IN THE CUTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH AT BANGALORE

M/s. Telco Construction Equipment Company Ltd.

Versus

The Commissioner of Central Excise & Customs, Belgaun

(Arising out of Order-in-Original NO. 24/2008-(Commr.) dated 19.12.2008 passed by the Commissioner of Central Excise & Customs, Belgaum)

M/s. Telco Construction Equipment Company Ltd. Appellant

Versus

The Commissioner of Central Excise & Customs, Belgaun Respondent

Appearance

Shri Thomas Vellapally, Advocate, for the Appellant

Shri D P Nagendra Kumar, JCDR, for the Respondent

CORAM

Hon'ble Mr. P. G. Chacko, Member (Judicial)

Hon'ble Mr. P. Karthikeyan, Member (Technical)

Date of Hearing: 22.09.2010

Misc. ORDER Nos. 01/2011

1. This is an appeal filed by M/s. Telco Construction Equipment Company Ltd. (TCECL for short) Dharwad impugning an order of the Commissioner of Central Excise & Customs, Belgaum vide which he disallowed and demanded an amount of Rs. 2,22,35,165/- availed by the appellant as credit of Service Tax paid on various input services during the period October, 2006 to March, 2008 along with applicable interest and imposed penalties of Rs. 2,000/- for each credit entry in the CENVAT Account under Rule 15(3) of the CENVAT Credit Rules, 2004 (CCR) in respect of each of the two show-cause notices decided.

2. The facts of the case are that the appellant is an assessee engaged in the manufacture of construction equipments, excavators and cranes of Chapter 84 of the Central Excise Tariff. They availed CENVAT credit of duty paid on inputs, capital goods and Service Tax paid on input services. TCECL have their Corporate office at Bangalore registered with the Department as an 'Input Service Distributor' under Rule 4 A of the Service Tax Rules, 1994, for distributing the credit of Service Tax paid and accounted at their Corporate office to its manufacturing units, one of which is TCECL, Dharwad, the appellant. The impugned order disposed two show-cause notices, one dated 05.11.2007 and another dated 02.09.2008. Both the show-cause notices had proposed to disallow and recover credit of Service Tax taken by TCECL on various taxable services such as 'air travel agents' service, 'management consultancy' service, 'goods transport agents' service, maintenance & repair service', 'car hiring' ('rent-a-cab') service, 'telephone and mobile' service, 'courier' service, 'recovery agent's service, 'rail travel agent's service, 'warranty handling' service, 'authorized service station', AMC of photocopier machines', 'club association' services, 'insurance service', service tax paid on professional fees and packing expenses. It was proposed in the notices to disallow the credit to the assessee on the ground that the impugned services were not 'input services' as defined in Rule 2(1) of the CENVAT Credit Rules, 2004 and the credit taken by the assessee as a manufacturer was irregular.

3. The assessee contested the proposals. In response to the show-cause notices, the assessee argued that the services involved were inputs for its output service or were activities related to the business of the appellant. In cases like mandatory servicing (of assessee's goods) falling under maintenance or repair services, the cost of the service formed part of the assessable value of the goods manufactured by the assessee. After considering the replies furnished by the assessee and after hearing their representatives, the Commissioner passed the impugned order.

4. In the appeal filed before the Tribunal, the appellants have raised the ground that the Commissioner considered admissibility to CENVAT credit of various input services in the context whether such services were used in or in relation to the manufacture and clearance of final products from place of removal ignoring the fact that the appellant was also a provider of output services. The appellant's unit was situated at Dharwad. The impugned credit was transferred to it by its Head Office located in Bangalore. The Headquarters Office operated as input service distributor under Rule 7 of CCR. Such credit could be disallowed only by the Service tax authorities at Bangalore. The impugned order was passed by the Commissioner, Belgaum without jurisdiction. In

