

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

PRINCIPAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 50277 of 2019

[Arising out of Order-in-Appeal No.445(SM)CE/JPR/2018 dated 26.10.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/S. LEEL ELECTRICALS LTD.,

....APPELLANT

(formerly M/s.Lloyd Electric & Engineering Ltd.),
A-146 (B &C), RIICO Industrial Area, Bhiwadi,
Distt.-Alwar (Rajasthan).

Vs.

COMMISSIONER OF CGST & CENTRAL EXCISE,

.....RESPONDENT

"A" Block Surya Nagar,
Alwar-301 001 (Rajasthan).

Appearance:

Present for the Appellant : None

Present for the Respondent: Shri Ranjan Prakash, Authorised Representative

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50309/2025

Date of Hearing : 04/02/2025

Date of Decision :14/02/2025

BINU TAMTA:

1. M/s. Leel Electricals Ltd.¹ (formerly known as "M/s Lloyd Electric & Engineering Ltd.") has challenged the order-in-appeal no.445(SM)CE/JPR/2018 dated 26.10.2018 confirming the demand for wrongly availing the CENVAT Credit along with penalty of equivalent amount under Rule 15 (2) of CENVAT Credit Rules,2004² read with Section 11 AC(1)(c) of Centrals Excise Act, 1944³.

¹ The Appellant

² CCR, 2004

³ The Act, 1944

2. The appellant is engaged in the manufacture of "Condenser Coils, Evaporative Coils and Air Conditioners". During the course of audit, it was observed that the appellant had wrongly availed CENVAT Credit of service tax paid on ineligible input services during the period, April 2015 to March 2016. Show cause notice dated 20.09.2017 was issued to the appellant invoking the extended period of limitation. By order-in-original dated 3.05.2018, the demand of Rs.80,95,227/- along with interest and penalty was confirmed. The appeal filed by the appellant was dismissed by the impugned order except on the limited point that interest is not recoverable from the appellant as their closing balance was never less than the amount of CENVAT Credit in question. Hence, the present appeal.

3. During the pendency of the appeal, NCLT proceedings were initiated and Resolution Professional has been appointed, however, despite service of notice, the Resolution Professional failed to appear. Vide our order dated 03.12.2024, last opportunity was granted and the appeal was listed for hearing on 29.01.2025. Since none appeared on behalf of the appellant/Resolution Professional, we have heard the learned Authorised Representative for the Revenue and perused the records of the case.

4. The issue for consideration is whether CENVAT Credit on advertisement services, tour operator services used for consignment agents and installation/dismantling of machinery at Haridwar Unit of the appellant is admissible.

5. The first submission in the grounds of appeal is that the service tax paid on the advertisement service is in relation to sales promotion of the goods manufactured by the appellant in terms of the inclusive part of the definition of "input service" under Rule 2(I) and hence, they are eligible to

claim CENVAT Credit. Before proceeding to consider the said argument, it is necessary to look at the definition of "input service", which reads as:-

" (1) "input service" means any service, -

- (i) used by a provider of [output service] for providing an output service; or
- (ii) 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 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 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.]

6. The appellant was manufacturing at their Bhiwadi Unit LED TV, Condenser Coils, Evaporative Coils and Air Conditioners for Railways only whereas CENVAT Credit of Rs.73,56,722/- was availed in respect of service

tax paid for advertising of the air conditioners meant for domestic purpose, which were manufactured at another unit of the appellant. That CENVAT Credit of service tax paid on advertisement service can be availed only in terms of Rule 2(I) of CCR. The findings of the Adjudicating Authority in this regard are:

"The Assessee was not manufacturing Domestic Air Conditioners at the factory premises, and the Domestic Air Conditioners were being manufactured at another unit. Thus, the said CENVAT Credit of Rs.73,56,722/- availed by them in respect of advertisement service used for Domestic Air Conditioner, which were being manufactured at their another unit, is not admissible to the assessee in terms of the provisions of Rule 2(I) and 3 of the CENVAT Credit Rules, 2004 as these services had no relation for manufacture, clearances and sale of their final products viz. LED TV, Evaporator/Conditioner Coil and Air Conditioner {Rail Mounted Package Units, (RMPU)} for Railway being manufactured by them. Thus, I find that the said CENVAT Credit amounting to Rs.73,56,722/- is not admissible to the assessee in terms of the provisions of rule 2(I) and 3 of the CENVAT Credit Rules, 2004."

