

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX Appeal No. 50753 of 2017

(Arising out of Order-in-Original No. DLI-LTUNT-000-COM-037-2016-17 dated 01.12.2016 passed by Commissioner, Central Excise & Service Tax, LTU, New Delhi)

M/s. Power Finance Corporation Ltd. **...Appellant**
Uranidhi, 1, Barakhamba Lane,
Connaught Place, New Delhi-11001

Versus

Commissioner (Appeal), Central Excise & Service Tax, LTU, New Delhi **...Respondent**
Large Tax Payer Unit,
NBCC Plaza, Pushp Vihar, Saket,
New Delhi-110017

APPEARANCE:

Mr. Varun Gaba, Advocate, Mr. Atul Gupta & Mr. Anmol Gupta, CA
for the Appellant
Mr. Ravi Kapoor, Authorized Representative of the Department

**CORAM : HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing: **27.5.2022**

Date of Decision: **09.06.2022**

FINAL ORDER No. 50502/2022

P.V. SUBBA RAO

This appeal has been filed by M/s. Power Finance Corporation Limited¹ assailing the order-in-original² dated 01.12.2016 passed by the Commissioner of Central Excise and Service Tax, LTU, Delhi whereby he denied service tax of Rs.78,68,936/- taken by the appellant during the period 01.04.2011 to 31.12.2015. A show

1. The Appellant
2. Impugned order

cause notice in this case was issued on 12.04.2016. The appellant is a non banking finance corporation engaged in financing projects and has been paying service tax on banking and other financial services rendered by it. It also avails the benefit of Cenvat Credit on various inputs and input services which it used in rendering these services. The definition of "input services" under the Cenvat Credit Rules 2004 is as follows:

2. *Definitions.-In these rules, unless the context otherwise requires-*

(1) input service" means-

(i) services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or

(ii) any service used by a provider of output service for providing an output service; or

(iii) any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto 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 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; [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.]

3. The appellant has taken Cenvat Credit on the service tax paid on services used for activities related to its corporate social responsibility³. A show cause notice dated 12.04.2016 was issued to the appellant seeking to deny this Cenvat Credit on the ground that it does not qualify as input service for its output services, viz; "banking and other financial services". After following due process, the Commissioner passed the impugned order assailing which the present appeal is filed.

4. On behalf of the appellant, following submissions were made:

3. CSR

- i. Expenditure on CSR is discharge of a statutory liability imposed under section 135 of the Companies Act 2013 and prior to the enactment of this Act, in compliance of the Department of Public Enterprise's guidelines. This section of Companies Act mandates companies to spend 2% of their average net profits towards CSR expenses. Non compliance of this provision entails action which may extend to fine and imprisonment.
- ii. Non compliance of section 135 read with section 134 of the Companies Act, they invite penal action against individual officers leading to serious breakdown in administration of the Company.
- iii. The services availed in respect of CSR activities qualifies as input service as per Rule 2(I) of CCR Rules 2004.
- iv. Reliance is placed on the following case laws:
 - a. C. Ex & Service Tax, Chennai vs. Brakes India Ltd. reported as 2019 (369) ELT 577 (Mad.)**
 - b. Commr. Of C. Ex. Bangalore vs. PNB Metlife India Insurance Co. Ltd. reported as 2015 (39) STR 361**
 - c. Gateway Terminals (I) Pvt. Ltd. vs. Commr. of C. Ex Raigad reported as 2015 (39) STR 1027 (Tri-Mumbai)**
 - d. Commr. Of C. Ex, Bangalore Vs. Millipore India Pvt. Ltd. reported as 2012 (26) STR 514 (Kar.)**

