

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Excise Appeal No.41856 of 2015

(Arising out of Order-in-Original No.08/2015 dated 28.05.2015 passed by
Commissioner of Central Excise, Chennai III Commissionerate, Chennai)

Bharat Heavy Electricals Ltd.,

..... Appellant

Boiler Auxiliary Plant,
Indira Gandhi Industrial Complex,
Ranipet – 632 406.

VERSUS

The Commissioner of CGST & Central Excise

...Respondent

Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Ms. S. Sridevi, Advocate, for the Appellant
Shri . N. Satyanarayanan, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40851/2024

DATE OF HEARING : 04.07.2024

DATE OF DECISION :11.07.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in the manufacture of
Electrostatic Precipitators, Industrial Fans, etc. They are registered with
the Central Excise department and are availing Cenvat credit on the

inputs, capital goods and input services as under the Cenvat Credit Rules 2004.

2. The appellant availed input service credit based on the Input Distributor Service Invoices issued by their Input Service Distributor (ISD) namely "Cost Centres". The appellant had corporate office at New Delhi, Power Sector Marketing Office at New Delhi, Industry Sector Marketing Office at New Delhi, Regional Operations Divisions and International Operations Division at New Delhi. These were called by the appellant as "Cost Centres", which had obtained Input Service Distributor for distributing the input service credit. The appellant had availed credit of service tax on the invoices issued by these Cost Centres (ISD invoices). The department was of the view that the services availed by the appellant on the invoices distributed by the ISD do not have any nexus with the manufacturing activity of the appellant, and therefore is not eligible for credit. The various input services under dispute are as under: -

3. Maintenance or Repair Service, Advertising Agency Service, Telecommunication Service, Professional Charges for Patents, Renting of Immovable Property, Man Power Recruitment / Supply Agency services, Technical Testing Service, Air Travel Agent Service, Courier Service, Software Development, Goods Transport Agent Service, Legal Consultancy Service, Information Technology Software Service, Packaging Service, Erection, Commissioning or Installation Service, Security Agency Service, Business Auxiliary Service, Scientific or

Technical Consultancy Service, Commercial Training Coaching or Technical Service, Consultancy Services, Facsimile Services, Outdoor Catering Service, Banking & Financial Services, Cable operators, Chartered Accountants, Accommodation Services, Convention Services, Renting of Immovable Proprieties, Share Transfer Agent, Membership, Insurance, Stock Exchanges, Sponsorship, AMC Services, Reverse Auction Services, Civil Works Services, Designing & Printing Services and Finance Lease Services.

4. The department noted that the Cost Centres (the offices of the appellant) are registered with the Central Excise department as Input Service Distributor and they distribute service tax credit to various manufacturing units and erection divisions based on turn over as per Rule 7 (c) or (d) of Cenvat Credit Rules, 2004. These Cost Centres do not have any turnover but only serve the manufacturing units by getting orders from customers, giving guidelines on policy matters to the units, arranging for funds required by the units.

5. The functions of the Coast Centres are as follows:-

Corporate office:

Control 14 manufacturing units and 4 erection divisions. Undertake guidelines on policy matters to the units, arranging for funds required by the units, finalization of technical collaboration, cash collection and allocation and overall administration.

Power Sector Marketing:

Submit bid based on tender floated by various developers of power projects, collection of outstanding dues, statutory forms, settlement of contractual issues and closing of contracts.

Operation Division:

Imports of raw materials and exports of final products. Also collects dues from customers.

Industry Sector Marketing:

Get orders from various companies and allocate orders to various manufacturing units and Erection divisions of BHEL. Also undertake collection of outstanding dues, statutory forms, settlement of contractual issues and closing of contracts.

International Operations Divisions:

Undertake the activity of getting order from developers in other countries.

6. The department was of the view that the appellant has not established that the services received through the ISD invoices are used in relation to manufacture of final products by them. Hence show cause notice dated 08.10.2014 was issued to the appellant proposing to deny the credit availed on input services for the period from September 2013 to July 2014 and proposing to recover the same along with the 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 of Rs.20,00,000/- under Rule 15 (1) of Cenvat Credit Rule 2004. Aggrieved by such order, the appellant is now before the Tribunal.

