

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

WEST ZONAL BENCH, MUMBAI

**Excise Appeal No. 88404 of 2018**

(Arising out of Order-in-Appeal No. NSK/EXCUS/SSP/APPL/052/18-19 dated 31<sup>st</sup> May 2018 passed by the Commissioner (Appeals), Central GST & C. Excise, Nashik.)

.....Appellant

**ANAND I POWER LTD.**

Plot No. 20, MIDC Satpur  
Nashik 400007.

*VERSUS*

**Commissioner of Central GST - NASIK**

Kendr.Rajaswa Bhawan  
Old Agra Road, Gadkari Chowk  
Nasik - 422 002.

.....Respondent

**APPERANCE:**

Shri Makrand Joshi, Advocate for the Appellant

Shri Saikrishna Hatangadi, Asst. Commissioner, Authorised Representative  
for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85141/2020**

Date of Hearing: 03-10-2019

Date of Decision: 03-02-2020

**DR. SUVENDU KUMAR PATI:**

Inadmissibility of Cenvat Credit availed on tax paid for “renting of immovable property” outside the manufacturing unit and confirmation of demand against such availment along with interest and penalty by the Commissioner (Appeals) Central GST & C. Excise, Nashik is assailed in this appeal.

2. Facts of the case that have given rise to this appeal is that appellant is a manufacturer of “piston ring” having its factory at Satpur Industrial Estate, Nasik. It had availed Cenvat Credit on tax paid for renting of immovable property at Delhi and Mumbai Branch offices. During the period March 2010 to March 2013 Cenvat Credit amounting to Rs. 33,21,270/- was held, in the EA 2000 audit, to be inadmissible. Appellant was put to show cause notice, was demanded such duty along-with interest and equivalent penalty and adjudication order confirm the same with 50% penalty u/s Rule 15(2) of CCR 2004 read with section 11 AC(1)(b) of the Central Excise Act with reduced penalty option by 25% u/s 11 AC(1)(c) in case payment of penalty was made within 30 days and reversal of Rs. 14,55,273/- of Cenvat Credit was also adjusted against total demand as well as appropriated. Appellant’s unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to this Forum.

3. In the memo of appeal and during the course of hearing the appeal, Learned Counsel for the appellant Mr Makrand Joshi submitted that at Delhi and Bombay, office premises were taken on rent by

appellant for marketing of product such as display, co-ordination with customers, new development of customers and for extending warranty coverage as well as trouble shooting of the operation of the product that would augment customer satisfaction and increase demand of appellant's product so that production and sale would remain unaffected, besides doing other management activities as well as training and coaching of staff and it has become a settled principle of law that those activities are covered within the definition of "activities relating to business" as mentioned in the pre-amended Rule 2(I) of Cenvat Credit Rule 2004. He further pointed out that the demand covers both pre and post period of the amended Cenvat Credit Rules 2004 and for both the periods Tribunal has been constantly of the opinion that such credit on 'renting of immovable property' for marketing and after sales service or research purpose is admissible. He relied upon the decision of the CESTAT Chennai reported in *2017 TIOL (869) CESTAT (Madras)*, *2017 (47) STR (148) (Tri. Bangalore)* and *2017 (52) STR (361) (Bom.)* to support his stand that such marketing of product and sales promotion activities are included within input service definition and renting of premises outside the manufacturing factory unit is permissible. Therefore, he argued that the credits taken by the appellant were valid credit for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. In response to such submissions, Learned Authorised Representative for respondent department Mr. Saikrishna Hatangadi submitted that activities undertaken in rented premises were beyond

the place of removal of final products and being a company registered as ISD, appellant had availed of the credits in its factory at Plot no. 20, Satpur, Nasik alone for which credit was rightly denied by the Commissioner (Appeals). He further submitted that Managing Director of appellant company had accepted the lapse and promised to pay back irregular Cenvat Credit of Rs. 14,55,273/- as well as paid the same vide challan dated 23-10-2010 and acknowledged such mistake in writing in his letter dated 22-10-2012. Further in citing Hon'ble Supreme Court's decision reported in 2004 (165) ELT 136 (S.C), he argued that facts of non-admissibility of credit were admitted by the appellant which needs no further proof for which interference for the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. Heard from both the sides at length and perused case record. It is observed that the Commissioner (Appeals) had rejected appellants appeal on the ground that sale of goods that had taken place from the immovable property taken on rent was situated away from the place of removal. Further appellant had acknowledged to have registered as an ISD. Therefore, availing total credit on renting services in the factory was not convincing as the rented premises were used for marketing and sale of goods manufactured in both the units of appellant's factory. He further noted that appellant had not disclosed about availment of such Cenvat Credit on renting services in its ER-1 Returns and ultimately he endorsed the findings of the adjudicating authority in confirming the demand, interest and penalty. However, going by the decision of this Tribunal in the case of I.P. Ring Ltd reported in 2017 TIOL, cited supra,

such renting of immovable property services taken to be used as branch office for procurement of orders, delivery of goods, repair and maintenance service as well as for marketing purpose are admissible credits for both pre and post amendment period covering the entire disputed period in the appeal. Moreover, appellant had replied to the query of the respondent department concerning its registration as ISD in which case, as an input service distributor, it had the discretion to distribute the inputs but the Commissioner (Appeals) had not believed its reply by observing that appellant was using the rented premises for sale of goods and marketing of products being manufactured in two units of Appellant and such issue of ISD registration was not agitated in the show cause notice. What is more important is that the Commissioner had accepted the Appellant's contention that appellant was using the rented premises for "marketing" purposes which is in conformity to Rule 2(I) of Cenvat Credit Rules that clearly covers "advertisement or sales promotion" within the definition of input services. Therefore, appellant is eligible to avail the credits and its specific non-reflection in ER-1, could be due to non-availability of such specific narration in the format meant for filing of ER-1 returns itself. The submissions of Ld. Authorised Representative regarding admission of appellant that credit is inadmissible cannot be taken in the spirit of Section 56 of the Indian Evident Act since it had erroneously presumed that the rule required it to make such payment and the same cannot be considered as facts admitted. Hence the order.

ORDER

6. The appeal is allowed with consequential relief. The Order No. NSK/EXCUS/SSP/APPL/052/18-19 dated 31<sup>st</sup> May 2018 passed by the Commissioner (Appeals), Central GST & C. Excise, Nashik is hereby set aside.

(Order pronounced in the court on 03-02-2020.)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

*John*