CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

Excise Appeal No: 87863 of 2019

[Arising out of Order-in-Appeal No. PVNS/58/APPEALS THANE/BW/2019-20 dated 25.06.2019 passed by the Commissioner of CGST & Central Excise - Appeals, Thane.]

MIRC Electronics Ltd … ***Appellant***
Bhiwandi-Wada Road, Kudus Village
Wada, Dist: Palghar

versus

Commissioner of CGST ***...Respondent***
Bhiwandi
12th Floor, Lotus Parel, Near Parel Station
Parel East, Mumbai – 400012

APPEARANCE:

Ms. Shreya Mundra and Ms. Pavni Lakhanpal, Advocates for the appellants

Shri Tanuj Bhist, Authorized Representative for the respondent

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86162/2026

DATE OF HEARING: 17.09.2026
DATE OF DECISION: 17.09.2026

Brief facts of the case are that the appellants are engaged *inter alia,* in the manufacture of electronic and electrical goods falling under Chapter headings 8528, 8450, 8529 and 8415 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT credit of Central Excise duty paid on inputs and Service Tax paid on input services, for use/utilization for payment of Central Excise duty on the said final products. During the disputed period, the appellants had availed CENVAT credit of Service Tax paid on 'Brokerage & Commission, Detention Charges, Insurance Services, Membership Fees, Conveyance (Rent-a-Cab) Service and Staff Welfare Expenses'. Taking of CENVAT credit on these services were disputed by the Department on the ground that these services were not categorized as 'input service', in terms of the definition provided under Rule 2(l) of CENVAT Credit Rules, 2004. Such allegation of non-eligibility for availing the CENVAT credit was initially raised by the audit wing of the Department. On the basis of audit report, proceedings were initiated against the appellants vide Show Cause Notices (SCN) dated 11.01.2018 and 15.05.2018, which culminated into the adjudication order dated 18.12.2018, wherein the original authority had adjudicated both the SCNs issued against the appellants and confirmed the proposals made therein. On appeal against the said adjudication order dated 18.12.2018, the learned Commissioner (Appeals), GST and Central Excise, Appeals-Thane, has upheld confirmation of the adjudged demands, except reducing the quantum of penalty to 10% of the CENVAT demand confirmed on the appellants in the original order. Feeling aggrieved with the impugned order dated 25.06.2019, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that the disputed services on which the appellants had availed CENVAT credit were confirming to the definition of 'input service', provided under Rule 2(l) of the Rules of 2004. She has explained the nature of the disputed services and their usage/participation in the ultimate manufacture of the resultant final products. She submitted that 'Brokerage & Commission' services were used by the appellants in relation to the sale of final products and

therefore, fall under the ambit of 'sales promotion' which is expressly included in the definition of 'input service'. With regard to 'Detention Charges', learned Advocate submitted that such charges relate to storage of imported goods in the warehouses situated at Docks or Airports, beyond the grace period; since such charges were paid in respect of import of raw material, used in the manufacturing process, the same should be considered as input service. Learned Advocate submitted that the 'insurance premium' towards various policies were paid for insuring the cargo, factory building and plant & machinery installed in the factory premises. In this context, she has submitted a certificate dated 12.05.2026 issued by the practicing Chartered Accountant firm, certifying that the insurance premium paid by them were not for any personal benefit or gain of the employees and the same were in relation to equipment/machinery etc. installed in the factory. As regards the 'Membership Fees' paid by the appellants, it is the submission of the learned Advocate that the appellants had availed CENVAT credit on membership fees for admission into various associations/federations to enable them to participate in various exhibitions, sales promotion activities, which help them in procuring raw materials at competitive rates and promote their manufacture of final products. Thus, it was contended that such service has the direct nexus with the manufacture and sale of the excisable goods. With regard to the 'Conveyance charges' (Rent-a-Cab service), learned Advocate fairly admits that no CENVAT credit is permissible on such services and the appellants had also reversed the CENVAT credit availed on rent-a-cab service. With regard to 'Staff Welfare expenses', she submitted that as per Factories Act, 1948 providing certain facilities to the staff are statutory in nature and under such statutory obligation, the appellants had incurred such expenses including payment of service tax and thus, the benefit of CENVAT credit should be available to them.