7. The Ld. Counsel Ms. S. Sridevi, appeared and argued for the appellant. It is submitted that the period involved is from September 2013 to July 2014 which is the period after the major amendment to the definition of Input Services. The Ld. Counsel referred to the definition of input service under rule 2 (I) of Cenvat Credit Rules 2004 for the disputed period which reads as under:-

As per Rule 2(1) of CENVAT Credit Rules, 2004

RULE 2(1): Input Services "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) 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. It is submitted that the credit has been denied alleging that the appellant has not established that the input services were used for manufacturing activities. It is an admitted fact that the input tax credit has been distributed to the appellant as per rules laid down in terms of Rule 7 of Cenvat Credit Rules 2004. The appellant has 4 Cost Centres which are registered as input service distributors. The appellant has availed credit only through the invoices issued by these input service distributors. The provision for registering as an input service distributor is to facilitate procurement of credit on services centrally and for distribution to various units. These units use the services directly or indirectly with the manufacturing activity or for providing taxable output service. All the services received has a nexus with the manufacture and clearance of final products of the manufacturing units and erection divisions. The payments for procuring the input services which were commonly utilized by all the units were maintained by the Cost Centres registered as an ISD. These Cost Centres having registered as ISD has distributed the credit which qualifies as an input service in terms of Rule 2 (I) of Cenvat Credit Rules 2004, these Cost Centres are subject to verification and audit by their jurisdictional officers. These ISDs are also liable to file periodical returns which are subject to the scrutiny by their jurisdictional officers. The correctness of the credit taken and the manner of distribution of the credit are therefore subject to the

verification of the department. So far, no adverse inference has been made against the Cost Centres (ISDs) in availing the credit.

9. The department has sought to deny the credit that has been distributed to the appellant which is a manufacturing unit alleging that the input service credit availed by the ISD registered Cost Centres is not used either directly or indirectly or in relation to the manufacture and clearance of final products by the appellant. This allegation is erroneous.

10. The allegation in the show cause notice is that the appellant has not produced documentary evidences to prove as to how these services have been used by the appellant so as to qualify as input services.

11. The invoice for each service is available at the input service distributor and the credit after having been distributed to the appellant is availed by them. The invoices clearly show the nature of services availed. All these services are used directly or indirectly or in relation to the manufacturing activity and therefore eligible.

12. The Ld. Counsel submitted that in the appellant's own case for earlier period similar show cause notice was issued. The appellant had filed appeal before the Tribunal against the denial of credit and confirmation of demand. The Tribunal vide Final Order No.42996/2018 dated 05.12.2018 had set aside the demand and remanded only two issues for further consideration. It was then noted by the Tribunal that Cost Centres being registered with the Central Excise Department as

ISD, the department cannot deny the credit to the unit to which the credits have been distributed in accordance with law.

13. Similarly, in the appellant's own case for different period April 2016 to June 2017 the Commissioner (Appeals) has set aside the demand allowing the appeal filed by the department vide O-I-A No. 12/2022 dated 03.03.2022. The allegations in the show cause notice of the said case are similar to the allegations raised in the present show cause notice.

14. In the appellant's own case, for the period from March 2013 to June 2013, show cause notice was issued denying credit to the tune of Rs.1,18,075/- alleging that certain input services are not eligible for credit. Services in the nature of air travel service, accommodation service, was under dispute in the said show cause notice. The original authority, after considering the submissions of the appellant vide O-I-O No.20/2022 dated 30.03.2022 held that the credit is eligible and dropped the entire proceedings in respect of show cause notice C. No. IV/16/102/2013- Adj. dated 24.09.2013. similarly, the proceedings initiated vide show cause notice dated 17.04.2006 on issue of availing credit on certain input services was dropped by original authority vide O-I-O No.29/2022 dated 03.06.2022 (period is March 2005).

15. It is submitted by the Ld. Counsel that the disallowance of the credit is without any legal or factual basis. It is prayed that the appeal may be allowed.

16. The Ld. AR Shri. N. Satyanarayanan, appeared and argued for the department. It is argued that the appellant has to establish that the services are used directly or indirectly for manufacturing activity. The credit has been correctly disallowed by the adjudicating authority. It is prayed that the appeal may be dismissed.

17. Heard both sides.

18. The only allegation raised in the show cause notice to disallow input service credit is that the appellant has not established that these services have been used directly or indirectly or in relation to the manufacturing of final products. The Ld. Counsel for appellant has given a tabulation with regard to the various services under dispute and the nexus of such services for the manufacturing activity. The said table reads as under:-

