CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87808 OF 2013

[Arising out of Order-in-Original No: Belapur/94-97/Bel-IV/R-III/COMMR/KA/12-13 dated 28th March 2013 passed by the Commissioner of Central Excise & Customs, Belapur.]

Siemens Limited
130 Pandurang Budhkar Marg, Worli, Mumbai - 400030 … ***Appellant***

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87237/2023

DATE OF HEARING: 27/06/2023
DATE OF DECISION: 13/12/2023

PER: C J MATHEW

The issue in this appeal of M/s Siemens Limited, against order[1] of Commissioner of Central Excise & Customs, Belapur, relates to

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[1] [order-in-original no. Belapur/94-97/Bel-IV/R-III/COMMR/KA/12-13 dated 28th March 2013]

disallowance of CENVAT credit and recovery thereof, under rule 14 of CENVAT Credit Rules, 2004, to the extent of ₹ 75,94,295/- that, for the period from August 2005 to September 2011, along with applicable interest under section 11AB of Central Excise Act, 1944, and imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 had been confirmed while dropping a portion thereof.

2. Though the proceedings had initially commenced for recovery of ₹ 1,35,53,518/- in four show cause notices between September 2010 and December 2011 claimed as eligibile for availment under CENVAT Credit Rules, 2004 on procurement of seven ‘input services’, the present appeal is concerned with the availment of credit of tax paid on obtaining ‘erection, installation and commissioning of research and development centre’ to the extent of ₹ 56,50,262/-, ‘garden maintenance service’ to the extent of ₹ 8,58,425/-, ‘canteen services’ to the extent of ₹ 4,88,159/- and a further ₹ 5,97,448/- towards ‘bus transport service’ which had since been reversed on 28th June 2013.

3. According to Learned Counsel for the appellant, the definition of ‘input service’ in rule 2(l) assumes a very wide scope comprising, as it does, ‘means’ followed by ‘includes’ and that the disputed services fall within both limbs. It was further contended that all these

'input services' are directly or indirectly used in or in relation to manufacture of final product and that, to the extent of having been procured prior to 2011 before omnibus inclusion 'activities relating to business' was excluded from the definition, could not be disallowed. Reliance was placed by him on the decision of the Hon'ble High Court of Bombay in *Coca Cola India Pvt Ltd v. Commissioner of Central Excise, Pune – III [2009 (15) STR 657 (Bom.)]* and in *Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd [2010 (20) STR 577 (Bom.)]*. Further reliance was placed on the clarification issued by Central Board of Excise & Customs (CBEC) in circular no. 943/4/2011-CX dated 29th April 2011 in relation to credit of tax levied on services procured and rendered prior to 1st April 2011 after the decision of the Tribunal in *Mahindra Ugine Steel Co Ltd v. Commissioner of Central Excise and Service Tax, Raigad*[2] disposing of excise appeal[3] arising out of order[4] of Commissioner of Central Excise (Appeals), Mumbai – II. It was, therefore, contended by him that the original authority had erroneously denied eligibility of 'input service' that was clearly covered by the provisions prior to 1st April 2011 and which undisputedly they had submitted in that proceedings.

4. Insofar as 'garden maintenance services' are concerned, reliance was placed on decisions of the Tribunal in *Semco Electric Pvt*

[2] [final order no. 85860-85861/2023 dated 6th March 2023]
[3] [E/85721/2013]
[4] [order-in-appeal no. US/952/RGD/2012 dated 31st December 2012]

Ltd v. Commissioner of Central Excise, Pune-I [2012 (25) STR 73 (Tri.-Mumbai)], in *Commissioner of Central Excise & Service Tax (LTU) v. Lupin Ltd [2012 (285) ELT 221 (Tri.-Mumbai)],* in *Brakes India Ltd v. Commissioner of Central Excise, Mysore [2010 (19) STR 524 (Tri.-Bang.)],* in *JBM Auto System Pvt Ltd v. Commissioner of Central Excise, Chennai [2012 (27) STR 170 (Tri.-Chennai)]* and in *L'Oréal India Pvt Ltd v. Commissioner of Central Excise, Pune – I [2011 (22) STR 89 (Tri.-Mumbai)].*

5. Insofar as 'erection, commissioning and installation of research and development centre' is concerned, it was contended that the adjudicating authority had placed erroneous interpretation on contents of circular no. 98/1/2008-ST dated 4th January 2008 of Central Board of Excise & Customs (CBEC) owing to the establishment of the said centre within the factory premises though the clarification therein was pertinent only to immovability of goods, otherwise eligible on clearances, at the site as activity not amounting to manufacture. Reliance was place on the decision of the Tribunal in *Cipla Ltd v. Commissioner of Central Excise, Mumbai – III [2021 (8) TMI 1199-CESTAT MUMBAI]* and in *Commissioner of Central Excise, Delhi-III v. Bellsonica Auto Components India P Ltd [2015 (40) STR 41 (P&H)]* on the entitlement of construction of facility in a factory. Reliance was also placed on the decision of the Tribunal in *Raymond Uco Denim Pvt Ltd v. Commissioner of Central Excise, Nagpur [2017*

(7) GSTL 346 (Tri.-Mum.)] and in *Ultratech Cement Ltd v. Commissioner of Central Tax, Belagavi [2019 (4) TMI 10 –CESTAT BANGALORE]*.

