IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

C.M.A.No.805 of 2021

The Commissioner of GST & Central Excise,
Office of the Commissioner of GST &
Central Excise, No.1, Foulks Compound,
Anaimedu, Salem - 636 001. ...Appellant

Vs

M/s.TVS Motor Co. Ltd.,
Post Box No.4, Harita Hosur,
Krishnakri - 635 109,
Tamil Nadu. ...Respondent

Civil Miscellaneous Appeal filed under Section 35(G) of Central Excise Act, 1944 to set aside the Final Order No.43026 of 2018 dated 22.11.2018 passed by the Hon'ble Customs Excise and Service Tax Appellate Tribunal, Chennai Bench, in Appeal No.E/36/2010-DB.

For Appellant: Mr.Rajnish Pathiyil, SCGSC

For Respondent: Mr.Raghavan Ramabadran

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the Revenue under Section 35(G) of the Central Excise Act, 1944 ('the Act' for brevity) read with Section 83 of the Finance Act, is directed against the order dated 22.11.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench ('the Tribunal' for brevity) in Final Order No.43026 of 2018.

2. The Revenue has raised the following substantial questions of law for consideration:

"1. Has not the Hon'ble CESTAT fallen in error in allowing CENVAT Credit on account of impugned services, as eligible input services, having nexus to the goods manufactured?

2. Whether the expenses incurred in relation to after sales service is an input service as defined in Rule 2(I) of the CENVAT Credit Rules, 2004?

3. Whether the Hon'ble CESTAT, Chennai has erred in holding that the impugned services would qualify as "Input Services" and consequently eligible for input?

4. Has not the Hon'ble Tribunal committed

an error in including within the ambit of Input Services, the services rendered by a third party, contrary to the confined meaning assigned to input services defined in Rule 2(I) of CENVAT Credit Rules, 2004?"

3. The respondent/assessee is engaged in the manufacture of motor cycles, parts and engines covered under Chapter heading 87.11, 87.14 and 87.08 of the Schedule to the Central Excise Tariff Act, 1985 and are availing Cenvat Credit on input services in terms of the Cenvat Credit Rules, 2004.

4. The respondent/assessee entered into an agreement with M/s.TVS Finance and Services Limited (hereinafter referred to as TVSFS for brevity) to provide finance facilities to customers, who purchase two wheelers manufactured by the respondent/assessee. In terms of the agreement, the assessee, apart from providing financial services, have entered into an arrangement with the respective authorized dealers to give sufficient space and facility in the dealership outlet so as to provide financial services to the customers, who come to purchase vehicles

manufactured by the assessee. During the period under consideration, i.e. 2005-06 to 2008-09, TVSFS raised invoices on the respondent/assessee under the head "Business Auxiliary Services" including service tax at appropriate rates and the assessee availed credit of the service tax paid to TVSFS being input services provided to them.

5. The appellant Department was of the prima facie view that the assessee is not eligible for credit on such services as the services do not qualify as input services and issued show cause notice dated 23.10.2008, stating that the assessee has wrongly taken and utilized Cenvat Credit during the period under question and why the amount should not be disallowed and corresponding amount demanded from the assessee under Rule 14 of the Cenvat Credit Rules, 2004 as amended, read with proviso to Section 11(A)(1) of the Act; why appropriate interest should not be demanded under Section 11AB of the Act; why penalty should not be imposed under Rule 15 of Cenvat Credit Rules read with Section 11AC of the Act and why penalty should not be imposed on TVSFS under Rule 26(2)(ii) of the Central Excise Rules, 2002.

6. The assessee submitted their reply, stating that they sell their products through authorized dealers in various locations all over the country and they have entered into a dealership agreement with the authorized dealers, who are appointed on non-exclusive basis, for marketing, selling and servicing the products within the territory alloted to them and it was a normal practice in the automobile industries for vehicle manufacturers to enter into exclusive arrangements with finance companies to provide financial assistance to the buyers of their products.

7. The assessee has entered into a Memorandum of Understanding with TVSFS for financing the purchase of two wheelers manufactured by the assessee on exclusive basis making it clear that TVSFS cannot enter into any arrangement or agreement with any other manufacturers. Further, the assessee would state that TVSFS were incurring promotion expenses and promoting the business of retail financing and the sale of two wheelers manufactured by the assessee, TVSFS raised invoices on them for the amounts claimed for providing the services as per the Memorandum of Understanding along with service tax payable thereon. They availed Cenvat Credit on the service tax on the services provided by TVSFS. Further, the

various marketing activities and business promotion activities were elaborately set out in the reply.