denying the Service Tax paid under Air Travel Agent's services, the impugned order held that the same had been incurred in connection with sponsored holiday trips, etc. allowed to its employees by the assessee. This finding was without any evidence or allegation in the show – cause notice. The appellants had produced invoices in support of the claim that the Service Tax was paid for booking air tickets for sales promotion trips undertaken by its employees. As regards the mandatory service (Maintenance or repairs), it is submitted that the services were arranged to be provided free of cost to the customers. The transaction value for the machines included cost of such services. Assessee's dealers provided services on production of mandatory service coupons issued to them by the assessee. As per Circular No. 643/34/2002-CX dated 01.07.2002 (para 7) CBEC had clarified that these services were provided free by the dealer on behalf of the assessee and the cost towards this was reimbursed to him. This was one of the considerations for sale of the goods (motor vehicles, consumer items etc.). In the case of the appellant, this element hence formed part of the assessable value of the machinery sold by it. Therefore, the assessee was entitled to avail credit of the Service Tax involved.

4.1 Another ground raised is that the service rendered by its dealers were used by appellant for providing maintenance or repair services to its customers and the appellant was fully entitled to avail of the input credit of Service Tax on the invoices raised on the appellant by the service centers. In dace of this service, the words used in the definition of 'input service' in Rule 2(1)(i) are service "used by a service provider of taxable service for providing output service". Therefore the denial of credit of Service Tax paid under this head was not legal,. The denial of credit on Rail Travel Agents Services was erroneous. The appellant had established that the service tax was paid for travel by employees of the assessee for sales promotion with the relevant invoices. The assessee was legitimately entitled to this credit. As regards car hiring/ rent-a-cab services also, they had explained that the services related to marketing and sale of the assessee's final products. The finding that he assessee had failed to produce any evidence in this regard was contrary to record. As regards Service Tax paid under the category Authorized Service stations, these were incurred in connection with the repairs and maintenance of the appellant's vehicles used by the marketing and service personnel. The credit involved was legitimately due to the assessee.

4.2 As regards the service provided by Watson Wyatt and India Life Capital Pvt. Ltd., the assessee had produced break-up of the management consultancy service availed from different consultants, along with documentary evidence; these were ignored by the Commissioner. The cenvat credit register submitted to the Jurisdictional Range Superintendent clearly showed that the assessee had availed of CENVAT credit provided by the consultants outside India like the KPMG Associated and Management consultancy services received in India from Watson Wyatt and India Life Capital Pvt. Ltd. etc. The management consultancy services received from Watson Wyatt were availed for the purposes of gratuity valuation, superannuation valuation, leave entitlement valuation of its employees and came within the scope of "Auditing". When the definition of 'input services' included services related to business such as auditing, financing etc., the appellant was entitled to this credit. They had received consultancy on various important policy matters relating to finance, accounting, taxation, capital investments, etc. form Shir Soumendu Mazumdar, a highly experienced Chartered Accountant. They had received consultancy services for process improvement of the organization from Shri John Vinward, a consultant appointed by the assessee. The assessee had appointed by the assessee. The assessee had appointed KPMG and SL Garrigues for due diligence for acquisition of foreign company. The was fully entitled to the credit of Service Tax. The

claims made by the assessee were ignored by the Commissioner while passing the impugned order.

4.3 As regards Service Tax reimbursement pertaining to mandatory services, these services were provided by the dealer on behalf of the appellant; the credit of the related Service Tax should not have been disallowed. The recovery agents' services used by the appellant to recover payment from customers was part of the business activities of the appellant. Therefore, Service Tax paid for this activity was admissible as input service credit. The service tax paid for insuring the manufacturing plants, warehouse and sales offices of the assessee and insurance paid for movement of materials used for manufacture and maintenance or repair as well as insurance paid for vehicle used for sale promotion was due as the assessee provided output service of repair and mantenance. The medical insurance for the employees also formed part of the business activities of the assessee.

