freight Charges, Mobile Phone etc. Alleging that the said services do not satisfy the definition of 'input service' as laid down

under Rule 2 (l) of CENVAT Credit Rules, 2004, two show cause notices were issued to them for recovery of the same on 27.08.2010 & 18.01.2011 with interest and penalty. On adjudication, (OIO No 35/PP-08/TH-I/2011 dtd 30.11.2011/ 13.12.2011 & OIO No 58/MM-07/TH-I/2012 dtd 22.02.2012/ 23.02.2012) the demand was confirmed with interest and penalty. Appeal filed by the appellant against these orders has been dismissed by the Commissioner (Appeal) vide the impugned order. Hence these appeal

3.1 We have heard Shri Rajesh Ostwald Advocate for the appellant and Shri P K Acharya, Superintendent, Authorized Representative for the revenue

3.2 Arguing for the appellant learned counsel submits that in view of the settled principle of law, the credit is admissible. The disputed services in the present case have been received prior to 01.04.2011 and would be covered by phrase "activities relating to business" used in inclusive part of the definition of input services. [Coca Cola India Pvt Ltd [2009 (15) STR 657 (BOM)] & UltraTech Cement Ltd. [2010 (20) STR 577 (BOM)]. He relies on the decision in their own case [Final Order No A/88420/2018 dated 30.11.2018] wherein the issue in respect of the same service has been adjudged in their favour for the past period. In following case the respective services are held to be input services and service tax paid on such services is held to be admissible to CENVAT Credit.

S No	Input service	Judgements
1	Export Handling Charges	i) Adani Pharmachem P Ltd [2008 (12) STR 593 (T)] ii) Apar Industries Ltd [2016 (45) STR 71 (T)] iii) Kennametal India Ltd [2016 (46) STR 57 (T)]
2	Bank Charges	i) Jeans Knit P Ltd [2011 (21) STR 460 (T)] ii) Meghmani Dyes & Intermediates Ltd [2013 (32) STR 671 (T)]
3	Canteen Service	i) Ultratech Cement Ltd [2010 (260) ELT 369 (Bom)] ii) L'oreal India Pvt Ltd [2011 (22) STR 89 (T)] iii) ACE Designers Ltd [2012 (26) STR 193 (Kar)] iv) Stanzen Toyotetsu India (P) Ltd [2011 (23) STR 444 (Kar)]
4	Courier Service	i) Semco Electric Pvt. Ltd. [2012 (276) ELT 94 (T)] ii) JSW Steel Ltd. [2014 (36) STR 801 (T)] iii) ArveeChem Pharma Pvt Ltd [2014 (34) STR 93 (T)]
5	Security	i) ITC Ltd. [2013 (32) STR 288 (AP)]

	service	ii) Dynamic Industries Ltd [2014 (307) ELT 15 (Guj)]
6	Telephone Service	i) Ace Glass Containers [2010 (250) ELT 110 (T)] Affirmed by High Court at [2014 (34) STR 805 (Uttar)] ii) Ballarpur Industries Ltd [2014 (36) STR 1122 (T)] iii) Golden Tobacco Ltd [2013 (32) STR 474 (T)]
7	Rent-a-cab Service	i) HEG Ltd [2012 (277) ELT 204 (T)] ii) J K Cement Works [2012 (277) ELT 194 (T)]
8	Cleaning and rentals of branch office	i) Anand I Power Ltd [2020 (37) GSTL 324 (T)] ii) Factor Alloys Ltd [2017 (48) STR 491 (T)] iii) Bharat Fritz Werner Ltd [2011 (22) STR 429 (T)]

3.3 The learned A.R. reiterates the findings of the learned Commissioner (Appeals).

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments

4.2 We find that in the impugned order learned Commissioner interpreting Rule 2 (l) of CENVAT Credit Rules, 2004 held that the services received by the Appellant claimed to be used in or in relation to manufacture of goods since having no nexus with the manufacturing activity, accordingly, do not fall under the scope of Rule 2 (l) of CENVAT Credit Rules, 2004. We find that the admissibility of CENVAT Credit against each of the aforesaid inputservices has been considered by the judgements referred by the learned Advocate and since the same are covered by said decision, therefore, CENVAT of service these services are admissible to the appellant. No contrary judgment has been placed by the Revenue.

4.3 We also take note of the Final Order No A/88420/2018 dated 30.11.2018 wherein for the past period the credit has been held in respect of same/similar services. Following the judicial precedence on the issue of admissibility of the CENVAT Credit in respect of the services in dispute we a set aside the impugned order.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Suvendu Kumar Pati)
Member (Judicial)