CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. IV

EXCISE APPEAL NO. 50794 of 2019 (SM)

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-387-18-19 dated 28.02.2019/06.03.2019 passed by The Commissioner (Appeals – I), Central Excise, Customs & Service Tax, Indore (M.P.).]

M/s Rajratan Global Wire Ltd. **Appellant**
200-B, Industrial Area, Sector – I,
Pithampur (M.P.)

VERSUS

Commissioner, **Respondent**
Central Goods & Service Tax,
Ujjain (M.P.).

Appearance

Shri Ankur Upadhyay, Advocate – for the appellant.

Shri P. Gupta, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

FINAL ORDER NO. 51239/2021

DATE OF HEARING : 19/03/2021.
DATE OF DECISION: 09/04/2021.

RACHNA GUPTA :-

The appellant M/s Rajratan Global Wire Ltd. is engaged in manufacture of wire of non alloy steel viz. steel wire, stranded wire and Tyre Bead wire. They are also availing the facility of Cenvat credit under Cenvat Credit Rules, 2004 (hereinafter CCR) on the inputs, capital goods as well as on input services. During the scrutiny of the appellant's record AGMP Audit party observed that the appellant has availed incorrect Cenvat credit of service tax on ineligible services like Customs House Agent Service, Rent a Cab Operator Service, Banking and Financial Services,

Insurance Services, Courier Services, Travel Agent Services, Subscription of Club Membership etc. Availment of Cenvat credit on the services which was not found in order as these were not specified categories of input services. Resultantly vide show cause notice No. 216 dated 23 April 2018 credit of Rs. 27,98,462/- was proposed to be disallowed to the appellant for availment of the above-mentioned services for not being the input services. Interest on appropriate rate and proportionate penalty was also proposed. The said proposal was confirmed vide order-in-original No. 20/DC/DEMAND/ADJ/PITH-I/18-19 dated 25 October 2018. Commissioner (Appeals) vide the order No. IND-EXCUS-000-APP-387-18-19 dated 28 February 2019 has modified the order by allowing Cenvat credit to the appellant with respect to all the above-mentioned services except for the two, that is, the credit on Membership of Club Service and credit on Health Insurance Service holding that both the services are specifically excluded from the definition of input service, as stands amended, w.e.f. 1 July 2012. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Ankur Upadhyay, learned Counsel for the appellant and Shri P. Gupta, learned Authorized Representative for the Department.

3. It is mentioned on behalf of the appellant that all the services which are used by the manufacturer directly or indirectly in relation to the manufacture of final product and for the clearance of final product up to the place of removal are input services for which credit is allowable. It is mentioned that the definition as stands amended w.e.f. 01 July 2012 also permits the same. In addition the amended definition has an inclusive part which has not specified services on which Cenvat credit is allowable but it still has specific activities in relation to which any service availed by its recipient would be eligible for availment of Cenvat credit. It is impressed upon that merely for the reason that the service is not mentioned either in the main part or

inclusive part of the definition the denial of Cenvat credit thereupon is not proper and legal with respect to the exclusion clause of the definition. It is submitted by the appellant that the services as enumerated in the inclusion clause of definition are excluded from the ambit of input service only when extended to employees on vacation, such as, leave or home travel concession and used primarily for personal used on consumption of any employee. It is submitted that neither the Health Insurance Scheme nor the Membership of Club Fee are for the personal use nor for consumption of an employee. Hence, Commissioner (Appeals) has wrongly disallowed the Cenvat credit of both the said services. The order is accordingly is prayed to be set aside. Appeal prayed to be allowed.

4. Per contra learned Departmental Representative led emphasis on the exclusion clause of Rule 2 (i) of Cenvat Credit Rules, 2004 and has mentioned that there is no infirmity in the order under challenge. Sufficient denial has already been extended in favour of the appellant. Appeal is accordingly prayed to be dismissed.

5. After hearing and pursuing the record, it is observed and held as follows :

Initially several services were denied to be the input services and the demand for the recovery of Cenvat credit availed for them was confirmed by the original Adjudicating Authority. However, Commissioner (Appeals) has set aside the said order with respect to all services, as that of Banking and Financial Services, Customs House Agent Service, Courier Service, Wind Mill Operation Service, Rent a Cab Service, Telephone Service and Ticket Booking Services holding that all the services are covered either under the main definition or under the inclusive part of the definition of input service. The services as that of Club Membership and that of Insurance are denied to be the input services, being falling in the exclusion

clause of the said definition and the demand with respect to said two services have been confirmed.