4.4 As regards professional fees and manpower supply, the assessee had produced necessary evidence in the form of relevant invoices and other materials. The appellants provided output service of maintenance and repair service. Hence, C&F agency services availed for packing qualified as input service for the output service. Photocopier was used in connection with business operations of the appellant. Therefore, tax paid on AMC of these machines was admissible. The Service Tax under Club association services was also admissible. The appellant was entitled to GTA service incurred for removing goods from the factory to depot for the period August, 2006 to March 2007. Service Tax paid on GTA for transport of the goods from factory to customer's premises came within the definition of input services. Courier services were essential for providing maintenance and repair services. Courier service was availed for transporting spares for sale/maintenance. This qualified as input services. The dealers of the assessee paid Service Tax for warranty handling service on behalf of the appellant.

5. The Commissioner had committed errors on computing the CENVAT credit distributed by the Headquarters' office and availed by the assessee. The discrepancies pointed out by the assessee were ignored by the Commissioner while passing the impugned order. The levy of interest under Rule 14 of CCR read with Section 11AB and Section 75 of the Finance Act was illegal and improper. The assessee had availed credit due to it. Similarly, penalty imposed for each credit entry under Rule 15(3) of CCR was illegal. The assessee had not taken any CENVAT credit wrongly in contravention of any of the relevant rules.

6. During hearing, the learned Counsel representing the appellants submitted that he mandatory service during warranty and services post-warranty were carried out by the dealers on behalf of the appellant. Free services were necessary in connection with the sale of the machine under contract between the appellant and the customer. The learned Counsel relied on the decision of the Tribunal in CCE, Vadodara-II vs. Danke Products [2009 (16) STR 576 (Tri.-Ahmd.)] in support of the claim that the appellant was entitled to credit of Service Tax paid by the dealer who carried out free services on behalf of the appellant. The services undertaken post warranty by the dealer also were carried out under a comprehensive maintenance contract between the assessee and the customer. The dealer undertook the ST dated 23.08.2007, it was clarified that services provide by the sub-contractors were in the nature of input services. Services of the dealers utilized

by the appellant was part of the overall maintenance contract with the customer and satisfied the definition of 'input service'.

6.1 As regards the GTA service, it was submitted that the definition of 'input service' in clause (ii) of Rule 2(1) covered services "used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal". In the case of transport from the factory to the depot, place of removal was depot and the appellant was entitled to credit. The Commissioner had wrongly relied on the Gujarat Ambuja Cement case (supra), which had been vacated by the judgment of the Punjab & Haryana High Court in Ambuja Cements Ltd. vs. Union of India [2009 (236) ELT 431 (P&H)]. The decision in the case of India Japan Lighting Pvt. Ltd. vs. CCE [2007 (8) STR 124] relied on by the Commissioner was no longer a good law in view of the Larger Bench decision of the Tribunal in the case of ABB Ltd. case. [2009 (15) STR 23 (Tri-LB)] and the judgment of the Punjab & Haryana High Court. The appellant Utilized GTA services for transportation of spare parts from the warehouse to customer's site for providing repairs and maintenance services. Courier agents were also engaged for the same purpose. These were input services.

6.2 Relying on the definition of Management Consultancy in Section 65(65) of the Act, it is claimed that the impugned services were utilized in relation to the activities related to business of the appellant. These included auditing, financing etc. The services involved were basically for gratuity valuation, superannuation valuation; leave encashment valuation of personnel all of which came within the scope of accounting/ auditing which fell under 'input service'. The arguments already taken in respect of authorized service centre, insurance service, air travel agent's service, rail travel agent's service, car hiring/ rent-a-cab service, warranty handling and service reimbursement, recovery agent's service, and other services were reiterated.