8. It is contended that promotion of sale at the retail level is an important element in increasing the sale of the manufactured products, financing of purchase of two wheelers by customers is directly responsible for the increased sale of vehicles followed by increased production and subsequent clearance of the vehicles. Therefore, financing of two wheelers is a service used by them in or in relation to manufacture of the final product, namely two wheelers, directly or indirectly. Further, it was submitted that it was irrelevant as to where the financing takes place and at what stage of sale as long as the service is in relation to financing of the vehicles manufactured by the assessee and therefore, such service provided by TVSFS is an input service.

9. Further, the assessee contended that the services used in activities relating to business are eligible for Cenvat Credit and the inclusive clause of the definition cover input services pertaining to activities relating to the business. Further, it was submitted that the sweep of the service

covered under activities relating to business is wide and cover services that are used normally in the business of the manufacturer. Thus, accounting, audit financing relate to both pre and post production activities. Similarly, computer net working, credit rating, share registry and security relate to the business of the organization as a whole.

10. The assessee contented that the use of the word "such as" is meant to be illustrative and not exhaustive and permit inclusion of all activities of the assessee. The inclusion of services in relation to activities relating to business followed by "such as" and the various services clearly indicate that the items of services mentioned therein are illustrative and not exhaustive. Further, the assessee submitted that the expenses towards input service qualifies as business expense and go to form part of assessable value of the goods. It was contended that irrespective of the stage of receipt of services, promotional activities carried out are only to improve the sale of the products of the assessee and hence is an input service in relation to goods cleared and therefore, the allegation of the Department that the service received by them is not connected with the continuous business cycle of the manufacture and sale of two wheelers, is incorrect.

11. Further, the assessee also submitted their reply with regard to the proposal to levy penalty and that there is no suppression or mis-statement and their returns contained all details relating to the Cenvat Credit availed and utilized by them on various input services and further it is submitted that the extended period of limitation cannot be invoked.

12. Since TVSFS was also one of the noticees in the show cause notice dated 23.10.2008, they submitted a reply dated 31.03.2009, stating that the service rendered by them to the assessee is an exclusive service provided only to TVS brand vehicles. They have undertaken not to provide service to vehicles of any other brand, the retail financing extended by them promotes the sale of TVS vehicles manufactured by the assessee and as a consideration for the said service, the assessee agreed to pay certain amounts for the services rendered. Invoices were issued to the assessee indicating the amount charged for the services as well as the service tax paid thereon. Further, TVSFS obtained registration and paid service tax. It was stated that they undertook various steps to increase the sale of two wheelers through retail financing and they expanded their operation in various states that resulted in promotion of sales of TVS motor vehicles, which resulted in

penetration of sales in semi urban and rural areas. As a consideration, the assessee had paid charges by way of infrastructure and other charges. They also referred to various Memorandum of Understandings, which specifies the obligations of TVSFS to the assessee.

13. Further, the contention was that they had set up requisite infrastructure facilities in the premises of the dealers of the assessee, they pointed Territory Sales Executives and posted Direct Selling Agents in such centres and through such centres, they made their presence in the areas of sale and promoted or marketed the financing service and sale of the two wheelers manufactured by the assessee. Further, they conducted loan melas and campaigns for promoting financing and sale of the two wheelers manufactured by the assessee.

14. The assessee further submitted that with effect from 01.07.2003, "business auxiliary service" was brought under service tax net vide Section 65(19) of the Finance Act, 1944. The definition included any service in relation to, promotion of marketing or sale of goods produced or provided by or belonging to the client. Thus, it was contended that since the

services provided is relating to financing of the vehicles manufactured by the assessee, the service is taxable under Business Auxiliary Service and therefore, the proposal in the notice may be dropped.

15. The Commissioner of Central Exicse, Chennai - III (Adjudicating Authority), by order dated 30.10.2009, though referred to various contentions raised, held that the input services should have some nexus to the manufacture of excisable goods and since TVSFS was engaged in financing and the same did not have any nexus to the manufacturing activity of the assessee. Accordingly, the proposal in the show cause notice was confirmed.

