

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40588 of 2019

(Arising out of Order-in-Appeal Nos. 438 & 439 of 2017 (CXA-II) dated 27.12.2017 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. MTL Instruments Private Limited

: Appellant

No. 3, Old Mahabalipuram Road,
Sholinganallur, Chennai – 600 119

VERSUS

The Commissioner of G.S.T. and Central Excise

: Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

APPEARANCE:

Shri Nischal Agarwal, Consultant for the Appellant

Ms. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40118 / 2022

DATE OF HEARING: 08.03.2022

DATE OF DECISION: **10.03.2022**

Order :

Brief facts are that the appellants are engaged in the manufacture of various types of industrial safety devices such as isolating interface unit, intrinsic safety barriers, etc., and hold Central Excise Registration.

2. On scrutiny of accounts of the appellant by The Internal Audit Group of the Department, it was noticed that the appellant had availed input Service Tax credit on various input services namely, Supply of Manpower for

Outdoor Catering Services and Gardening Services and Rent-a-Cab Services for transportation of its employees and customers during the period from August 2008 to October 2010 and from November 2010 to August 2011, which according to the Department was not eligible for credit.

3. Separate Show Cause Notices were issued to the appellant proposing to disallow the credit and to recover the same along with interest and for imposing penalties. After due process of law, the Original Authority disallowed the credit and confirmed the demand along with interest and imposed penalty. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein, upheld the order to the extent of disallowing the credit, but, however, set aside the penalty observing that the entire issue is interpretational in nature. Against this order whereby the Commissioner (Appeals) upheld the confirmation of demand along with interest, the appellant is now before the Tribunal.

4.1 Shri Nischal Agarwal, Learned Consultant, appeared and argued on behalf of the appellant. He submitted that the major part of the demand is prior to 01.04.2011 when the definition of 'input service' had a wide ambit and included the phrase "activities relating to business". He adverted to the definition of 'input service' prior to 01.04.2011, which is reproduced below:

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

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture or final products and clearance of final products from the place of removal.

And includes service 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 or removal, procurement of inputs, activities relating to business, such as accounting, audition, 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.

4.2 In regard to the issue of eligibility of credit on Supply of Manpower for Outdoor Catering Services and Rent-a-Cab Services, he submitted that for the period prior to 01.04.2011, the credit is eligible as per the definition.

4.3 For the period after 01.04.2011, the Learned Consultant for the appellant submitted that the credit would be eligible as these services are availed to comply with statutory requirements. The appellant has to maintain a green belt as per the Pollution Control Board norms, for which the appellant has availed Manpower for Gardening Services. Since the factory premises is situated far away from the city, the appellant has provided transport facilities. Further, as per the labour legislations, the appellant has to maintain a canteen facility. The service of Manpower was availed for Canteen / Outdoor Catering for such reason. That though the Larger Bench of the Tribunal in the case of M/s. Wipro Ltd. v. Commissioner of Central Excise, Bangalore-III reported in 2018 (363) E.L.T. 1111 (Tri. – L.B.) had held that Outdoor Catering Services is not eligible for credit post-amendment, the Tribunal had not examined as to whether credit would be eligible when the Outdoor Catering Services are availed as per statutory requirements. He referred to the decision of the Hon'ble High Court of Rajasthan in the case of *Commissioner,*

Central Excise v. M/s. Manglam Cement Ltd. reported in 2017 (11) T.M.I. 483 – Rajasthan High Court. He submitted that in the said case, the period after 01.04.2011 was also considered in respect of Outdoor Catering Services. The Tribunal in the case of *M/s. Varroc Engineering Pvt. Ltd. (Plant VII) v. Commissioner of Central Excise and Service Tax, Aurangabad* reported in 2020 (10) T.M.I. 281 – CESTAT Mumbai and in the case of *M/s. Hawkins Cookers Ltd. v. Commissioner of C.G.S.T., Thane* reported in 2021 (3) T.M.I. 789 – CESTAT Mumbai held that the Larger Bench had not looked into the issue as to whether credit is eligible when Outdoor Catering Services are availed as a statutory requirement for providing canteen facility to employees. The Tribunal in the said decisions had applied the decision of the Hon'ble Rajasthan High Court in *M/s. Manglam Cement Ltd. (supra)*.

4.4 In regard to Rent-a-Cab Services, the Learned Consultant for the appellant submitted that even after 01.04.2011, the appellant would be eligible for credit. To support his argument, he relied upon the decision of the Tribunal in the case of *M/s. Sundaram Clayton Ltd. v. Commissioner of Central Excise, Chennai-II* reported in 2018 (7) T.M.I. 688 – CESTAT Chennai. He argued that the Revenue has not alleged in the Show Cause Notice that the vehicles have not been used as capital goods and therefore, the exclusion does not apply.

4.5 It is submitted by the Learned Consultant for the appellant that the appellant-factory cannot operate without maintaining a green belt as this is a requirement as directed by the Pollution Control Board. To maintain such green belt, the appellant has procured the services of Manpower Supply for maintaining the garden / green belt; the Service Tax paid for such services is, therefore, eligible for credit. He relied upon the following decisions:

- (i) *M/s India Glycols Ltd. V. C.C.E., Meerut [2013 (292) E.L.T. 312 (Tri. – Del.)];*
- (ii) *M/s. Hindustan Zinc Ltd. V. C.C.E., Jaipur [2013 (288) E.L.T. 406 (Tri. – Del.)];*
- (iii) *M/s. Kirloskar Oil Engines v. C.C.E., Aurangabad [2010 (258) E.L.T. 123 (Tri. – Mum.)]*

4.6 It is further submitted by the Learned Consultant for the appellant that the Show Cause Notice for the first period viz. August 2008 to October 2010 has been issued invoking the extended period of limitation. The Commissioner (Appeals) has set aside the penalty observing that the issue is an interpretational one. For this reason, the invocation of extended period alleging that the appellant has suppressed facts with intent to evade payment of duty cannot sustain.