6. In the given facts, it is relevant to look into the definition of input services which reads as follows :-

> **RULE 2. Definitions.** —(1) In these rules, unless the context otherwise requires,-
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> (a) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);
>
> (b) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (46) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017);
>
> (c) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);
>
> (d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;
>
> (e) "final products" means excisable goods manufactured or produced from input;
>
> (f) "first stage dealer" means a dealer, who purchases the goods directly from,-
>
> (i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2017 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
>
> (ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;
>
> (g) "input" means excisable goods used in the factory by the manufacturer of the final product but excludes high speed diesel oil or motor spirit, commonly known as petrol;
>
> (h) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;
>
> (i) "notification" means the notification published in the Official Gazette;

(j) "person" means the person referred to in sub-section (84) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

(k) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

from where such goods are removed;

(l) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

(2) The words and expressions used in these rules and not defined but defined in the Excise Act shall have the meanings respectively assigned to them in the Excise Act.

A perusal of this definition makes it clear that any service which has been used directly or indirectly in relation to the manufacture of final product and the clearance thereof upto the place of removal, the credit is allowable. In inclusive part of the definition also though there are no specific services mentioned, but it widens the scope of main definition that any service can be the input service provided it is used in relation to manufacture of final product. Coming to the exclusion part thereof specific services have been excluded therein, however, only and only in the situation if the services are used primarily for personal used or consumption of any employee.

7. The two services to be adjudicated herein are Club Membership Service and the Insurance Service. Both these services are neither for the personal use of the appellant nor for consumption of any one employee, but for the welfare of the employee at large. Tribunal Hyderabad in the case of **Hydus Technologies India Pvt. Ltd. versus CCE, CUS & ST, Hyderabad – II – 2017 (52) S.T.R. 186 (Tri. – Hyd.)** has

held that the group gratuity scheme for employees is a service for the welfare of the employees at large services stated in clause (c) in the input service definition are held to be excluded only when such services are used primarily for personal use or consumed by any employee Hyderabad Tribunal has denied the insurance service of all the employees if taken by the manufacturer to fall under exclusion clause of the input definition. Hon'ble Madras High Court also in the case of **Ganeshan Builders Ltd. versus Commissioner of Service Tax, Chennai – 2019 (20) GSTL 39 (Mad.)** has held that insurance also was insured specific and not employee specific. It cannot be for personal use or for consumption of an employee manufacturer held entitled to take credit of service tax paid. Similarly, with respect to the Club Membership Services, Tribunal Delhi in **BCH Electric Ltd. versus Commissioner of Central Excise, Delhi – IV – 2013 (31) S.T.R. 68 (Tri. – Del.)** has held that Membership of an association of manufacturers is covered by the definition of input service under Rule 2 (l) of Cenvat Credit Rules, 2004 as related business activity providing information on technology.

8. Above all, there is no evidence produced by the Department to prove that even these two services were for personal use of the appellant. In absence thereof, I do not find any logic in the findings of Commissioner (Appeals) while confirming the recovery of Cenvat credit availed by the appellant on these two services as well. There is no other evidence with respect to the alleged suppression of facts or willful mis-statement on the part of the appellant. Law has been settled that the allegations as that of fraud, collusion or willful mis-statement are grave allegations, mere recital thereof cannot be suffice. It is for Department to prove evidence that the assessee has a malafide intend to evade the payment of duty while the facts were suppressed or mis-stated by the assessee. Apparently, there is no such evidence on record. To my opinion in the

circumstances, Department was not entitled to invoke the extended period for issue show cause notice. This finding vitiate the show cause notice, as such.

9. As the result of above discussion it is held that Club Membership Service and Insurance Service both are input services of the appellant. Credit for these both has wrongly be disallowed. Above all, the show cause notice is held barred by time. Hence, the order under challenge is hereby set aside and appeal stands allowed.

(Order pronounced in open court on 09/04/2021.)

(Rachna Gupta)
Member (Judicial)

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