CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 85606 of 2015

(Arising out of Order-in-Original No. 43/AC/COMMR/Th-II/2014 dated 08.12.2014 passed by the Commissioner of Central Excise, Thane-II.)

M/s. Tata Steel Co. Ltd. ....Appellant
16th Floor, R Tech Park,
Nirlon Complex, Goregaon (E),
Mumbai – 400 063

VERSUS

Commissioner of Central Excise, Thane-II ....Respondent
3rd Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai – 400 028

APPERANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Vinod S. Chettiparambil, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85075/2024

Date of Hearing: 29.01.2024
Date of Decision: 08.02.2024

PER: DR. SUVENDU KUMAR PATI

Denial of CENVAT Credit of ₹52,92,917/- to the Appellant alongwith interest and equal penalty through adjudication proceeding is assailed before the Tribunal in this second round of litigation.

2. Briefly stated, facts of the case is that Appellant is a manufacturer of wire rods, wire ropes, wires etc. in its factory at Tarapur where it had received various input services during manufacture of the final product. Show-cause notice dated 11.04.2012 was issued by the Department denying CENVAT Credit of the above referred amount for the period from August, 2007 to July, 2011 with a proposal for its recovery alongwith interest under Rule 14 of the CENVAT Credit Rules, 2004 and imposition of penalty of equal amount under Rule 15(2) of the said Rule read with Section 11A, 11AA and 11AC respectively was proposed. Matter was adjudicated by the Commissioner confirming the proposal made in show-cause notice against which Appellant preferred an appeal before the CESTAT who, *vide* its order dated *A/258/13/EB/C-II dated 05.03.2013,* remanded the matter for *de novo* adjudication after directing Appellant to pay ₹60,000/- that was recovered directly from the employees for canteen services. *De novo* adjudication proceeding re-confirmed the demand, penalty and interest without acknowledging payment of ₹60,000/- made by the Appellant pursuant to the direction given by the Tribunal in the first round of litigation. Legality of the said order is assailed in this appeal.

3. During the course of hearing of the appeal learned Counsel for the Appellant Mr. Rajesh Ostwal submitted that credit was denied in respect of six services namely - providing bus services for transportation of employees from work place to their residence,

Mathadi contractor/worker subsidy, renovation of canteen, renovation of executive toilets, professional fees and maintenance of canteen building, housekeeping of admin building. On misreading of the ratio of the judgment passed by Hon'ble Bombay High Court in *UltraTech Cement Ltd. case, [2010 (20) STR 577 (Bom.)]* and applying the ratio of the order passed by this Tribunal in the case of *Sundram Break Linings, [2010 (19) STR 172 (T)]* that was overruled subsequently in the case of *CCE Vs. Schott Glass India* reported in *2013 (30) STR 219 (T)* for being per incuriam the said order was passed while in actuality, this Tribunal has consistently followed Hon'ble Bombay High Court's judgment passed in the case of *UltraTech Cement Ltd. cited supra* and extended the benefit of availment of CENVAT Credit on identical services. In producing decision of this Tribunal on bus services for transportation of employees passed in the case of *Microsoft India (R & D) Pvt. Ltd. Vs. CCE* reported in *2022 (56) GSTL 29 (T), CCE Vs. Haldyn Glass Gujarat Ltd.* reported in *2009 (240) ELT 729 (T), Piramal Enterprise Ltd. Vs. CCE* reported in *2018 (1) TMI 460 CESTAT Mumbai,* on catering services to workers passed in the case of *Heartland Bangalore Transcription Ser. (P) Ltd. Vs. CST* reported in *2011 (21) STR 430 (T), Stanzen Toyotetsu India Pvt. Ltd. Vs. CCE.* reported in *2009 (14) STR 316 (T)* – that was affirmed by Hon'ble Karnataka High Court in *2011 (23) STR 444 (Kar.),* on renovation and maintenance of executive toilets and canteens passed in the case of *Zydus Nycomed Healthcare Pvt. Ltd. Vs. CCE* reported in *2013 (30)*

STR 197 (T), Lakshmi Vilas Bank Ltd. Vs. CCE reported in *2017 (48) STR 265 (T), SEMCO Electric Pvt. Ltd. Vs. CCE* reported in *2012 (25) STR 73 (T),* on professional fees passed in the case of *Kijiji (India) Pvt. Ltd. Vs. CCE* reported in *2013 (32) STR 661 (T), CCE Vs. Holister Medical India Pvt. Ltd.* reported in *2017 (49) STR 426 (T), Delphi Automotive Systems Pvt. Ltd. Vs. CST* reported in *2015 (37) STR 522 (T),* on housekeeping of admin building passed in the case of *Sun Pharmaceuticals Industries Ltd. Vs. CCE* reported in *2019 (7) TMI 1296 – CESTAT Chennai, Suzuki Powertrain Indian Ltd. Vs. CCE* reported in *2017 (3) TMI 851 – CESTAT Chandigarh, L'Oreal India Pvt. Ltd. Vs. CCE* reported in *2011 (22) STR 89 (T), Balkrishna Industries Ltd. Vs. CCE* reported in *2010 (18) STR 600 (T),* he pointed out that all issues have been settled at rest *vide* above referred decisions in favour of admissibility of credit on those services for which order passed by the Commissioner is unsustainable both in law and facts and the same is required to be set aside.

4. In response to such submissions, learned Departmental Representative Mr. Vinod S. Chettiparambil has argued in support of the reasoning and rationality of the order passed by the Commissioner and pointed out that only input services, which are integrally connected with the business of the Assessee / the manufacturer of final product, received would qualify for input credit and not all services and the same has been categorically analysed by

leaned Commissioner, for which interference by the Tribunal in the order passed by the Commissioner is uncalled for.

5. We took note of the submissions and perused the case record, order of the Commissioner and relied upon judgments. At the outset it must be kept on record that denial of CENVAT Credit on those services namely services provided to the employee for transportation to and fro the workplace by bus, provision for canteen services, Mathadi services were made on the ground that there was no statutory requirement/obligation to provide those services. Moreover on renovation of executive toilets and housekeeping of administrative building, the denial was on account of the fact that those were not used by the workmen nor having any nexus to the manufacture of final product and on denial of professional fee as well as maintenance of canteen building, no reason is assigned by the leaned Commissioner. This being the observation of the Commissioner on record, it is apparently cleared that he has accepted only the core work including laborious activities undertaken during the production process and excluded all other ancillary and incidental activities that go with the manufacturing process and form its integral part. For example, if executive toilet meant for the Executives/Managers of the company is required to undergo any renovation or repairing, then credit should not be denied on the ground that workmen are not using the said toilet, as if there is no requirement of any Manager, Director in any Company to supervise the production work and

workmen would alone be sufficient to take care of all pre and post production activities starting from procurement of raw materials to clearance of goods etc. etc. Be that as it may, when all these services are specifically held by this Tribunal and confirmed by the Appellate Courts like Hon'ble High Courts and Hon'ble Supreme Court to be valid inputs for the purpose of manufacture, there is no reason for us to depart from the judicial precedent set by this Tribunal when they themselves are integral part of manufacture process for which these services availed by the Appellant can be said to be valid input services against which credit are admissible. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Central Excise, Thane-II *vide* Order-in-Original No. 43/AC/COMMR/Th-II/2014 dated 08.12.2014 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 08.02.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad