

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 11981 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-065-2019-20 dated 10.05.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

**Bombay Market Art Silk Co Op
(Shops & Warehouse) Society Limited**

.... Appellant

Post Box No. 1002, Sahara Gate, Umarwada
Surat, Gujarat-395010

VERSUS

C.C.E. & S.T.-Surat-i

.... Respondent

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

Shri Jigar Shah, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING / DECISION : 17.05.2022

FINAL ORDER NO. A/10528 / 2022

RAMESH NAIR :

The issue involved is that whether the appellant is entitled for Cenvat credit in respect of Construction/ Works Contract Service for re-carpeting of road in their industrial estate. The lower authorities denied Cenvat credit on the ground that it is a new construction of road under works contract service which is excluded in the definition of Input Service under Rule 2(I) of Cenvat Credit Rules, 2004. Aggrieved by the denial of Cenvat credit the appellant filed appeal before this Tribunal against the impugned order.

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that there were already existing tar roads for which the Board has

decided to re-carpet the same. He invites my attention to the conference papers and also shown the minutes of meeting of the Board wherein it is pointed out that work for which the Board meeting was conducted is for re-carpeting of existing road. On this basis, it is his submission that if the industrial estate already existing and roads were also existing hence the work of re-carpeting of roads falls under repair or renovation, which is specified in inclusive clause of definition of Input Service in terms of Rule 2(l) of Cenvat Credit Rules, 2004. He submits that the entire basis for denial of credit that it is a new construction of road, is not correct and the order is not sustainable. He placed reliance on the judgment of this Tribunal in the case of *Reliance Industries Limited vs. CCE & ST, Rajkot – 2022 (4) TMI 729 – CESTAT AHMEDABAD*.

3. Shri R P Parekh, learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order. He submits that whether it is new construction or repair, the construction service/ works contract service has been excluded from the definition of Input Service, therefore, credit is not admissible on the service of road construction.

4. I have considered the submissions made by both the sides and perused the record. I find that the fact is not under dispute that the industrial estate already existed and for moving around the Industrial Estate the tar roads were also existing. The works contract/ construction was executed for the purpose of re-carpeting of existing road. Therefore, the said services are for the purpose of repair and renovation of the exiting industrial estate. I have also observed from the notes of the Board meeting for the purpose of re-carpeting of the road that it is for re-carpeting and not for new construction of road. Therefore, this service is for repair and

renovation and not for originating the new construction. This issue has been considered in the decision of this Tribunal in the case of *Reliance Industries Limited (supra)* wherein the bench has observed as under :-

“4.10 Without prejudice to our above findings, we further find that the appellant’s factory is admittedly huge existing petroleum industry and working for decades. The ECIS service was used for expansion, renovation and modernization of overall existing petroleum plant. As per inclusion clause of the definition the services relating to modernization, renovation is an admissible input service. In our view, even though service of construction of building or civil structure are falling under the exclusion clause but even if similar service is used for renovation and modernization of existing factory, the credit is admissible. The exclusion applies only in respect of such service as specified therein which are used for initial setting of the factory. It is pertinent to note that when the exclusion was brought in the rules, services relating to setting up of the factory was removed from the inclusion clause of the definition of input service in rule 2(l) of Cenvat Credit Rules, 2004 therefore, there is a direct nexus of the service mentioned in the exclusion clause and setting up of the factory. It is important to note that the legislature consciously continued the services of renovation, modernization, repairs appearing in the inclusion clause of definition of input service. This clearly shows that any service relating to modernization, renovation of the existing factory is admissible as input service which is the direct case of the appellant. This aspect has been considered in various judgments which are reproduced below:-

BHARAT COKING COAL LTD VS. COMMR. OF CENTRAL EXCISE & S.TAX, RANCHI - MANU/CK/0036/2021

“9. Further, the said CHP has been set up with the view to 'modernise the coal loading process in the mines' also satisfies the definition of input service. Moreover, since the credit has been allowed by the Department on certain invoices raised by the Contractor, the Department has in-principle found the service to be eligible for credit. We also agree with the submission made by the appellant that the mode of valuation adopted by the Contractor to discharge service tax on 40% of the contract value is in accordance with law contained in Service Tax Valuation Rules and cannot be disputed while deciding credit eligibility at the appellant's end. When service tax has been levied only on 40% of the total value, it essentially means that service tax has been paid only on the service portion.”

ION EXCHANGE (I) LTD. Vs. COMMISSIONER OF C. EX., CUS. & S.T., SURAT-II- 2018 (12) G.S.T.L. 302 (Tri. - Ahmd.)