4.6 He prayed that the appeal may be allowed.

5.1 Ms. Sridevi Taritla, Learned Authorized Representative, appeared and argued for the Department. In regard to the credit disallowed on Outdoor Catering Services, she submitted that after 01.04.2011, the definition of 'input service' specifically excludes such services and therefore, the authorities below have rightly disallowed the credit. She referred to the definition of 'input service' after the amendment with effect from 01.04.2011, which reads as under:

"Input Service" means any service,

- (i) Used by a provider of output service for providing an output service; or*
- (ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal,*

and includes services used in relation to 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 up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes, -

(A).....

(B).....

(C)Such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as on Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

5.2 She relied upon the decision of the Hon'ble Supreme Court in the case of *M/s. Toyota Kirloskar Motor Pvt. Ltd. v. Commissioner of Central Tax* reported in 2021 (55) G.S.T.L. 129 (S.C.) and submitted that the Hon'ble Supreme Court has upheld the view of the Hon'ble High Court in disallowing the credit on Outdoor Catering Services after 01.04.2011.

5.3 With regard to Rent-a-Cab Services, it is submitted by the Learned Authorized Representative for the respondent that for the period after 01.04.2011, the appellant is not eligible for credit unless they establish that

the vehicles are capital goods for the service provider. The appellant has not produced any document to establish the same and therefore, the credit has been rightly disallowed.

5.4 With regard to the issue of limitation, it is submitted by her that the extended period has been invoked only in the first Show Cause Notice wherein the period involved is prior to 01.04.2011 and that the second Show Cause Notice has been issued within the normal period.

6. Heard both sides.

7. At the outset it has to be stated that major part of the demand is for the period prior to 01.04.2011. Learned Consultant for the appellant has adverted to the definition of input service as it stood prior to 01.04.2011, in which the phrase "activities relating to business" is included. In various decisions of the Tribunal as well as several High Courts, it has been held that the said definition has a very wide ambit and it would include almost all services used for the activities of business. For this reason, I hold that the impugned services are eligible for credit for the period prior to 01.04.2011.

8.1 The definition of input service was amended with effect from 01.04.2011 which has been reproduced in paragraph 5.1 above. The definition contains an exclusion clause wherein the credit availed on Rent-a-Cab Services as well as Outdoor Catering Services has been specifically excluded. The Learned Consultant for the appellant has relied upon the decision in the case *M/s. Sundaram Clayton Ltd.(supra)*. In the said order of the Tribunal, at paragraph 7, it can be seen that the appellant therein had produced a certificate issued by the service provider wherein it was stated that the vehicles rented out to the appellant are capital goods in their books of account. There was no allegation in the Show Cause Notice issued to the appellants denying this claim raised by them. The Tribunal, in paragraph 7 of the order, had discussed this issue and held that since the vehicles are capital goods for the service

provider, the exclusion would not apply. However, in the present case, the appellant has not furnished any evidence to show that the vehicles are capital goods for the service provider. The said decision is, therefore, of no assistance to the appellant.

8.2 I hold that the appellant is not eligible for credit on Rent-a-Cab Services after 01.04.2011.

9.1 The credit availed on supply of Manpower for Outdoor Catering Services has been disallowed for the period after 01.04.2011. The Hon'ble Supreme Court in the case of *M/s. Toyota Kirloskar Motor Pvt. Ltd. (supra)* has held that the said credit is not eligible post 01.04.2011. The relevant part of the order is reproduced as under:

"2. The statutory provision - Rule 2(1) defining "Input Service" post 1-4-2011 is very clear and the out-door catering services when such services are used primarily for personal use or consumption of any employee is held to be excluded from the definition of "Input Service".

3. In that view of the matter, it cannot be said that the High Court has committed any error in denying the input tax credit and holding that such a service is excluded from input service.

4. We are in complete agreement with the view taken by the High Court. Hence, the Special Leave Petitions stand dismissed."

9.2 Following the same, I hold that the credit availed on Supply of Manpower for Outdoor Catering Services for the period after 01.04.2011 has been rightly disallowed.

10. The other issue is with regard to the Supply of Manpower for Gardening Services after 01.04.2011. The service of gardening does not fall under any specific exclusion clause of the definition of 'input service'. The appellant has availed the said services to comply with the requirements of the Pollution Control Board. For this reason, I hold that the credit availed on Manpower Supply

for Gardening Services to maintain a garden / green belt within the factory premises is eligible for credit.

11. Coming to the issue of limitation, it is seen that the extended period has been invoked only for the period involved in the first Show Cause Notice. The said period being prior to 01.04.2011, the argument of the Learned Counsel for the appellant is irrelevant for consideration.

12.1 From the foregoing, I hold that the impugned services, namely:

(1) Rent-a-Cab Services

(2) Supply of Manpower for Outdoor Catering Services

(3) Supply of Manpower for Gardening Services

are eligible for credit for the period prior to 01.04.2011.

12.2 For the period post 01.04.2011, the appellant is not eligible for credit on Rent-a-Cab Services and Supply of Manpower for Outdoor Catering Services. However, the credit availed on Supply of Manpower for Gardening Services for the period after 01.04.2011, if any, would be eligible.

13. The impugned order is modified to the above extent.

14. The appeal is partly allowed with consequential reliefs, if any.

(Order pronounced in the open court on **10.03.2022**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)