7. The learned JCDR representing the Revenue had based his arguments I support of the impugned order on the judgment of the apex court in Maruti Suzuki Ltd. reported in 2009-TIOL-94-SC-CX. He has also relied on the decisions of the Tribunal in Vikram Ispat- 2010-TIOL-900-CESTAT-MUM; Chemplast Sanmar Ltd.- 2010-TIOL-180-CESTAT-MAD; M/s. Manikgarh Cement Works- 2009-TIOL-2059-CESTAT-MUM and Sundaram Brake Linings- 2010(19) STR 172 (Tri.-Chennai). The main plank of the Revenue's case is that in order to qualify as 'input service', the same had to satisfy two ingredients; i.e. (i) such input service should be used by a provider of taxable service for providing an output service or used by the manufacturer of the final product for manufacture and clearance of final product upto the place of removal. (ii) Any services specified in the inclusive part of the definition of Rule 2(1) should also meet the essential requirements specified under the main part of the definition. Paragraph 39 of the High Court's judgment ran counter to the ruling of the apex court in the Maruti Suzuki case. In the Vikram Ispat case (supra), the Tribunal had distinguished the Coco Cola India P Ltd. vs. CCE, Pune –III [2009(15) STR 657 (Bom.)] case from that of Maruti Suzuki Ltd. In the case of M/s. Sundaram Brake Linings case Tribunal in the GTC Industries case and the High Court's judgment in the Coco cola India P Ltd. case. The Department had not accepted the judgment of the Hon'ble High Court in the Coca cola India P Ltd., case and an appeal had been filed before the apex court vide SLP No. CC/3580/2010.

7.1 The learned JCDR has made the following submissions in respect of the various services involved:

(a) Air Travel Agent's Service: The appellant had not submitted evidence to establish that the services of Air Travel Agents availed by the assessee was in relation to sales promotion or activities relating to business as defined under Rule 2(1) of the CCR.

(b) JCDR made the same submissions as in the case of Sl. No. (1) in respect of Rail Travel Agents' service, Car hiring/ rent-a-cab service, Authorized service station service.

(c) As regards the professional fees, he submitted that the appellate had failed to produce any evidence to establish that the service related to Chartered Accountant's service.

(d) As regards the Management Consultancy services, it is argued that they were not used in relation to manufacture of excisable goods and their clearance or for providing any taxable service specified under the input service definition. He relied on the decisions of the Tribunal in the cases of Vikram Ispat, Chemplast Sanmar Ltd. and Manikgarh Cements (supra).

(e) As regards the maintenance and repair service (mandatory services), it was argued that the dealers only had paid service tax on maintenance and repair services. As regards the service rendered beyond the warranty period, the JCDR raised the same ground to deny the credit. It is also submitted that the amount involved did not form part of the assessable value of the goods cleared on payment of excise duty. After sales services was provided by the dealers who received consideration, the same could not be treated as input service of TCECL in terms of Rule 2(1) of CCR in the light of the apex court judgment in the Maruti Suzuki Ltd. case (supra). Similar ground is raised for denying credit availed under warranty handling service. The services were provided after sale of the goods; the same could not be availed as input service tax credit.

(f) As regard the service tax reimbursed to dealers, it is submitted that the reimbursement of Service Tax pertained to mandatory services provided by the dealer to the customer on the finished products after their sale from the factory. Therefore, the same could not be held as input service in terms of Rule 2(1) of CCR.

(g) As regards Recovery Agent's service, the same were provided subsequent to sale and had no nexus either with the manufacture or clearance of excisable goods or were to activities specified in Rule 2(1) of CCR.

(h) As for the insurance services involved, the same relating to branch office and transit insurance in respect of spares could not be treated as input service as such services were availed subsequent to sale of manufactured goods. It could not be said with certainty that entire spares in respect of which insurance had been taken at the branch office warehouse as well as transit insurance were actually used for providing taxable output service such as maintenance or repair by the appellants themselves. Moreover, the maintenance or repair services were actually provided by the dealers. Therefore, the services involved did not confirm to the input service in definition 2(1) of CCR.

(i) As regards the packing expenses incurred at the C&F agent's premises, it is submitted that these were services availed subsequent to sale of the goods from the assessee's premises and, therefore not credit could be availed. It was also not established that the spares packed at C&F Agent's premises were fully used either for further manufacture of excisable goods or for providing taxable service.

