

(2020) 11 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12492, 12984 of 2019

Power Build Pvt Ltd @Hash C.C.E. And S.T.-Vadodara-I

Date of Decision : 12-11-2020

Acts Referred:

Cenvat Credit Rule, 2004 — Rule 2(I)
Finance Act, 1944 — Section 65(19)

Citation : (2020) 11 CESTAT CK 0031

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Mrugesh Pandya, Vinod Lukose

Final Decision : Allowed

Judgement

1. These appeals have been filed by M/s. Power Build Ltd. against denial of Cenvat Credit on services availed for providing Warranty Services to

their clients.

2. Learned Counsel for the appellants relied on the decisions in support of his claim. He argued that the Warranty Services are part of the

manufacturing and sale activity as they are required for the purpose of ensuring sale of the goods.

3. Learned Authorized Representative relied on the decision in the case of M/S. MAHINDRA & MAHINDRA LTD- 2012-TIOL-836-CESTAT-

MUM and asserts that the credit can only be allowed if the value of the services is included in the assessable value for the purpose of Central Excise.

He asserts that the term "Activity relating to business" has been removed from the definition of Input Services.

4. I have considered the rival submissions, I find that the decision in the case of LUCAS TVS LTD. v/s. COMMISSIONER OF CENTRAL

EXCISE, CHENNAI observed as follows:

6. In the show cause notice, the sole allegation is that credit is ineligible since the input services do not have nexus with the

manufacturing activity. Such an allegation is factually wrong since the supply of parts and components during the warranty claim definitely

relates and has nexus with to the manufacturing activity of the appellant. At the time of adjudication, the original authority has given a go

by to this allegation raised in show cause notice and has rejected the credit raising a new allegation stating that the credit is not eligible as

the input services have been availed outside the place of removal. The authorities below have relied upon the decision of Honâ??ble Apex

Court in the case of Commissioner of Central Excise & Service Tax v. M/s. Ultratech Cement Ltd., reported in 2018 (9) G.S.T.L. 337 (S.C.)

to observe the input services have been availed beyond the place of removal and, therefore, not eligible for credit. I do not think that the

said decision is applicable to the facts of this case. The input services in the nature of repair and maintenance are in connection with supply

of parts during the warranty period. These are not services which are connected with outward transportation of goods. All input services

listed in the definition under Rule 2(l) of Cenvat Credit Rules are not restricted to be availed within the factory itself. It is not necessary that

all input services should be availed within the factory itself. The restriction in respect of inputs does not apply to input services. The

Honâ??ble High Court in the case of M/s. Deepak Fertilizers & Petro-chemicals Corporation Ltd., reported in 2013 (32) S.T.R. 532 (Bom.)

has held that it is not necessary that the input services should be availed inside the factory itself. Thus, the rejection of credit observing that

the said warranty services have been availed beyond the place of removal is without any legal basis.â??

4.1 It is seen that in the said case pertains to period after the amendment of the definition of Input Service and when the term â??Activity relating to

businessâ? has been removed from the definition of Input Service. It has been held that supply to Parts & Components during the warranty claim

definitely relates and has nexus with the manufacturing activity of the appellant. In these circumstances, I find that this case law is squarely applicable

to the facts of the case.

5. Learned Authorized Representative has relied on the decision of M/S. MAHINDRA & MAHINDRA LTD (supra) in Para 6 of the said case

following has been held:

6. Apart from the above, the appellate authority has viewed the problem from angle, when he observed as under: 4.5 Assuming, though

not admitting, for the sake of argument that the services have been provided by M/s. Danke Electricals to M/s. GEB on behalf of the

appellants, then the services would be appropriately classifiable as Business Auxiliary Services covered under clause (iii) [any customer

care service provided by a third party on behalf of another person] and/or under clause (vi) [any service provided by a third party on

behalf of another person] of Section 65(19) of the Finance Act, 1944. Keeping in view the fact that services/repairs during warranty period

are an obligation of the manufacturer of goods and in a situation, as in the presentcase, where the said service is rendered by a third party

(in this case by M/s. Danke Electricals) on behalf of the manufacturer, then also the said services- Business Auxiliary Service- would be

covered with the definition of input service for the appellants.

6. I find that it is the Warranty Service which implies that the value is already included in the sale price of the goods. Moreover, there is no

requirement in the definition of Input Service that the value is to be included in the assessable value for the purpose of Central Excise before the credit

can be allowed. There is no such restriction in the definition of input service.

7. In view of the above, relying on the decision of tribunal in the case of LUCAS TVS LTD (Supra) the appeals are allowed.

(Dictated & Pronounced in the open court)