On imposition of penalty on the appellants, she has pleaded that since there is no element of *mens rea* in availment of CENVAT credit, the penal provisions contained in Rule 15 of the Rules of 2004 read with Section 11AC of the Central Excise Act, 1944 cannot be made applicable to them.

3. On the other hand, learned Authorized Representative appearing for Revenue, reiterated the findings recorded in the impugned order and further submitted that Staff Welfare expenses incurred for providing the services of canteen facilities and transportation of workers to the factory, should not fall under the ambit of 'input service', for the purpose of availment of CENVAT credit. In this context, he has relied upon the judgment of the Hon'ble High Court of Karnataka, in the case of *Toyota Kirloskar Motor Pvt. Ltd. vs. Commissioner of Central Tax, Bangalore [2021 (50) GSTL 286 (Kar.)],* which was subsequently upheld by the Hon'ble Supreme Court reported in *[2021 (55) GSTL 129 (S.C.)].*

4. Heard both sides and examined the case records.

5. The phrase '*input service'* has been defined under Rule 2(l) of the Rules of 2004, which reads as under:

> *"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 up to the place of removal,;*
>
> *and includes services 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 up to the place of removal;

but excludes….
(A)…..
(B)…..
(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."

6. Rule 3 of the Rules of 2004 is the enabling provision, which entitles a manufacturer to take CENVAT credit of various duties paid on the inputs and capital goods, and service tax paid on input services, received by the manufacturer of final product. The phrases 'capital goods', 'input', and 'input service' have been defined in Rule 2(a), 2(k) and 2(l) *ibid* respectively. The dispute involved in the present appeal relates to consideration of the issue whether, the disputed services qualify to be considered as 'input service' in terms of the definition under Rule 2(l) *ibid* for availing CENVAT credit of service tax paid thereon. On reading of the said definition clause, it transpires that the legislature has divided the eligible services into three parts viz., (i) the 'main part', under which the services used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, are specified; (ii) Under the 'inclusive part', even though certain services are not useable as per (i) above, but those would still be

considered as input service on account of specific inclusion, and the scope of such inclusion is wider in nature. (iii) Certain excluded category of services was carved out under this segment, to straight away disqualify such specified services from the scope and ambit of consideration as 'input service'.

7.1 The inclusive part of the definition of 'input service' cover the services of 'advertisement or sales promotion', for the benefit of availing CENVAT credit. In the case in hand, the charges towards 'Brokerage & Commission' and 'Membership Fees' were paid by the appellants by way of obtaining membership in different associations/federations, with the objective of enhancing their sales promotion activity, which ultimately results in increase in sales volume. Since the said disputed services were in relation with 'advertisement or sales promotion' with regard to the goods manufactured by the appellants, and in view of the fact that such phrase is specifically finding place in the inclusive part of the definition of input service, in my considered opinion, such services availed by the appellants should be considered as input service, for the purpose of availment of the CENVAT benefit. In addition to the above discussions, I also find that the definition of 'input service' underwent an amendment w.e.f. 03.02.2016, through Notification No.02/2016-C.E. (N.T.) dated 03.02.2016. The effect of the amendment was that an explanation clause was added to the said definition, providing that "*for the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis*". The period of dispute involved in the present appeal is from January, 2016 to June, 2017 and thus, the case of the appellants falls under such amended clause and even if the inclusive part of the definition is not considered for ascertaining the eligible of CENVAT credit on such service, then also, the commission paid by the appellants should qualify as 'input service', as per the said explanation clause appended to the definition of input service.

7.2 The main part of the definition of input service, takes within its ambit the services used by a manufacturer for manufacture of the final products. The appellants in this case, had procured the raw material/goods intended for use in the manufacturing activities undertaken within the factory. The 'detention charges' paid by the appellants were owing to the reason of non-clearance of the goods within the agreed upon stipulated time, during their storage in the warehouses and subsequently taking such goods to the factory. Since, the detention charges were incurred in connection with the imported goods/raw materials, intended for use in the process of manufacture of final products, and the cost of such detention charges have been included in the value of goods/raw materials for accounting purpose, the same should qualify for consideration as 'input service' under the main part of the definition.