(j) As regards the GTA service, the JCDR submitted that the service relatable to transport from factory to depot was admissible. In so far as the transportation of goods from factory to customer's premises, credit could be allowed if it was established that the sale was on for destination basis and the place of delivery was the customer's premises where the ownership of the goods including risk remained with the seller and the cost of transportation was included in the assessable value of the goods sold, in terms of CBEC Circular dated 23.08.2007. He seeks the matter to be remanded for factual verification. As regards the Service Tax paid on outward transportation of goods from the warehouse to customer's site, the same could not be allowed as it was subsequent to sale and the decision of the Tribunal in the case of ABB Ltd. (supra) stood stayed by the Hon'ble High Court of Karnataka.

Findings:

9 We have examined the case records and carefully studied the submissions by both sides. The impugned order disallowed credit of service tax paid by the assessee on various services and demanded the same along with interest on the ground that the impugned services were not input services and the credit taken was not admissible. In respect of certain items credit has been allowed based on case law in favour of the assessee. The impugned credit has been taken against documents issued by the assessee's head office at Bangalore functioning as distributor of input services. Before us, the assessee raised the ground that the authority competent to adjudicate admissibility of the impugned credit was the Commissioner having jurisdiction over the input service distributor at Bangalore and not the Commissioner, Central Excise and Service tax, Dharwad. We do not find this objection raised or answered in the impugned order. However, this being a legal question the Commissioner needs to give a finding in this regard in the remand proceedings we order.

9.1 The admissibility of credit raised on the various services is discussed below seriatum.

(i) Air Travel Agent's Service: The assessee had claimed credit of Service Tax paid for booking Air tickets for travel by its employees. The claim before the Commissioner was that the personnel had undertaken travels in connection with promotion of sales of the finished products of TCECL. The Commissioner denied the credit on the ground that the assessee had not established with necessary evidence that the impugned service was availed for sales promotion as claimed by the service was availed in relation to promotion of sales of the assessee's products namely excavators etc. We find that in principle, the authorities are not averse to allow the disputed credit. We find that this matter has to be remanded to the Commissioner so that the appellants can establish its entitlement to the credit in terms of the provisions contained in the CENVAT Credit Rules.

(ii) Rail Travel Agent's Service: The dispute in relation to this service is essentially similar to the Air Travel Agents service. The credit was disallowed for the assessee's alleged failure to establish its entitlement to the credit with evidence that the service was input service availed for sales promotion. This dispute is also remanded.

(iii) Car hiring/Rent-a-cab service: As regards the credit under this head also, the authorities are inclined to allow the credit provided the assessee establishes with evidence that the service involved conform to input service under Rule 2(1) of CCR. The dispute is remanded.

(iv) Authorized Service Station service: The appellants claimed before the adjudicating authority that the impugned service was availed for servicing the vehicles owned by the assessee and used for travel by its employees for sales promotion. From the records, we find that the appellants had not established the above claim. We remand this dispute for a fresh decision by the Commissioner.

(v) Management Consultancy Service: Under this category, the appellants had availed consultancy from agencies such as M/s. Watson Wyatt, India Life Capital Pvt. Ltd., etc M/s. Watson Wyatt was engaged for constancy on superannuation valuation, Bhavishya Kalyan Yojana Sheme, leave encashment valuation, post retirement valuation, insurance of its employees, investment of PF, gratuity, superannuation fund etc. Consultancy was also received from various other persons. The commissioner rejected the argument of the assessee that the services provided were activities related to its business and that the services constituted input service of Rule 2 (1) of CCR. The Commissioner found that these were part of welfare measures for the employees. The beneficiaries of these services were the employees of TCECL. We hold that tax paid on these services will be available to the assessee provided the services areactivities related to business of TCECL. We discuss the entitlement of credit of tax paid on activities claimed to be related to business in a subsequent part of the order.