7. There is no reason to differ from the findings arrived at above for the simple reason that there is no co-relation of the input services received and consumed in the unit at Bhiwadi. The appellant failed to discharge the burden that the input service taken and utilised was related to manufacture, clearance and sale of the final products manufactured by them.

8. In support of our decision, we would like to refer to the decision of the Bombay High Court (Nagpur Bench) in the case of **Commissioner versus Ultratech Cement Ltd.** ⁴, where the view taken was that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(I) of 2004 Rules. Following the decision of the Bombay High Court, the majority decision in **Telco Construction**

⁴ 2010 (260) ELT 369(Bom.)

Equipment Co. Ltd. Vs. C.C.E. & CUS., Belgaum ⁵ also held that the assessee is required to establish integral connection between the service and the business of manufacture of final product for the benefit of CENVAT Credit on the service. The Tribunal in **Dai Ichi Krakaria Ltd. Vs. Commissioner of Central Excise, Pune-I** ⁶ dealt with the input service on which the credit taken were mostly directly related to the manufacturing activities at Pune and, therefore, it was held that the input credit cannot be utilised for paying service tax liability on the renting of property service provided in Mumbai relying on the principle in **Telco Construction Equipment**, that there must be semblance of integral connection between the input service and the manufacturing/output service. In view of the law down in these decisions, there is no manner of doubt that the appellant is not entitled to the CENVAT Credit on account of advertisement services relating to the Air Conditioners for domestic purpose which were manufactured at another unit of the appellant.

9. Secondly, the submission is that the consignment agents were carrying out the function of sales promotion for the appellant as they were entrusted with the responsibility of interacting with the buyers, arranging sale of the goods to the buyers and also for pitching further sales to buyers, CENVAT Credit of Rs.6,47,013/- on service tax paid on package tour for the consignment agent under 'Tour Operator Service' and installation or dismantling of IMPULS 6020 machine at their Haridwar unit under 'Repair or Maintenance Service' was inadmissible. These services do not fall within the definition of "input service" as it has no relation to manufacture of their finished goods manufactured by the Bhiwadi unit in as much as these services have been utilised at their other unit at Haridwar. Moreover, as noted by the Adjudicating Authority, the services of execution of contract,

⁵ 2013 (32) STR 482 (Tri. -Bang.)

⁶ 2015 (40) STR 275 (Tri. Mum.)

construction services and service of foundation or making of structure for support of capital goods as well as 'tour operator service' have been mentioned under the exclusion clause of the definition of "input service" definition. Hence, the appellant is not entitled to avail the CENVAT Credit on the said amount.

10. Lastly, the Credit of service tax of Rs.91,492/- taken in respect of invoices, which are not in the name of the assessee is clearly not admissible. Rule 9 of CCR prescribes the documents for availing the credit, which reads as under:-

"RULE 9. Documents and accounts. —

(1) The CENVAT Credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by –

[(2) No CENVAT Credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT Credit.]"

To be a valid document in terms of Rule 9(2), it is necessary that the document contains all particulars as mentioned therein to avail the credit. The name of the consignee or service receiver on the invoice is the basic requirement for availing the CENVAT Credit. Considering the facts of the present case, it is undisputed that the invoices were not in the name of the

appellant and therefore, cannot be said to be valid documents as per Rule 9(2). The appellant was, therefore, not eligible to avail the CENVAT Credit on the basis of the invoices which were not in their name.

11. The appellant has also challenged the invocation of the extended period of limitation and imposition of penalty as the appellant had already reversed the credit before the issuance of the show cause notice. The appellant has wrongly availed and utilised the credit amounting to Rs.80,95,227/- on in-eligible input services by suppressing material facts with intent to evade payment of duty and have also contravened the provisions of Rule 2 and 3 of CCR, hence the said amount is recoverable and the appellant has rightly debited the said wrongly availed credit which has to be appropriated to the Government Account. Under the circumstances, the appellant is also liable to penal action under the provisions of Rule 15(2) of CCR read with section 11 AC (1)(c) of the Act.

12. We do not find any infirmity in the impugned order and the same is hereby affirmed . The appeal is, accordingly dismissed.

[order pronounced on 14th February, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.