6. According to Learned Authorised Representative, eligibility for credit of tax paid on 'bus transport service' had attained finality insofar as it was claimed only on deployment for carriage of workers to factory premises without collecting any charge. Insofar as 'garden maintenance service' is concerned, reliance is placed on the decision of the Tribunal in *Stanadyne Amalgamations Pvt Ltd v. Commissioner of Central Excise, Chennai [2011 (22) STR 344 (Tri.-Chennai)]* and circular *supra* was relied upon insofar as services for 'establishing research and development centre' is concerned. It was also contended by him, that 'canteen services' were not eligible and did not deserve to be permitted.

7. The biggest component of the disallowance in the impugned order is the service availed for 'establishment of research and development centre' at the premises of appellant and, primarily, based on circular of Central Board of Excise & Customs (CBEC) issued in 2008. The said circular relates to availment of services of 'commercial and industrial construction service' which, to the extent utilized for erection of immovable property, was ruled as ineligible. We find that this narrow perspective of the activity undertaken by the appellant is

not appropriate inasmuch as it was not restricted to construction of a building but outfitting as 'research and development centre' which was essential for manufacture. The issue which came to be considered by the Central Board of Excise & Customs (CBEC) was the excisability of movable goods, upon being fixed permanently, to acquire the character of non excisability which excluded application of Central Excise Act, 1944 while the present dispute does not relate to 'output service' but to the manufacturing undertaken by the appellant which stands on an entirely different footing. On the other hand, in *re Bellsonica Auto Components India P Ltd*, it has been held that

> *'10. This becomes clearer from the fact that by an amendment of the year 2011 to Rule 2(l), construction services were excluded from the definition of "input service." The amended section in so far as it is relevant reads as under:-*
>
> *"(l) "input service" means any service, -*
>
> *.... ....*
>
> *(ii) (A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -*
>
> *(a) construction of a building or a civil structure or a part thereof; or" Clause (105)(zzq) of Section 65 of the Finance Act reads as under :-*
>
> *"(105) "taxable service" means any service provided or to be provided, -*
>
> *(zzq) to any person, by any other person, in relation to commercial or industrial construction.*
>
> *Explanation.- For the purposes of this sub-clause, the*

construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force shall be deemed to be service provided by the builder to the buyer."

11. If in fact the said services were not covered by Rule 2(l), it would not have been necessary to introduce the amendment. It is clear, therefore, that prior to the amendment the setting up of a factory premises of a provider for output service relating to such a factory fell within the definition of 'input service.' The amendment of 2011 is not retrospective and is not applicable to the respondents' case.'

8. Insofar as 'garden maintenance service' is concerned, the reliance placed by the Learned Authorised Representative on the decision in *re Stanadyne Amalgamations Pvt Ltd* does not appear to reflect the correct law inasmuch as the decision that

'4.4 The learned Advocate further submits that in their own case, in respect of "waste management service" and "tour operator service", this Tribunal has allowed credit vide Order No. A/17/2011/SMB/C-IV, dated 15-12-2010 and Order No. A/165/2011/SMB/C-IV as reported in 2011-TIOL-954-CESTAT-Mumbai. As regards "garden maintenance service", she relies on the judgment of the Hon'ble High Court of Chhattisgarh in the case of Union of India v. H.E.G. Ltd. - 2011 (24) S.T.R. 275 (Chhattisgarh) wherein the question arose as regards the eligibility to credit of the service tax paid on input services namely cleaning and maintenance of Garden, Pandal and Shamiyana Services etc. The Hon'ble High Court held that credit of the service tax

> *paid is available in respect of the said services and the assessee is entitled for the same. As regards repair of fan, the learned Counsel relies on the judgment in the case of H.E.G. v. Commissioner of Central Excise, Raipur - 2010 (17) S.T.R. 178 this Tribunal held that maintenance and repair of photocopier, air conditioner, water cooler etc., are essential without, which the factory cannot run; therefore, the service tax paid on the services is admissible as credit. Accordingly, the learned Counsel prays that the Cenvat credit of the service tax paid on input service be allowed.'*

in *re Lupin Ltd,* of the Tribunal, would apply to the facts of the present case. Likewise, on the aspect of 'canteen facility', several decisions of the Tribunal enumerated *supra* have set out the terms for availment of credit of tax paid on such services.

9. It would also appear that the appellant has reversed credit insofar as the 'bus transport service' is concerned which, thus, no longer continues as dispute. In view of our findings *supra* on the entitlement of tax paid on the services as CENVAT credit, the impugned order lacks merits and is set aside to allow the appeal.

(Order pronounced in the open court on 13/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*