

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.40215 of 2015

(Arising out of Order-in-Appeal No. 04/2014 (M-III) dated 5.11.2014 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

M/s. Intimate Fashions (I) Pvt. Ltd.

Thirupporur – Kothamdu High Road
Nandhivanam Village
Guduvancherry 603 202.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai Outer Commissionerate
Newry Towers, No. 2054, I Block, II Avenue
12th Main Road, Anna Nagar
Chennai – 600 040.

Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40321 / 2022**

Date of Hearing : 20.09.2022

Date of Decision: 20.09.2022

Brief facts are that the appellants are engaged in the manufacture of womens' inner garments falling under Chapter Heading 61 and 62 of CETA, 1985. They are also registered with the Central Excise Department. They avail the facility of CENVAT credit on taxes paid for various input services. On verification of accounts, it was noticed that the appellants have availed ineligible

credit on outdoor catering services for the period January 2010 to August 2010 for an amount of Rs.4,45,329/-. Show Cause Notice dated 18.1.2011 was issued proposing to disallow the credit and also for recovery of the same along with interest and for imposing penalty. Later a Show Cause Notice dated 12.9.2011 was issued proposing to disallow the credit for the period from September 2010 to April 2011 for an amount of Rs.4,68,131/- on the very same services. After adjudication, the original authority confirmed the demand along with interest and imposed penalties. On appeal, though the Commissioner (Appeals) set aside the penalties, however, confirmed the demands. Aggrieved by such order, the appellant is now before the Tribunal.

2. The learned counsel Shri M.N. Bharathi submitted that major period is prior to 1.4.2011 before the introduction of amendment to definition of 'input service'. He was fair enough to submit that for one month i.e. from 1.4.2011 to 30.4.2011 pertaining to the Show Cause Notice dated 12.9.2011 would be out of the erstwhile definition of input service and the appellant would not be eligible for credit. He adverted to the decision of the Hon'ble Supreme Court in the case of Toyota Kirloskar Motor Pvt. Ltd. Vs. Commissioner of Central Tax reported in 2021 (55) GSTL 129 (SC) to submit that after 1.4.2011, the appellant is not eligible for credit. The decision of the Tribunal in the cases of M/s. Sharda Motor Industries Ltd. Vs. CCE reported in 2019-TIOL-

2592-CESTAT-MAD and Chennai Container Terminal Pvt. Ltd. Vs. CCE, Chennai reported in 2022 (58) GSTL 359 (Tri. Chennai) was relied by the counsel to argue that prior to 1.4.2011 credit availed on outdoor catering service is legal and proper. He prayed that the appeal may be allowed.

3. The learned AR Shri R. Rajaraman supported the findings in the impugned order.

4. Heard both sides.

5. From the periods involved in both the Show Cause Notices, it is seen that only one month from 1.4.2011 to 30.4.2011 pertains to the period after the amendment in the definition of input services. The Hon'ble Supreme Court in the case of Toyota Kirloskar Motor Pvt. Ltd. (supra) has held that after 1.4.2011, the assessee cannot avail credit on outdoor catering services. Following the same, credit availed for the period 1.4.2011 to 30.4.2011 which is part of the Show Cause Notice dated 12.9.2011 is not eligible for credit.

6. For the remaining period i.e. from January 2010 to August 2010 as well as from September 2010 to March 2011, the credit will be eligible as the definition of input service prior to 1.4.2011 included such services. Following the decisions in the cases of Sharda Motor Industries Ltd. (supra) and Chennai Container Terminal Pvt. Ltd. (supra), I hold that the credit on outdoor catering services for these periods is eligible. The impugned order

is modified to the extent of allowing credit for the period from January 2010 to March 2011 and disallowing the credit from 1.4.2011 to 30.4.2011. The appeal is partly allowed in the above terms with consequential relief if any.

(Order dictated in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex