CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85373 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-438/17-18 dated 06.10.2017 passed by Commissioner (Appeals) Central Tax, Pune)

M/s Thermax Ltd. **.... Appellant**
D-13, MIDC Industrial Area,
R.D. Aga Road, Chinchwad,
Pune – 411 019.

Versus

Commissioner of Central Tax, (Appeals), Pune **.... Respondent**
GST Bhawan, 41-A, Sassoon Road,
Opp. Wadia College
Pune- 411 001.

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Ranjan Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85930/2026

Date of Hearing: 20.07.2026

Date of Decision: 20.07.2026

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Brief facts of the case are that the appellant is engaged *inter alia,* in the manufacture and sale of Boilers, Heaters, Pollution Control Equipment etc., falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant avails CENVAT Credit of Central Excise duty paid on the inputs and service tax paid on the input services. During the disputed period from 2005-06 to June 2015, the appellant had availed the CENVAT credit on various taxable services viz., Staff Heath Insurance, Club Membership, Rent-a-Cab and Travel Agent services. Availment of CENVAT Credit on those services were

disputed by the Department on the ground that those services are not confirming to the definition of 'input service', as per Rule 2(l) of the CENVAT Credit Rules, 2004. The original order dated 09.12.2016, rejecting the CENVAT Credit on the disputed services was upheld by the learned Commissioner of Central Excise (Appeals-I), Pune vide the impugned order dated 09.10.2017. Feeling aggrieved with said impugned order dated 09.10.2017, the appellant has preferred this appeal before the Tribunal.

3. The case of the appellants falls under the definition of input service effective upto 01.04.2011. Under such unamended definition, the phrase 'activity relating to business', specifically finds place for the purpose of availment of benefit of CENVAT Credit in respect of the taxable services received and used for accomplishing the business purpose. In the case in hand, it is an admitted fact on record that the disputed services availed by the appellant were in context with their business activities and the expenditure incurred by them towards such services were duly accounted for in their books of accounts, on the basis of which, the assessable value of final products was determined by them for payment of central excise duty thereon. Thus, those services used/utilized for the intended purpose, no doubt, would construe as used in their manufacturing business. Therefore, in our considered view, the CENVAT Credit availed on the disputed services under the unamended definition of the input service should be available to the appellant. For the period post 01.04.2011, though the definition of 'input service' was amended, wherein the inclusive part of definition does not contain the phrase "activity relating to business", but in the exclusion clause under such amended provision, the CENVAT benefit is available to the assessee, if the service is not meant for the personal use of the employee.

4. We find that in an identical issue, the Hon'ble Bombay High Court in the case of *Commissioner of CGST, Mumbai Vs. Sony Pictures Networks India Pvt. Ltd. – 2024 (6) TMI 1109 – BOMBAY HIGH COURT,* while answering to the question "(b) *Whether in the facts and circumstances of the case, the respondent assessee is entitled to avail credit on services i.e. Rent-a-Cab services, Outdoor Catering services and Club or Association services which have been specifically excluded*

from the definition of "input service" as defined under Rule 2 (l) of Cenvat Credit Rules, 2004, w.e.f. 01.07.2012", has held as under*: -*

> *"4. Insofar as question (b) is concerned, admittedly there is no material on record to show that these services were utilised for personal consumption to deny credit. Respondent/Assessee is a company and therefore issue of personal consumption does not arise. These expenses are admittedly incurred for its employees who are working for the respondent/assessee in the course of its business to render output services. It is also settled position that an assessee cannot prove negative when the appellate / revenue alleges that the respondent /assessee has failed to prove that these services were not used for personal consumption of its employees. Whether any service is used for personal consumption or not is certainly question of fact. Furthermore, on other services, the appellant / revenue has not disputed this position. In view thereof, this being question of fact, no substantial question of law arises from the impugned order of the Tribunal."*

5. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld denial of the CENVAT Credit in respect of the services used/utilized for accomplishing the activity, concerning manufacture of excisable goods. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha/Snj