S.No.	Nature of service	Reason for disallowance of credit	Appellant's submission	Purpose	Covered decisions
1	Repairs and Maintenance	Repair services in respect of factory building or office building alone is covered in the definition. (Page 62)	It is an inclusive definition. It is covered under the expression "any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal"	Annual maintenance for Computer/AC and other office equipment	Assessee own case, LAA has allowed the credit for subsequent period in OIO No. 29/2022 dt 03.06.22 Also covered in ADC Inda communication - 2014(34) STR 637 (page 157-158)
2	Advertising Agency Services	Only advertisement of final products is eligible. (Page 63)	Advertisement specifically covered in definition.	Used for publishing tenders, recruitment notifications, etc	Covered- Coco Cola Pvt Ltd., 2015(38) STR 695 (Tri Mum) Birla Corp 2014(35) STR 977 (Tri Del) Page 159 to 161)
3	Telecommunication,	These services are not covered in the definition. (Page 63)	Covered by the main part of the definition reproduced in (1) above. Air Travel service covered by the earlier order of this Tribunal.	Telephone/Internet	Stainless Steels India -2014-TIOL-635- cestat del (page 162 & 163)
	Professional Charges for Patents			Fees for Patent Registration for new invention	Garware Polyester _ 2012(26) STR 215 (page 165 & 165)
	Renting of Immovable Property			Rent for Cost centres	Ingersoll Rand Internationa; 2015-TIOL-1247-CESTAT BANG National Engg - 2013(30) STR 511 (page 166 & 167)
	Technical Testing			Stability testing on the quality of the inputs to be used	Cadila Health care-2013-TIOL-12 HC-AHM -ST (PAGE 17- TO 182)
	Air Travel Agency			Ticket for executives towards marketing,	Assessee own case vide FO

				meeting clients, negotiation etc.,	No.42996/2018 dt 05.12.18; and other decision in page 186 to 188
	Courier Services			Sending official documents/ communication with buyers etc.,	Assessee own case OIO No. 29/22 dt 03.06.2022 and other decisions in Page 189 to 191)
	Software Development & IT Services			Software development for monitoring day to day affairs such as order monitoring, due date of delivery, realizing of pending payment, invoice/PO templates	Manatec Electronics - 2017(47) STR 239 (Tri Chennai) and Integra Software 2017(50) STR 145 (Tri Chennai)
4	Manpower recruitment / supply service	No evidence to prove that they are used in or in relation to manufacture (Page 63 & 64)	The employed manpower is working directly or indirectly in or in relation to manufacture only	Manpower for office works/factory	Wipro Ltd., 2014-TIOL- 2554-CEST-MAD
5	Erection, commissioning of installation of services, generators, UPS, etc.	Definition excludes, service portion in works contract service (Page 64)	Exclusion is only with reference to civil structure. Covered by earlier order of the Tribunal.	Installation of servers/generator/Ups etc, essential for functioning of office/factory	GE India Technology-2014-TIOL-1931-CESTAT- BANG (197-199) Assessee own case in FO 42996/2018 dt 5.12.2018
6	Business Auxiliary Service, Business Support service, storage and warehousing service	No proof submitted / not covered in the definition (Page 64)	Covered under the definition	Sales promotion, Storage and warehouse of imported/export goods	Allowed in appellant's case in OIO 29/2022 dt 3.6.2022 Wadpack Pvt Ltd 2013(293) ELT 400 (page 201) Cadila Health care 2013(30) STR 3 (Guj) ape 170 - 185)
7	Scientific or technical consultancy service	These services are not covered in the definition. (Page 66)	Covered by the main part of the definition reproduced in (1) above.	Utilised these services for R& D purposes for development of new products/processes for mfr of final products	CAlibre Chemicals-2013-TIOL-843- CES-AHM (207 TO 208) Manatec Electronics - 2017(47) STR 239 (Tri Chennai)

8	Commercial coaching or training	Not used in or in relation to manufacture. (Page 66)	Used in or in relation to manufacture only.	Technical training to employees for proper execution of work	CCE vs Mindarika Pvt Ltd., 2015(39) STR 309 (Tri De)
9	Professional Consultancy service	These services are not covered in the definition (Page 66 & 67)	Covered by the main part of the definition reproduced in (1) above.	For finalizing tender documents	Heartland Bangalore Transcription - 2011(21) STR 430 (Tri0- Bang)
10	Fascimile service	These services are not covered in the definition. (Page 67)	Covered by the main part of the definition reproduced in (1) above.	Similar to telecommunication services for using fax line	Similar to telecommunication services
11	Outdoor catering	Not provide that it pertain to period prior to 01.04.2011 (Page 67 & 68)	Ineligible portion of the credit already reversed.	Services availed prior to 01.04.2011.	
12	Banking and financial services	Not used in or in relation to manufacture (Page 68)	Used in or in relation to manufacture only. Specifically covered in the definition.	LC charges, bank guarantee charges, bank charges for bills handlings	Covered in Assessee own case in OIO 21/2022 dt 31.3.2022; MPI Machines - 2013(31) STR 103 (page 211)
13	Cable operator service	Cable connection in office (Page 68)	Covered by the main part of the definition reproduced in (1) above. Covered by earlier order of the Tribunal.	Cable connection in office/conference to remain updated with business news and development which is essential for efficient output	Assessee own case in FO 42996/2018 dt 5.12.2018
14	Accommodation and convention service	Not pertaining to Ranipet (Page 68)	ISD credit. Remanded in the earlier order of the Tribunal. But in the impugned order the finding is different.	For conduction Annual General Meetings/floating renders/ acceptance of orders etc.,	Assessee own case in FO 42996/2018 dt 5.12.2018
15	Share Transfer agent service	Finding in page 18 of the order / Page 69 of the paper book (Page 69)	Covered in the definition of input service	Being a public ltd company services of share transfer agent is essential for transfer of shares and registration/updation of same with ROC.	
16	Membership Service	Excluded from definition (Page 69)	Not excluded.	Subscription for Membership with Mangement/Engg institutes, trade /commerce association etc.,	Assessee own case in FO 42996/2018 dt 5.12.2018