(vi) Maintenance or Repair service: This service was availed by TCECL for carrying out 'free services' to the machinery sold by it during the warranty period as well as services against charges paid by the customers as per the agreement between the assessee and its customers. As a condition of sale, the assessee is required to carry out a number of initial 'free services' of the equipment during the warranty period. The consideration for these services is paid to the dealer by the assessee. The assessee bears the cost of these services and the same is included in the value of the equipment. The cost of the service and the tax are part of the assessable value of the equipment on which excise duty is paid. Beyond the warranty period, the customers of the assessee have the option to avail servicing of its vehicles by the designated dealers of the assessee at various locations. The customers pay for the services and the dealer proceedings before the Tribunal, the appellants relied on a decision of the Tribunal in the case of Danke Products (supra). We find that the taxable entry 'maintenance or repair service' read as follows during the material period:

" Section 65(64): management, maintenance or repair means any service provided by-

(i) any person under a contract or an agreement ; or
(ii) a manufacturer or any person authorized by him, in relation to-
(a) management of properties, whether immovable or not;
(b) maintenance or repair of properties, whether immovable or not; or
(c) Maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle."

During the period from 01.06.2007, the activity was service as per (ii) (c) of the above definition i.e. service provided by a manufacturer or any person authorized by him in relation to maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding motor vehicle. We find that the service rendered by the dealer during the warranty period and post-warranty period is as

per the authorization by the appellant. During the warranty period, the appellant is bound by a contract with the customers to provide 'free service'. In the Danke Products case (supra), the Tribunal held that findings of the Commissioner (Appeals) in the order impugned before it to the effect that the person who (Danke Electricals) undertook maintenance and repair service of transformers under warranty period had not rendered service to the buyers of transformers but to the manufacturer of the transformers who had the legal obligation to provide repair and maintenance service to its customers. We find that the services provided by the dealers of TCECL to its customers during warranty period are essentially similar to the services provided to the buyers of transformers by Danke Electricals Ltd. in the Danke Products case. The appellants herein are entitled to credit of the Service Tax paid by the dealers for maintenance or repair services rendered to customers of the appellants during the warranty period. As regards the service provided by the dealers beyond the warranty period, it is also covered by a comprehensive contract between the appellants and the customers. The Service Tax paid by the dealers designated by the appellants is reimbursed by TCECL. Though the service is provided by dealer and TCECL has no legal obligation to provide these services, the fact that TCECL reimburses the tax clearly shows that the same is towards sales promotion of appellant's products. This activity undertaken by the appellants will be covered by the expression "activities relating to business" which are input services of Rule 2(1) of CCR.

(vii) Recovery Agent's service: The commissioner has disallowed credit of tax paid under this head, as the impugned services were provided subsequent to sale and had no nexus either with the manufacture or clearance of excisable goods or were activities specified under Rule 2(1) of CCR. We note that this service is availed by the appellant for recovering amounts due from customers of the assessee. The appellants had claimed that these were Business Auxiliary Services availed in relation to business in connection with the manufacture and clearance of final products from the place of removal. After considerating the arguments by both sides, we find that the tax paid under this head will qualify for credit provided the services can be brought under "activities relating to business", which we discuss in the latter part of this order.

(viii) Insurance and Courier service: Insurance service is provided for insuring branch offices, warehouses, stocks, medical insurance of employees, transit insurance for spares and car insurance. As per the impugned order, the assessee pays Service Tax on insurance of warehouse, branch office and for stocks, medical insurance of employees, transit insurance for spares and car insurance. The appellants have claimed that insurance service relating to manufacturing plant, warehouse, sales office and for transportation were inputs for the assessee to provide its output service; namely maintenance or repair service. The same argument is advanced in respect of insurance of cars used for sales promotion. Courier service was also an input for the assessee's output service. As regards the insurance services, the appellants relied on the following decisions:-

(i) Millipore India Ltd. vs. CCE, Bangalore- 2009 (236) ELT 145 (Tri.-Bang)
(ii) CCE, Raipur vs. Beekay Engineering & Castings Ltd. – 2009 16) STR 709 (Tri.-Del.)

