

**2015-VIL-171-CESTAT-DEL-CE**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

**NEW DELHI, PRINCIPAL BENCH, COURT No.II**

**Excise Appeal No. 60795 of 2013-(SM)**

[Arising out of Order-In-Appeal No. DLI-EXCUS-003-APP-410-13-14 dated 12/08/2013 passed by Commissioner of Central Excise, (Appeals), Delhi III, Gurgaon]

**Date of Hearing/decision: 26.02.2015**

**COMMISSIONER OF CENTRAL EXCISE, DELHI III, GURGAON**

**Vs**

**M/s KML MOLDING**

**Appearance**

**Shri Devender Singh, AR for the Appellants**

**None for the Respondent**

**CORAM**

**Hon'ble Shri Ashok Jindal, Member (Judicial)**

**FINAL ORDER NO. A/ 50583 /2015-Ex(SM)**

**Per Ashok Jindal :**

Revenue is in appeal against the impugned order wherein the learned Commissioner (Appeals) allowed the input service credit on civil construction services after examining the definition of 'input service' as per Rule 2(I) of CCR, 2004 that these civil construction relate to construction of factory shed in the manufacturing premises in their factory.

2. The facts of the case are that respondents are manufacturer of motor vehicle parts. They constructed factory shed in their factory premises and paid service tax on civil construction services, availed cenvat credit of service tax paid thereof. The show cause notice was issued to the respondents to deny cenvat credit on the civil construction works on the premise that civil construction services has been taken for immovable property, therefore, they are not entitled to take Cenvat credit. The show cause notice was replied by the respondents and as per the adjudication order, para 2.1 the contention of the respondent was that construction services are relatable to construction of factory shed. But the adjudicating authority without

appreciating the definition of input service as defined under Rule 2(l) of CCR, 2004 and the construction of factory shed, confirmed the demand against the respondents by denying the Cenvat credit along with interest and also imposed penalty. The said order was challenged before the learned Commissioner (Appeals) by the respondents who perused the facts and allowed the Cenvat credit against that order. Revenue is in appeal on the ground that civil construction services has no nexus with the manufacturing activity of the respondents.

3. Heard the learned AR who supported the ground of appeal.

4. In this case, the show cause notice was issued to the respondents on the premise that construction of factory shed do not qualify as input service as per Rule 2(l) of CCR as reproduced herein

*“2(l) ‘Input service’ means any service -*

*(i) used by a provider of taxable 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 setting up, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.”*

5. On going through the above provisions, it is clearly mentioned in the inclusive part of the definition under Rule 2(l) of CCR, 2004 that for for setting up, modernization, renovation or repair of the factory Cenvat credit is entitled for input service. The said part of the definition has been ignored by the adjudicating authority as well as by the Committee of Commissioners while filing the appeal before this Tribunal. As appellant has taken the Cenvat credit on civil construction services for construction of factory shed which is not other than setting up of factory premises. Therefore, I hold that respondent is entitled to take Cenvat Credit on the above said services.

6. With these observations, I do not find any infirmity in the impugned order. Same is upheld. Appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court )