CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
~~~~~

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1677 Of 2012

[Arising out of Order-in-Original No. 09-10/SSS/CCE/2012 dated 27.03.2012 passed by the Commissioner of Central Excise, Delhi-III]

M/s Rico Auto Industries Ltd. **: Appellant (s)**
38 KM Stone, Delhi-Jaipur Highway, Gurgaon

Vs

Commissioner of C. Excise-Delhi-III **: Respondent (s)**
Plot No. 36-37, Sector-32 Gurgaon, Haryan122021

With
Excise Appeal No. 1678 Of 2012

[Arising out of Order-in-Original No. 09-10/SSS/CCE/2012 dated 27.03.2012 passed by the Commissioner of Central Excise, Delhi-III]

M/s Rico Auto Industries Ltd. **: Appellant (s)**
38 KM Stone, Delhi-Jaipur Highway, Gurgaon

Vs

Commissioner of C. Excise-Delhi-III **: Respondent (s)**
Plot No. 36-37, Sector-32 Gurgaon, Haryan122021

APPEARANCE:
Shri Ram Chander Choudhary, Advocate for the Appellant
Shri Manoj Nayyer, Departmental Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60130-60131/2023

Date of Hearing:09.05.2023

Date of Decision:12.05.2023

Per : S. S. GARG

These two appeals have been filed by the appellant against the common impugned order dated 27.03.2012 passed by the Commissioner of Central Excise, Delhi-III whereby the Ld. Commissioner has denied the cenvat credit on 'Civil Construction and
~~~~~

Maintenance Services'. The amount and period for which the cenvat credit has been denied is mentioned herein below:-

Sr. No.	Appeal No.	Amount involved	Period of dispute
1.	E/1677/2012	Rs. 62,81,089/-	2005-06-2009-10
2.	E/1678/2012	Rs. 1,01,489/-	April, 2010 to March 2011

Since, the issue in both the appeals is identical and the impugned order is same, hence, we proceed to decide both the appeals by this common order.

2. Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods falling under Chapter 87 of the Central Excise Tariff Act, 1985 and are availing facility of Cenvat Credit of the duty paid on inputs, input services and capital goods as envisaged under Rule 3 of Cenvat Credit Rules, 2004. Two show cause notices were issued to the appellant alleging that during the course of audit, it was found by the Audit party that the appellant have taken Cenvat Credit of service tax paid on civil construction and maintenance services of items other than plant and machinery which are not covered under the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004 for the purpose of availment of Cenvat Credit.

3. After following due process, the Ld. Commissioner vide the impugned order has confirmed the demand, hence, the present appeals.

4. Heard both the parties and perused the case records.

5. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of input services as provided under Rule 2(l) of the Cenvat Credit Rules, 2004. He further submits that the adjudicating authority has wrongly interpreted the provision of 2(l) of Cenvat Credit Rules, 2004 regarding the definition of 'input services'. He further submits that the input services involved in these appeals have been received by the appellant for their business activity and accordingly the same are covered under the definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004 during the relevant period involved in these appeals. He further submitted that the adjudicating authority has ignored the inclusive portion of the definition under Rule 2(l) of Cenvat Credit Rules, 2004 which specifically mentioned the services used in or in relation to setting up, moderanisation, renovation or repair of factory premises or an office relating to such factory premises. He further submitted that in the present case, the construction services have been obtained by the appellant for construction/renovation of their factory premises of manufacture of dutiable goods. He further submitted that the adjudicating authority has wrongly interpreted the provision of Rule 2(l) of Cenvat Credit Rules, 2004 and relied on the Board's Circular No. 98/1/2008 dt. 4-1-2008 so as to deny the cenvat credit availed by the appellant on the construction services. He further submitted that this issue is no more res-integra and has been considered by the various benches of the Tribunal and the Hon'ble High Court and they have held that the construction services falls under the definition of

'input service' during the relevant period involved in the present case. In support of his submission, he relied upon the following decisions:-

