

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

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2007 of 2012

(Arising out of Order-in-Appeal No. BC/251/M-III/2012-13 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Emco Ltd.

Plot No. F-5, Road No. 28,
Wagle Estate, Thane-400080.

.... Appellant

Versus

Commissioner of Central Excise-Mumbai-III Respondent

3rd & 4th Floor, Vardaan Centre, MIDC Wagle Industrial
Estate, Thane West, Thane-400604.

WITH

Excise Appeal No. 85519 of 2013

(Arising out of Order-in-Appeal No. BC/251/M-III/2012-13 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Emco Ltd.

Plot No. F-5, Road No. 28,
Wagle Estate, Thane-400080.

.... Appellant

Versus

Commissioner of Central Excise-Mumbai-III Respondent

3rd & 4th Floor, Vardaan Centre, MIDC Wagle Industrial
Estate, Thane West, Thane-400604.

Appearance:

Shri Sushant Murthy, Advocate for the Appellant

Shri P. K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85447-85448/2023

Date of Hearing: 20.03.2023

Date of Decision: 20.03.2023

Per: Anil G. Shakkarwar

Above stated two appeals are taken together for decision since issue involved in both of them is same and Order-in-Original and Order-in-Appeal both are common.

2. Brief facts of the case are that the appellants were manufacturer of transformers and are availing the facility of CENVAT Credit. The appellants were issued with show cause notice dated 07.01.2010 for the period from August 2006 to November 2007 proposing to deny CENVAT Credit of Service Tax paid on services such as Outdoor Catering Service, Rent-a-Cab Service, Club or Association Service and services availed to provide food coupons to the employees which is described by appellant as Hospitality Service. There was proposal to deny CENVAT Credit to the tune of Rs. 3,19,796/-. Subsequently on 17.09.2010 another show cause notice on similar lines proposing to deny CENVAT Credit of Rs. 1,10,723/- on the same services for the period from November 2009 to March 2010 was issued. Both the show cause notices were adjudicated by the original authority together. The original authority dropped the proceedings initiated against the show cause notice. Revenue preferred an appeal before the learned Commissioner (Appeals). Commissioner (Appeals) allowed the appeal filed by the Revenue and set aside the order passed by the original authority and disallowed CENVAT Credit of Service Tax paid on above stated services to the appellant. Aggrieved by the said order, appellant is before this Tribunal.

3. Learned Counsel for the appellant has submitted that the first show cause notice dated 07.01.2010 was hit by limitation since the same was issued for the period from August 2006 to November 2007 and the normal period was over and after the normal period was over by invoking extended period of limitation, the said show cause notice was issued but there were no ingredients for invocation of extended period of limitation. Therefore, the proceedings initiated through show cause notice dated 07.01.2010 cannot survive. In respect of show cause notice dated 07.09.2010, he has submitted that the said show cause notice proposed to deny CENVAT Credit of Service Tax paid on Outdoor Catering Service, Rent-a-Cab Service, Corporate Membership of Club Service. Insofar as Outdoor Catering Service and Rent-a-Cab Service are concerned, he has submitted that the manufacturing unit is having large number of employees working in the factory and as per Factories Act they were bound to provide food facilities and therefore, Outdoor Catering Service before 2011 amendment to the definition of input service was eligible for availment of CENVAT Credit. The said arguments were put forth by him for Rent-a-Cab Service stating that the Rent-a-Cab Service was provided by the appellant for facilitating transportation of employees. He relied on ruling of the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise Bangalore Vs Bell Ceramics Ltd reported at 2012 (25) STR 428 (Kar) and submitted that the Hon'ble Karnataka High Court has held that services such as Outdoor Catering Service and Rent-A-Cab Service provided to the manpower working in a manufacturing unit were admissible as input services, in respect of Club Services he has submitted that the club membership was of the company and

company was paying the membership fee and services of the club were utilize for the purpose of business and that the period was also before 2011. He has relied on decision of this Tribunal in the case of Vinayak Steels Limited Vs Commissioner of Central Excise & Service Tax, Hyderabad reported at 2017 (4) G.S.T.L. 188 (Tri.-Hyderabad) and submitted that it was held in the said decision of this Tribunal that Service Tax paid on corporate membership of a club is eligible for availment of CENVAT Credit prior to 01.04.2011. In respect of services availed to provide food coupons he has submitted that food coupons are provided to employees to be utilized during lunch, dinner etc. and submitted that since the services are utilized by the employees, CENVAT Credit is admissible. He further submitted that the said issue is involved in said show cause notice dated 07.01.2010.

4. Heard the learned AR who has supported the impugned Order-in-Appeal and reiterated the findings of learned Commissioner (Appeals).

5. I have carefully gone through the records of the case and submissions made. Insofar as the proceedings initiated through show cause notice dated 07.01.2010 are concerned, the show cause was issued beyond normal period of limitation and I do not find any reason justifying invocation of extended period. I, therefore, drop all the proceedings initiated through show cause notice dated 07.01.2010 as time barred.

6. Insofar as the issues involved in show cause notice dated 17.09.2010 are concerned, I find that Hon'ble High Court of

Karnataka in the case law referred by learned Counsel for the appellant has held that the Service Tax paid by the assesses under Rent-A-Cab Service and Outdoor Catering Service provided to its employees to transport them to the factory and back and to provide food to employees fall under input services and are entitled for CENVAT Credit. Following the said ruling of Hon'ble Karnataka High Court, I allow CENVAT Credit of Service Tax paid on Outdoor Catering Service and Rent-a-Cab Service in the present appeal.

7. Insofar as Club Services are concerned, I find that the issue is no more *res integra* and this Tribunal has decided it in the case of Vinayak Steels Limited Vs Commissioner of Central Excise & Service Tax, Hyderabad reported at 2017 (4) G.S.T.L. 188 (Tri.-Hyderabad), wherein it was decided that corporate membership of the club is utilized for business meetings and sales meetings and therefore, for the period prior to 01.04.2011, Service Tax paid on corporate membership of club was admissible for availment of CENVAT Credit. Following the precedent decision of this Tribunal in the present case, I allow CENVAT Credit of Service Tax paid on corporate membership of club to the appellant.

8. In above terms, both the appeals are allowed.

(Order dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)