We find that the tax incurred under insurance service for insuring the employees of assessee was held to be eligible input service in the decision of the Tribunal in

Stanzen Toyotetsu India Pvt. Ltd. vs. Commissioner- 2009 (14) STR 316 (Tribunal). In Beekay Engineering case, the Tribunal held that tax paid on premium of general insurance against losses due to fire, machinery breakdown, cash handling, group gratuity and group accident policy was eligible for credit. We find that insuring the business premises of the assessee including godowns and its stocks are apparently "activities relating to business". Medical insurance of employees is held to be input service in the case of Stanzen Toytetsu (supra) by the Tribunal. Therefore, all these services qualify to yield credit. In any case, these are "activities relating to business".

(ix) Professional fee service: As regards tax on professional fees, the commissioner denied credit for the reason that the appellant had not established that the tax was incurred on account of professional fees relating to accounting, documentation, etc. which were specifically listed as input services. We find that this matter has to go back to the Commissioner to provide an opportunity to the assessee to establish if the activity rendered was covered by input service listed specifically or otherwise in the definition under Rule 2(1) of the CCR.

(x) Annual Maintenance Contract of Photocopier machines: As regards this service, credit was denied for the reason that the maintenance or repair of office equipment was not covered under inputs or capital goods and therefore, services relating to AMC of office equipment were not covered under Rule 2(1) of CCR. The appellant had relied on a decision of the Tribunal in parason Machinery (I) Pvt. Vs. CCE [2009 (16) STR 20 (Tri.- Mumbai). We find that vide the order cited, the Tribunal had held that the tax paid on maintenance or repairs of photocopy machines used in assessee's office was input service. The impugned services are availed on equipment place in its various offices for use in connection with sale. We hold that this service is an input service and the appellant is eligible for the credit of tax paid.

(xi) Club Association Service: As regards this service, the assessee had taken corporate membership in Bangalore Club and claimed credit on the ground that the membership was for official purpose and was related to business activities. We find that membership of any employee of the assessee in Bangalore Club is not an activity related to business. We uphold the decision of the Commissioner.

(xii) Courier Service: This service was availed for transportation of spares from central warehouse to feeder warehouses and branches for transport of replacement materials under warranty or for providing maintenance or repair services or for sale of goods to dealers. The Commissioner held that these activities were post removal and clearance of goods and not entitled to credit. We find that transportation of spares for maintenance etc. by courier could come under activity relating to business.

(xiii) One of the important services for which the assessee had availed major share of the total credit disallowed and demanded was under GTA for (i) transportation of goods from factory to depot; (ii) transportation of goods form factory to customers place and (iii) transportation of goods from warehouse to customer's site, for providing maintenance or repair services or for providing services during warranty period. During hearing, the learned JCDR fairly conceded that Service Tax paid under GTA for transportation of goods from factory to depot is admissible. Accordingly, we allow this part of the appeal. As

regards the transportation of goods from factory to customer's place, we find that he Department had relied on a judgment of the Punjab & Haryana High Court wherein their lordships held that tax paid for transportation of goods from the factory to the customer's premises was admissible when the three conditions stipulated in the CBEC Circular No. 97/6/2007-ST dated 23.08.2007 were satisfied. These were (a) the ownership of the goods and the property of the goods remained with the seller of the goods till the delivery of goods in acceptable condition to the purchaser at this door step; (b) the seller bore the risk of loss or damage to the goods during transit to the sistinatlion and (c) the freight charges were an integral part of the price of goods. We allow the appeal filed by the assessee to the extent the activity satisfied the conditions prescribed by the CBEC in the above Circular and upheld by the Pujab & Haryana High Court in the case of Ambuja Cements Ltd (supra). As regards the cases that do not satisfy the conditions prescribed in the Circular, the Commissioner should allow credit if they are activities relating to business.