- Commissioner of Central Excise, Delhi-III vs. Bellsonica Auto Components India P. Ltd. 2015 (40) STR 41 (P & H)
- Commissioner of Central Excise, Nagpur vs. Ultratech Cement Ltd. 2010 scc online Bom 2102 : (2010) 260 ELT 369 : (2010) 36 VST 505
- Commissioner of Central Excise, Delhi-III vs. Madhusudan Auto Ltd. 2015 (40) STR 732 (Tri.-Del.)
- Cadila Healthcare Ltd. vs. Commissioner of C. Ex. Ahmedabad 2010 (17) STR 134 (Tri.-Ahmd.)
- Commissioner of C. Ex. Delhi-III vs. Rane NKS Steering Systems Ltd. 2015 (39) STR 339 (Tri.-Del.)
- Commissioner of C. Ex. Delhi-III vs. KML MOLDING 2015 (39) STR 348 (Tri.-Del.)
- Cadila Healthcare Ltd. vs. Commissioner of C. Ex., Ahmedabad 2010 (17) STR 134 (Tri.-Ahmd.)

6. On the other hand, the Ld. DR reiterated the findings in the impugned order.

7. After considering the submissions of both the parties and perusal of material on record, we find that during the relevant period, the definition of 'input service' was very wide and it include any service received in or in relation to setting up, moderanisation, renovation or repair of the factory premises. Further, this input services involved in the present appeals have been held to be input services in the decisions relied upon by the appellant cited (supra). It is relevant to reproduce the definition of input service as provided

under Rule 2(l) of Cenvat Credit Rules, 2004 during the relevant period:-

Rule 2(l)(ii) and Rule 3(1)(ix) of the Cenvat Credit Rules, 2004, in so far as they are relevant, read as under :-

"**2. Definitions.** - In these rules, unless the context otherwise requires, -

(a) to (k)…… …… …… ……..

(l) "input service" means any service,-

(i) …… ……. …….. …….

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

"**3. Cenvat credit.** - (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereafter referred to as the Cenvat credit) of-

(i) to (viii) ... ...

(ix) the service tax leviable under section 66 of the Finance Act;"

8. Here it is pertinent to mention that the Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Central Excise, Delhi-III vs. Bellsonica Auto Components India P. Ltd. cited (supra) has considered this issue and has held that the construction services and other services which are necessary for the renting of the business falls in the definition of 'input service' as provided under Rule 2(l) of Cenvat Credit Rules, 2004. It is pertinent to reproduce the relevant paras of the said findings which are as follows.

"7. We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the respondents, that the Cenvat credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(l) by dividing it into two parts terming

them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.

8. The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(l) aptly referred to by Mr. Amrinder Singh as the "means part."

9. The respondents' case also falls within the second part of Rule 2(l) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second part of Section 2(l)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(l)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product.

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.

12. Our view is supported by the judgment of a Division Bench of the Bombay High Court in *Coca Cola India Pvt. Ltd*. v. *Commissioner of C. Ex., Pune-III*, 2009 (242) E.L.T. 168 (Bom.). = 2009 (15) S.T.R. 657. The Division Bench construed Section 2(l) as follows :-

> "39. The definition of input service which has been reproduced earlier, can be effectively divided into the following five categories, in so far as a manufacturer is concerned :
>
> (i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products,
>
> (ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal,
>
> (iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,
>
> (iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,
>
> (v) Services used in relation to activities relating to business and outward transportation upto the place of removal;
>
> Each limb of the definition of input service can be considered as an independent benefit or concession exemption. If an assessee can satisfy any one of the limbs of the above benefit, exemption or concession, then credit of the input service would be available. This would be so even if the assessee does not satisfy other limb/limbs of the above definition. To illustrate, input services used in relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal. This would follow from the observation of the Supreme Court in *Kerala State Cooperative Marketing Federation Ltd. and Ors.* v. *Commissioner of Income-tax*, 1998 (5) SCC 48, which is as under :
>
> 7. We may notice that the provision is introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."

We are in respectful agreement with the judgment of the Bombay High Court."

9. Since the issue is squarely covered by the decision of jurisdictional High Court of Punjab and Haryana, hence, by following the ratio of the same, we are of the considered view that the impugned order is not sustainable in law and therefore, the same are set-aside by allowing both the appeals of the appellant.

10. Accordingly, both the appeals are allowed.

(Pronounced on 12.05.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.