17	Insurance	Insurance of export goods is not eligible as it is beyond place of removal (Page 69)	Not excluded	Availed in respect of buildings, equipments, stock, etc.	DCSL Sugars & DCM Engineering -2014(34) STR 58 & 2014(33)STR 522 (page 215 to 218)
18	Stock exchange	Claim that the services are used to monitor the fluctuations is not true. (Page 70)	Covered in the definition	Appellant is public Ltd., company registered with Stock exchange and covered under share registry services(main)	Mangalore Refinery Petrochemicals 2015(319) ELT 121 (Tri Bang)
19	Civil works	The claim that these pertain to repairs of buildings, etc. is not true. (Page 70)	Not excluded from the definition. But in the impugned order the finding is different.	Renovation of factory building/office premises. Repairs and renovation of factory or office is entitled for credit	Covered under the main definition
20	Designing and printing	These services are not covered in the definition. (Page 71)	Covered by the main part of the definition reproduced in (1) above. Covered by earlier order of the Tribunal.	Printing of tender docs/house journals/annual reports etc.,	Assessee own case in FO 42996/2018 dt 5.12.2018
21	Finance lease charges	These services are not covered in the definition. (Page 71)	Covered by the main part of the definition reproduced in (1) above. Covered by earlier order of the Tribunal.	Purchase of computers/printers/on finance lease. Similar to banking and financial services.	Assessee own case in FO 42996/2018 dt 5.12.2018

19. On perusal of the impugned order, other than alleging that these services are not used directly or indirectly or in relation to manufacture of final products, there is no specific finding to deny the credit. As correctly argued by the Ld. Counsel for appellant, the Cost Centres which are registered as input service distributors have to file periodical returns declaring the credit availed by them. These ISDs are subject to verification and audit by the jurisdictional authorities. There has been no dispute raised against these Cost Centres (ISDs) alleging that they have availed ineligible credit.

20. The department has sought to deny the credit at the end of the manufacturing unit which has availed the distributed credit. There is no allegation that the provisions of Rule 7 of Cenvat Credit Rules 2004 for distribution of credit has not been complied. The show cause notice is very vague in alleging that the appellant has not established that the credit is utilized for manufacturing activity.

21. When there is no dispute raised by the jurisdictional authorities against the input service distribution centres for availing the credit and distributing the same, the department cannot deny the credit at the end of the manufacturing unit on very vague allegations. The show cause notice does not make any specific allegation with respect to particular input service.

22. In the appellant's own case for a different period the very same issue of disallowing credit at the manufacturing unit distributed by the Cost Centres and has been considered by the Tribunal vide Final Order No.42996/2018 dated 05.12.2018 in Appeal No E/40788/2018.

23. Almost all the services listed in the above table was held to be eligible for credit by the Tribunal, by the Commissioner (Appeals) and by the adjudicating authority as pointed out by the Ld. Counsel. The appellant has given the details of the case law in respect of each input service in the last column of the table. We find that the decisions in the appellant's own case as well as the decisions passed by the Tribunal in

other appeals applies to the issue of eligibility of credit on the disputed input services.

24. In respect of outdoor catering services, it is seen that the services have been availed prior to 01.04.2011. So, also in the case of works contract services/ civil work these are availed for repair and maintenance as well as modernization and not of setting up of a factory. There is no allegation by the department that such civil works were availed for setting up of a factory.

25. We find that all the services are eligible input services. The credit cannot be denied on such vague allegations at the end of the manufacturing unit without disputing the credit availed by the input service distributor. For these reasons we find that the impugned order cannot sustain.

26. In the result the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on 11.07.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)