***e. Essel Propack Ltd. vs. Commr. Of CGST Bhiwandi
reported as 2018 (362) ELT 833 (Tri-Mumbai)***

- v. The matter has already been decided in favour of the appellant in the case of ***Essel Propack Ltd. and Millipore India Pvt. Ltd. (Supra)***.
- vi. The appellant has taken Cenvat Credit under the bonafide belief that it is entitled to it and still look at the same belief. Therefore, extended period of limitation should not be invoked.
- vii. The penalty under section 76 of Finance Act 1994 is for non payment or short payment of service tax but in this case the dispute is only regarding Cenvat Credit. Accordingly, the penalty cannot be imposed.
5. It is therefore prayed that the appeal may be allowed and the impugned order may be set aside.
- 6.** Learned authorised representative for the Revenue vehemently supports the impugned order and reiterates the findings of the Adjudicating authority. He submits that to determine if service qualifies as an "input service" one needs to look at the definition of input service under Rule 2(l) of Cenvat Credit Rules 2004. So far as the service providers are concerned the relevant portion needs input service means **"Any service used by a provider of output service for providing an output service."**
7. He submits that a contrast can be seen with respect to the manufacturer where services used whether directly or indirectly in or in relation to the manufacture of the final products and

clearance of the final product upto the place of removal has been included. Therefore, insofar as the service providers such as the appellant are concerned all that needs to be seen is whether or not there is a nexus between the output services and the services on which the credit is claimed. Undisputedly, corporate social responsibility is an obligation of the appellant under the Companies Act but it has no nexus to the services provided. The service provided is a part of the business. Service tax is paid on such services and credit on the input services is allowed.

8. After providing the services, if the appellant earns some profit or otherwise meets other criteria laid down in the Companies Act, it has a legal obligation to spend some amount on the CSR. The appellant may have other such legal responsibilities also towards other stakeholders also. These responsibilities, *per se*, do not make them input services to the output services are rendered by the appellant. In this case the output service is "banking and other financial service" with which the Cenvat Credit taken on CSR expenses has no nexus whatsoever. He therefore prays that the appeal may be dismissed.

9. We have considered the submissions of both the sides and perused the records.

10. The question to be answered by us is whether in the facts and circumstances of this case and the definition of input service under Rule 2(I) of CCR 2004, the expenditure incurred by the appellant in discharging its corporate social responsibility can be considered as input service or the output services rendered by it.

Undisputedly, the output services rendered by the appellant were “banking and other financial services”. These services can be rendered and were rendered using various input services. After rendering these services the appellant earns some profit or meets other criteria laid down under section 135 of the Companies Act 2013. This results in a legal obligation on the appellant to spend some amount on the activities of corporate social responsibility. Of course, not fulfilling this responsibility attracts penalties under the Companies Act. Similarly, the company will also have other responsibilities towards their stakeholders such as payment of bonus, productivity linked incentives, etc. All these are consequent to the rendering of the output services and not before they are rendered. Input services are those which are used for providing the output services. Corporate social responsibilities arise if, after providing the output services, the appellant earns some profits, etc. A plain reading of the relevant portion of Rule 2(I) of CCR, 2004 shows that not any service used by the provider of output services in running its business qualifies as “input service” but only such services which are used by such provider for providing an output service qualify as input service. A provider of output service may utilise several services in its business and may pay service tax on them. If the legislative intent was to allow a provider of output service to avail Cenvat Credit on all such services, the rule would have read as “any service used by the provider of output services”. However, it does not read so. It qualifies the definition by “for providing output services”. Therefore, there could be services

which are used by the provider of output services who provide output services and there could be services used not for providing output service for some other business purpose. In our considered view the corporate social responsibility falls under the second category. It has no nexus to providing any input services.

11. Even in case of a manufacturer not any service used by manufacturer qualifies as input service but only such services which are used directly or indirectly in or in relation to manufacture of final product and clearance of final product upto the place of removal.

12. The main part of the definition of input services reproduced above is followed by an inclusion clause and an exclusion clause. Some services which may not be used for providing output service or for manufacturing final products have been included in the inclusion part of the definition. These include services used for modernisation, renovation, repairs of factory premises of provider of output services, advertisement, market research, storage, training, share registry, etc. Some services were also specifically excluded under the definition which is not relevant to this case.

13. As may be seen the services such as sales promotion, market research, training, coaching, modernisation, renovation and repairs of factory premises of output service do have a nexus with the business of the provider of output service or the manufacturer, as the case may be. However, it is clearly understood that these do not become input services *per se* because these are not used for providing output services or for manufacturing final product.

