

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Excise Appeal No. E/53163/2018 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-250-18-19 dated 27.07.2018 passed by the Commissioner(Appeals), Customs, CGST & Central Excise, Indore]

Mahle Engine Components Pvt. Ltd.	...Appellant
Vs.	
CGST, C.E. & S.T., Indore	...Respondent

Present for the Appellant : Mr. D.K. Tyagi, Advocate
Present for the Respondent: Mr. K. Poddar, DR

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

Date of Hearing: 07.12.2018
Pronounced on: 15.01.2019

FINAL ORDER No. 50046/2019

PER: RACHNA GUPTA

M/s Mahle Engine Components Pvt. Ltd., the appellants are engaged in the manufacture of Camshaft and Cylinder Liner. They are also availing the facility of cenvat credit under Cenvat Credit Rules, 2004 and payment of duty on monthly basis as provided under Rule 8 of Central Excise Rules, 2002. During the course of audit of records of the appellants for the period from April 2013 to March 2016 it was observed that appellant have availed cenvat credit of service tax Rs. 5,84,363/- paid on Maintenance Charges recovered by M/s M.P. Audyogic Kendra Vikas Nigam (AKVN) Indore Ltd. who has leased the plot to appellant. The said maintenance service is not used by the appellant in or in relation to manufacture of final products or clearance of final products up to place of removal. Hence, vide SCN dated 07.06.2017, department alleged that cenvat credit availed by the appellant on said service appeared

as not admissible. Accordingly, appellant was asked to pay/ reverse the said wrongly availed credit of Rs. 5,84,363/- (Rs. 2,11,201/- + Rs. 3,73,162/-) alongwith interest and applicable penalty. The said demand has been confirmed vide Order-in-Original dated 25.04.2018. Commissioner(Appeals) also vide Order-in-Appeal dated 27.07.2018 holding that maintenance charge is not specifically mentioned in the main parts as well as the inclusive part of the definition of Input Service. The appellant is therefore before this Tribunal.

2. It is submitted on behalf of the appellant that even if the input services are availed out of the factory premises, still the same are eligible input services, as the definition of input service does not mandate that the service should be availed in the factory premises. The reliance is placed on the decision reported as **Commr. of C. Ex., Cus. & S.T., Visakhapatnam-I Vs. Facor Alloys Ltd. 2017 (48) STR 491 (Tri.-Hyd.)**. Further, such services were availed for the business of manufacture of excisable goods and the business was not possible without the use of such services and therefore these services were related to manufacture of goods and therefore eligible input service, maintenance amount being part of the lease rental of the business premises. Since, the lease rental charges of the business premises are eligible input services such services remain the eligible input services. The reliance is placed on the decision reported as **Phoenix Mills Ltd. Vs. C.S.T., Mumbai-I 2016 (46) STR 120 (Tri.-Mum.)**.

3. From the argument of both the parties, the narrow compass of adjudication appears to be whether Maintenance Charges for common area of a business premises taken on rent is eligible input service?

4. As per definition of Input Service, applicable to the impugned period are 'input service' used by a manufacturer, those which are used directly or indirectly in or in relation to the manufacture of final products and clearance of final products upto the place of removal and also includes services which are used in relation to modernisation, 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 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 upto the place of removal;

5. It is the admitted fact that the manufacturing activity of appellant is carried from the premises as are taken on rent. It is apparent from record that the impugned maintenance charges are the part of lease/ rent charges. M/s AKVN i.e. the leaser is also charging the service charges in their lease bills raised for lease amount and maintenance amount. Though the maintenance is for roads, street lights, drainage, etc. i.e. for facilities being provided beyond the manufacturing/ factory premises of appellant but the simultaneous fact is that such services are charged on the basis of per square meter of business premises occupied by the appellant. Hence, were very much the part of lease/ rent of the impugned premises. The lease/ rent charge are the eligible inputs, so are to my opinion the maintenance charges. I draw my support from the decision of Hon'ble Apex Court in Karnani Properties case as was relied upon by Tribunal Mumbai in the decision reported as **2016**

(46) STR 30 wherein it is held that without maintenance of adjoining roads, etc. the business premises cannot function and without maintenance charges lease of business premises cannot continue. Therefore, I am of the opinion that these charges are indirectly related to business and they fall in the main part of the definition of input services. The findings of Order-in-Appeal are therefore held incorrect. Hence, are set aside.

6. In view of above discussion, there is no apparent intention of tax evasion on part of appellants. No question of imposing of penalty arises. The Order accordingly is set aside. Appeal stands allowed.

[Pronounced in the open Court on 15.01.2019]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.