“6. The short issue involved for determination in the present case is : whether the appellants are eligible to credit of Service Tax paid on „construction service“ relating to modernization/renovation of their factory.

7. It is the contention of the Revenue that after amendment to the definition of „input service“ all „construction service“ undertaken within the factory premises fall outside the scope of the said definition, accordingly, Service Tax paid on „construction service“ is not admissible to credit. The appellant, on the other hand, submits that on deletion of words „setting up“ from the scope of said definition, new construction undertaken, would no longer be eligible, however, the construction relating to „modernization, renovation or repair“ of the existing plant and machinery inside the factory premises is definitely continued to fall within the ambit of said definition. Consequently, the Service Tax paid on „construction service“ involving modernization,

renovation and repair work within the factory is eligible to credit. Before scrutiny of the rival contentions, the relevant old and amended Rule 2(l) of the Cenvat Credit Rules, 2004 are reproduced as below : 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, **Prior to 1-4-2011**

(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 of final products and clearance of final products up to 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 up to 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 up to the place of removal;

From 1-4-2011

(l) "input service" means any service,

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

(ii) used by a 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 modernisation, renovation or repairs of a factory, premises of provider of output service 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) service portion in the execution of a works contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(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 Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

8. A plain reading of the said provisions makes it clear that service utilized in relation to modernization, renovation and repair of the factory are definitely fall within the meaning of „input service“ even though; construction of a building or civil structure or part thereof has been placed under exclusion clause of the said definition of „input service“. After amendment to the definition of the „input service“, a clarification issued by the Board vide Circular No. 943/4/2011-CX, dated 29-4-2011 whereunder answering to the questions raised on the eligibility of credit of service tax paid on construction service as an „input service“ used in modernization, renovation or repair, it has been clarified that the said services being provided in the inclusive part of definition of “input service” are definitely eligible to credit. Thus, harmonious reading of the inclusive part of the definition and the exclusion clause mentioned at clause (a) relating to construction service of the definition of „input service“, it is clear that the construction service relating to modernization, renovation and repair of the factory continued to be within the meaning of „input service“ and accordingly, the Service Tax paid on such service is eligible to credit. Undisputedly, the appellant carried out modernization/renovation work to meet USA, FDA guidelines for manufacture of their products therefore, the service tax paid on such construction service is eligible to credit. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law.”

**MUSADDILAL PROJECTS LTD. Vs.COMMR. OF C. EX., CUS. & S.T., HYDERABAD-I -2017
(4) G.S.T.L. 401 (Tri. - Hyd.)**

“15. The department has denied credit alleging that all these services are for setting up of premises of the appellant and therefore not admissible. It is the case of appellant that the input services were not availed for setting up of the premises, but the services were availed only for modernization and renovation of the premises. From the table itself it is clear that the services are not per se for “construction of building” or “setting up of premises” and these are merely renovation/modernization works. The services in the table show that these are construction services for laying the flooring, Erection of Machinery, Electric Installation Works, Single Leaf Door, Installation Boom Barriers, Electrical Consultancy Charges. Since these services would fall within the category of modernization, renovation services which come within the inclusive part of the definition of input services, I am of the view, that the services are eligible for credit. The judgment in the case of Infosys Ltd. v. CST, Bangalore (supra) is also applicable to the said issue. In para 5.8 of the said judgment, the Tribunal held that after 1-4-2011 services used in modernization, renovation or repairs alone would be admissible for credit.”

**MAHLE ENGINES COMPONENTS INDIA P. LTD vs. COMM. OF C. EX., INDORE -2018
(363) E.L.T. 1150 (Tri. - Del.)**

“6. With regard to the availment of Cenvat credit of the Service tax on painting of the factory building & machinery, I find that the Authorities below have denied Cenvat credit on the ground the construction of building or civil structure is falling under the Exclusion Clause contained in the definition of “input service” under Rule 2(1) of the Rules. However, on perusal of the sample copies of the invoices issued by the service provider, I find that the services were provided in relation to the painting of the factory building and plant & machinery, which are appropriately classifiable under category of “renovation or repair of the factory” contained in the inclusive part of the definition of the “input service”. Thus, I am of the considered view that such service falls under the purview of the “input service” for the purpose of availment of Cenvat credit. Therefore, denial of Cenvat credit and imposition of penalty on the appellant will not be sustainable.”

5. From the above decision of this Tribunal it is clear that any construction and works contract if used for repair and renovation of existing factory, the same falls under inclusion clause of definition of Input Service, accordingly, the Cenvat credit is admissible. The impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

**(Ramesh Nair)
Member (Judicial)**