However, the legislative intent was to allow Cenvat Credit on these services and therefore, they were specifically included in the definition. Clearly the corporate social responsibility was not included in the inclusion part of the definition. Viewing from this angle also the corporate social responsibility expenses cannot be called as an input service for providing the output services. The fact that the corporate social responsibility is a legal responsibility does not make it an output service. Several case laws were cited by the appellant. However, most of these do not deal with CSR. Learned counsel for the appellant mainly laid emphasis on **Millipore India Pvt. Ltd.** and **Essel Propack Ltd. (Supra)**. We have examined these case laws. Hon'ble High Court of Karnataka as in the case of **Millipore India Pvt. Ltd.** stated as follows as in para 7:

"That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection there- with, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk al accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. A any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in

this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed."

14. We find that the dispute in the case before the Hon'ble High Court was with reference to medical and personal accident policy, insurance, personal vehicle services, catering services and landscaping of factory, garden etc. Aggrieved by the denial of Cenvat Credit on these services, the appellant had filed the appeal before the Hon'ble High Court of Karnataka. The High Court has held that landscaping of factory garden falls within the scope of modernisation, renovation, repair etc. of office premises which is fact of the inclusion part of the definition. With respect to the medical and personal accident policy etc. they were held to be related to the business of manufacture of excisable goods. Accordingly, Cenvat Credit was allowed. There was a passing reference to corporate social responsibility in para 7 of the judgement but that was not issue in dispute nor was there any decision on if it qualifies as an input service.

15. As we have discussed above, several services which are not directly input services for providing of output services or which are not used for manufacturing final product have been included in the inclusion part of the definition under rule 2(l). This includes modernisation, repair etc.

16. As far as **Essel Propack Ltd. (Supra)** case is concerned it was on the specific ground of denial of Cenvat Credit on corporate social responsibility. Learned single member in this case has discussed the matter at length, paras 8 & 11 of which are reproduced below:

"8. The refusal of such Cenvat credit availed by the appellant by the department, was mainly on three scores. First CSR is a charity which is unrelated to production. Second, no direct service was availed by the appellant from the said Kalama Charitable Trust as it had made the expenditure itself and sought reimbursement from the appellant. Third, the same is not in conformity to the Rules meant for raising of invoice as contemplated under Rule 9(2) besides being outside the scope of input service defined under Rule 2(1) of the Cenvat Credit Rules, 2004 for which the credit as referred above was inadmissible.

....

11. To pin point the dispute, it is now to be looked into as to if CSR can be considered as input service and be included within the definition of "activities relating to business" and if in so doing, a company's image before corporate world is enhanced so as to increase its credit rating as found from the handbook of CSR activities discussed above. The answer is in the affirmative since to win the confidence of the stakeholders and shareholders including the people affected by the supply of raw material from their locality, say natural resources like mines and minerals etc., the hazardous emission that may result in production activities."

17. In our considered view, the order of the learned Member does not lay down the correct law as Rule 2 (I) does not include "activities relating to business" as input service. It is not open for this Tribunal to modify or enlarge the scope of this Rule which is a legislative or quasi-legislative function. It can only apply it as such. In our considered view one cannot read words "activities relating to business" into the definition of input services under rule 2(I). We therefore, respectfully disagree with the learned Member and hold that the appellant was not entitled to Cenvat Credit on the services used for corporate social responsibility.

18. Insofar as the invocation of extended period of limitation and imposition of penalties are concerned we find that there is no evidence of fraud or collusion or wilful statement or suppression of

the facts in the matter. Accordingly the demand can only be raised within the normal period of limitation.

19. In view of the above, the appeal is partly allowed and the impugned order is modified as follows.

20. The denial of Cenvat Credit on the expenses incurred on corporate social responsibility within the normal period of limitation is upheld. The demand for extended period on limitation and the penalties are set aside. The matter is remanded to the original authority for limited purpose of calculating the amount of Cenvat Credit to be denied. The appeal is disposed of accordingly.

(Order pronounced in the open court on 09.06.2022)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Bhanu