IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/244/2011 & E/266/2011

(Arising out Order-in- Appeal No. PKS/423/Bel/2010 dated 23.11.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

For approval and signature:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. S.H. Kelkar & Co. Pvt. Ltd. — Appellant

Vs.

Commissioner of Central Excise, Mumbai III — Respondent

Appearance:

Shri Yogesh Patki, Advocate for the appellant
Shri Anil Choudhary, AC (AR) for the respondent

CORAM:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing : 29-01-2019
Date of decision : 29-01-2019

O R D E R No: A/**85241-85242/2019**

Per: C J Mathew

Both Revenue and M/s S H Kelkar & Co Pvt Ltd are in appeal against order-in- appeal no. PKS/423/Bel/2010 dated 23rd November 2010 of Commissioner of Central Excise (Appeals), Mumbai-III. Narrating the background, Learned Counsel for the assessee-appellant informs that show-cause notice was issued to them for denial of CENVAT credit, and consequent recovery, of ₹22,35,336/- on taxes included in the consideration for supply of services, *viz.,* towards housekeeping expenses of factory amounting to ₹3,21,132/, execution of civil works, with duty burden of ₹1,11,272/- in factory as well as residence of directors which is within the precincts of the company, ₹7,211/- towards travel agents services for tours by employees and ₹18,58,473/- towards commission agents.

2. In appeal of the assessee before the first appellate authority, the credit of tax paid on services rendered by commission agents was held to be eligible while denying entitled to CENVAT credit of ₹4,39,615/-. Revenue is in appeal against the dropping of demand of ₹18,58,473/-. The assessee appellant challenges the denial of credit that had been availed as the cleaning service, maintenance and repair services and expenditure for works in residence of director was rendered in the factory or its property.

3. We find that the appeal of Revenue involves a dispute over ₹18,58,473/-, which is below the threshold for initiation, as well as continuance, of dispute against orders of lower authorities, as communicated in instruction F. No. 390/Misc./116/2017-JC dated 11th July 2018 of Central Board of Indirect Tax & Customs. The lower authorities have denied the CENVAT credit of ₹4,39,615/- by holding that these pertain to post-manufacturing cost that was not intended to be covered in rule 2(l) of the CENVAT Credit Rules, 2004 and that the nexus between the services rendered and manufacturing activity had not been satisfactorily evidenced by the assessee. While Learned Authorised Representative reiterates the contents of the order of the original, and appellate authority, in the matter pertaining to the availment of credit of tax paid on these three services, Learned Counsel for assessee- appellant relies upon the decision of the Tribunal in *Indian Additives Ltd v. Commissioner of Central Excise, Chennai [2016 (44) STR 611 (Tri-Chennai)]* and of the Hon'ble High Court of Madras in *Commissioner of Central Excise & Service Tax, LTU, Chennai v. Rane TRW Steering Systems Ltd [2015 (39) STR 13 (Mad.)]* which have permitted the inclusion of housekeeping of factory premises within the meaning of 'inputs' for the purposes of CENVAT Credit Rules 2004. Reliance is placed on the decision of the Tribunal in *Vidyut*

Metallics Pvt Ltd v. Commissioner of Central Excise, Mumbai III [2012 (27) STR 305 (Tri-Mumbai)] which is followed by the decision of the Tribunal in *Vidyut Metallics Pvt Ltd v. Commissioner of Central Excise, Mumbai III [2016 (42) STR 321 (Tri-Mumbai)]* on the eligibility of credit of taxes paid on utilisation of travel agent services. Likewise, by placing reliance in *Forge India Pvt Ltd v. Commissioner of Central Excise, Indore [2017 (48) STR 246 (Tri-Del.)],* it is contended that, till 2011, there was no bar on availment of CENVAT credit of tax paid on such work under the CENVAT Credit Rules 2004.

4. Having heard both sides, and in accordance the settled law in favour of the assessee appellant, we find that each of those services are in conformity with the definition of inputs in rule 2(l) of CENVAT Credit Rules 2004. Accordingly, we set aside the impugned order and allow the appeal of M/s S H Kelkar & Co Pvt Ltd while dismissing the appeal of Revenue in accordance with the litigation policy of Government of India.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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