7.3 With regard to insurance policies obtained by the appellants, it has been submitted that those policies were taken for insuring the plant & machinery installed at the factory premises, stock of goods available at the godowns/ware-houses and in transit. It was specifically denied by the appellants that they had not used/ utilized the insurance service by paying premium for the benefit of the employees. Such submission made by the appellant is duly fortified with the certificate dated 12.05.2026 issued by the practicing Chartered Accountant firm, certifying that the appellants had paid the insurance premium for insuring their various assets from peril of theft, fire, burglary etc. Since the insurance premiums were paid by the appellants not for the benefit of the employees, it cannot be said that such insurance service is falling under the exclusive part of the definition of input service.

7.4 The appellants have accepted the fact that on the 'rent-a-cab' service, they should not be eligible for availment of CENVAT credit and accordingly, reversed the CENVAT credit availed thereon. Since the appellants have accepted their liability on this count, I am not expressing any opinion on such irregularly availed CENVAT credit, which should be looked into by the original authority.

7.5 With regard to expenses incurred by the appellants towards 'staff welfare activities', I am not convinced with the submissions made that the service tax paid for such activities viz., canteen service and bus facility service should qualify as input service, citing the reason that those were for accomplishing the statutory provisions under the Factories Act, 1948. I find that this issue is no more open for any debate, in view of the judgement delivered by the Hon'ble Karnataka High Court, in the case of *Toyota Kirloskar Motor Pvt. Ltd.* (supra), which was upheld by the Hon'ble Supreme Court, as reported in *2021 (55) GSTL 129 (S.C.).* In view of the settled position of law, the availment of CENVAT credit on such service by the appellants is not in conformity with the statutory provisions, and the same should be paid back along with interest to the government by the appellants.

8.1 The original authority in the adjudication order dated 18.12.2018 had imposed the penalty of 50% of the irregularly availed CENVAT credit in terms of Rule 15 of the Rules of 2004 read with Section 11AC of the Act of 1944. However, the said original order was modified by the learned Commissioner (Appeals) in the impugned 25.06.2019 holding that the quantum of penalty should be reduced to 10% of the irregularly availed CENVAT credit. On reading of the statutory provisions, it would transpire that sub-rule (1) of Rule 15 *ibid* read with sub-section (1)(a) of Section 11AC *ibid*, makes the position clear that in case of wrong availment or utilization of CENVAT credit, without involving the ingredients viz., fraud, collusion, mis-statement etc., the quantum of penalty to be imposed on the assessee should be confined to 10% of such irregularly availed CENVAT credit. Thus, in my considered view, the learned Commissioner (Appeals) has correctly analyzed the statutory provisions and reduced the quantum of penalty to 10% of the CENVAT credit, which was availed irregularly by the appellants.

8.2 In the preceding paragraphs the entitlement/dis-entitlement of CENVAT credit were discussed at length and as per the discussions, taking of CENVAT credit irregularly can only be considered in case of 'rent-a-cab' service and in expenses incurred towards 'staff welfare activities'. The quantum of penalty as per the statutory provisions should be confined to 10% of such irregularly availed CENVAT credit on these two disputed services only.

9. In view of the foregoing discussions and analysis, the impugned order upholding denial of CENVAT credit on the services of Brokerage and Commission, Detention Charges, Insurance and Membership Fees, cannot be sustained and the impugned order to such extent is set aside and the appeal is allowed in favour of the appellants; the impugned order sustains, to the effect it has upheld denial of CENVAT credit of service tax paid on Rent-a-Cab service and Staff Welfare expenses, and accordingly, the appeal filed by the appellants to such extent is dismissed; and in respect of imposition of penalty on the said two disqualified services, the impugned order sustains.

10. In the result, the appeal is partly allowed in favour of the appellants.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

**/as*