

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Excise Appeal No. 86883 of 2019

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-512-2018-19 dated 19.11.2018 passed by the Commissioner (Appeals), GST & CX, Nashik)

Aurangabad Electricals Ltd.
Plant III, Gut no. 120/122,
Paithan Road, Village Pangra
Tq. Paithan, Aurangabad

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Aurangabad**
N-5, Town Centre,
CIDCO, Aurangabad

.....Respondent

APPEARANCE:

Shri A.B. Nawal, Advocate for the appellant
Shri Xavier Mascarenhas, Supdt (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86008/2023

DATE OF HEARING : 16.01.2023
DATE OF DECISION : 27.06.2023

Per: AJAY SHARMA

This appeal has been filed from the impugned Order-in-Appeal dated 19.11.2018 passed by the Commissioner (Appeals), GST & CX, Nashik by which the learned Commissioner while partly allowing the appeal filed by the appellant rejected the Cenvat Credit on Manpower Service (office boy & Driver) and

confirmed the demand of Rs.20,019/- of Cenvat Credit availed on the said service.

2. I have heard learned Consultant for the Appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions/ synopsis alongwith case laws placed on record. The period in issue is from June, 2015 to April, 2016. The issue involved herein is about the availment of Cenvat credit of Rs.20,019/- on Manpower Recruitment Service, out of which Rs. 18,745/- pertains to availment of services of manpower recruitment and supply agency of office boy and driver as the car is arranged for bringing managers in the factory for supervising/looking after the manufacturing operations and for that purpose they need office boy for doing basic services in the factory office, whereas Rs.1274/- pertains to manpower supply at the appellant's guest house to provide proper hospitality to whosoever visited them as part of sales promotional activity. According to learned Consultant the Drivers and office boys are essential for ensuring smooth manufacturing operations and clearly falls under the definition of '*input service*' as prescribed under Rule 2(I) of Cenvat Credit Rules, 2004. He further submits that the same services have been held as eligible input service by learned Commissioner (Appeals) in Appellant's own cases for the period September, 2013 to August, 2014 vide Order-in-Appeal No. NGP/EXCUS/000/APPL/595/16-17 dated 22.2.2017 and also by the Adjudicating Authority vide Order-in-Original dated

26.2.2019 for the period from May, 2016 to June, 2017 [*i.e. the period immediately after the period in dispute herein*] by relying upon the Order-in-Appeal dated 22.2.2017 (supra). Per contra learned Authorised submits that the disputed service do not fall under the ambit of definition of *input service* as defined u/r. 2(l) ibid and the appeal is devoid of any merits and liable to be rejected.

3. Although the said Order-in-Appeal dated 22.2.2017 (supra) on identical issue was cited by the appellant before the learned Commissioner (Appeals) herein also but the said authority misdirected itself by observing in paragraph 11 of the impugned order that the period involved in that Order-in-Appeal dated 22.2.2017 (supra) was upto the year 2010, whereas infact the period involved therein was from April, 2013 to September, 2014 i.e. period after the amendment and that is why for the next period i.e. May, 2016 to June, 2017 (*i.e. the period immediately subsequent to the period involved herein*) the Adjudicating Authority therein while relying upon the said Order-in-Appeal dated 22.2.2017 (surpa) has dropped the demand against the appellant for the very same services in issue therein. The said Order-in-Appeal dated 22.2.2017 (supra) has not challenged by Revenue and has attained finality. Time and again it has been held by the Tribunal that the revenue is not permitted to take contrary view on identical issue. If they are permitted to do so then the law will be in a state of confusion and will place the authorities as well as the assesseees in a

quandary. A similar view has been taken by this Tribunal in the matter of *Vistex Asia Pacific P. Ltd. vs. Commr. CGST, Mumbai; Final Order No. A/85935/2023 dated 13.6.2023*. As the issue has already been settled in favour of the appellants by the authorities below for different period, therefore, the issue involved herein is decided in favour of the appellant as I do not find any justification to take a contrary view.

4. In view of the discussions made hereinabove, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 27.06.2023)

(Ajay Sharma)
Member (Judicial)

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