16. Aggrieved by the same, the assessee preferred an appeal before the Tribunal, which has been allowed by the Tribunal by the impugned order. Aggrieved over the same, the Revenue is before us by way of this appeal.

17. We have elaborately heard Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel appearing for the appellant and

Mr.Raghavan Ramabadran, learned counsel for the respondent.

18. The Tribunal from paragraph 2 has set out the contentions advanced by he assessee and paragraphs 3.0 and 3.1 notes the submissions made by the authorized representative of the assessee. The discussion starts from paragraph 5 of the order and the Tribunal holds that since during the relevant period, the definition of input services included the words "all activities relating to the business", it has to be concluded that the activity rendered by TVSFS is an activity relating to the business of manufacture of the assessee. Hence, the impugned service is qualified as 'input service' and the assessee is eligible for credit.

19. We fully approve all the findings rendered by the Tribunal for the reasons, which we are to render hereinafter.

20. The factual aspects had been elaborately set out by us in the preceding paragraphs to understand the nature of transaction between the assessee and TVSFS. This aspect has been noted by the adjudicating authority, but has not been dealt with, since the adjudicating authority was

of the view that the activity did not have any nexus to the manufacture of two wheelers by the assessee. The adjudicating authority cannot be blamed for having taken such a stand as he had passed his order on 30.10.2009 and obviously did not have the benefit of the decision of the Larger Bench of the Hon'ble Supreme Court in the case of ***M/s.Ramala Sahakari Chini Mills Ltd., Vs. Commissioner of Central Excise [2016 (334) ELT 3 (SC)], dated 19.02.2016***. When the Tribunal passed the impugned order, the aforesaid decision was very much available and though the learned counsel for the assessee relied on the same and this was noted by the Tribunal in paragraph 2.2 of the order, the Tribunal has not applied the said decision while allowing the appeal filed by the assessee.

21. The question referred for consideration to the Larger Bench of the Hon'ble Supreme Court was whether the definition of the term "input" in Rule 2(g) of the Cenvat Credit Rules, 2002 is to be understood to include items beyond the 6 items mentioned specifically in Rule 2(g). The Larger Bench held that the word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction and this interpretation may be applied to

ascertain admissibility of Cenvat Credit on inputs on facts of each case.

22. The facts clearly show that there is direct nexus between the activity of TVSFS with that of the activity of the assessee. We say so because of the exclusive arrangement between the assessee and TVSFS. The Revenue has not disputed the factual position that the services rendered by TVSFS is exclusively to the assessee. The Memorandum of Understanding and the various agreements demonstrate that the assessee has made necessary facilities for TVSFS by allotting spaces in the outlets of their authorized dealers for the purpose of marketing the sale of the vehicles and financing of the vehicles and also providing finances to TVSFS for the purpose of rendering such services. Further, the assessee as well as TVSFS have, in their reply to the show cause notice, placed materials to show that by virtue of this arrangement, they were able to penetrate into semi urban areas, thereby increasing the sale of two wheelers manufactured by the respondent/ assessee.

23. Thus, the expansive definition requires to be applied in this case and as noted, the Memorandum of Understanding provides for

exclusive retail financing of two wheelers manufactured by the assessee, which results in promotion and expansion of sale of two wheelers manufactured by the assessee and payments are received by TVSFS from the assessee and as the services are taxable under Business Auxiliary Services, TVSFS has obtained registration under the Act, as provided under Rule 4 of the Service Tax Rules, 1994. Thus, as long as services of TVSFS in relation to financing of the vehicles manufactured by the assessee promotes the sale of vehicles manufactured by the assessee, such service is taxable under Business Auxiliary Services.

24. Therefore, we hold that the Tribunal had rightly allowed the assessee's appeal and granted the relief. Hence, the Revenue has not made out any grounds before us to interfere with the impugned order. Accordingly, the civil miscellaneous appeal is dismissed and the substantial questions of law are answered against the Revenue. No costs.

(T.S.S.,J.) **(R.N.M.,J.)**
25.03.2021

Index: Yes
Internet:Yes
Speaking Judgment
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To

1. Customs, Excise and Service
Tax Appellate Tribunal,
Chennai Bench.

2. The Commissioner of GST & Central Excise,
Office of the Commissioner of GST &
Central Excise, No.1, Foulks Compound,
Anaimedu, Salem - 636 001.

T.S.SIVAGNANAM,J
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