(xiv) As regards packing expenses, the same were incurred by the C&F Agents engaged by the assessee for packing of spares outside the factory premises. These expenses were incurred for activity carried out after clearance of the goods from the factory. The appellant has canvassed its case on the basis that these services are input for the assessee's output service of maintenance or repair. From the records, we are not clear whether the activity involved was undertaken at the depot or werehouse of the assessee or elsewhere. However, there is no serious doubt that the impugned activity was undertaken for facilitating transport of spares to be used for maintenance or repair or sale of the assessee's products. It would appear that the activity is one of the activities related to business. This aspect has to be examined by

10. The Commissioner disallowed credit relating to most services on the ground that as per definition contained in Rule 2(1) of Cenvat Credit Rules, input service was service which was used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture and clearance of the final products upto the place of removal and included certain activities relating to business. An illustrative list of such activities was contained in the definition. Therefore, service tax paid on services which were not directly or indirectly used, in or in relation to the manufacture and clearance of the final products of the assessee upto the place of removal, or which were not inputs for the provision of the output services of the assessee were not input services eligible to credit. Commissioner has not allowed credit of service tax paid on activities undertaken after the manufacture and clearance of final products or not covered in the list of items specified in the inclusive definition of input services.

11. Ld. Jt.CDR had made an endeavour to support the impugned order relying on the following case law and the rule 2(1) of CCR.

a. Vikram Ispat vs. CCE, Aurangabad [2009-TIOL-997-CESTAT-MUM]

b. Vikram Ispat vs. CCE, Raigad [2010-TIOL-900-CESTAT-MUM]

c. Maruti Suzuki vs. CCE, Delhi-III [2009 (240) ELT 641 (SC)]

d. Chemplast Sanmar Ltd. vs. CCE, Salem [2010-TIOL-180-CESTAT-MAD]

e. CCE, Nagpur vs. Maikgarh Cement works [2009-TIOL-2059-CESTAT-MUM]

f. CCE, Chennai vs. Sundaram Brake Linings [2010(19) STR 172 (tri. Chennai)]

Relying on the definition of "input service" under Rule 2(1) of Cenvat Credit Rules, the learned JCDR submitted that to qualify as input service, such service should be used by a provider of a taxable service for providing output service or used by the manufacturer in the manufacture and clearance of final product upto the place of removal. However, as far as services specifically mentioned in the inclusive part of the definition were concerned these could be held as input services even if they did not satisfy the main part of the definition. As regards other input services, they had to meet the conditions prescribed in the substantive part of the definition. This definition could not be separated into different limbs but had to be read as a whole. The essential ingredients were that the services should be used in the manufacture and clearance of excisable goods upto the place of removal or should be used in providing taxable service. He relied on the judgment of the apex court in the Maruti Suzuki Ltd. case in support of his above proposition. The judgment of the Hon'ble High Court of Bombay in the case of Coca-cola India Pvt Ltd. stood impliedly overruled by the Maruti Suzuki Ltd. Judgment. However, he cited para 43 of the judgment in the Coca-cola India Pvt Ltd. case where the High Court had rendered the finding that the advertisement service which was the subject matter in that case was eligible input service. As long as the manufacturer could demonstrate that the service had an effect or impact on the manufacture of the final product and the manufacturer could demonstrate that the service had an effect or impact on the manufacture of the final product and the manufacturer could establish the relationship between the input service and the manufacture of the final product the same was eligible input service. However, he was of the opinion that the observation of the Hon'ble High Court contained in para 39 in which the High Court found the definition of input service to comprise five independent definitions ran counter to the ruling of the apex court in the Maruti Suzuki Ltd. case.

12. He has cited various decisions of the Tribunal I support of the Revenue's case. We discuss these decisions below seriatim.

a. Vikram Ispat vs. CCE, Aurangabad [2009-TIOL-997-CESTAT-MUM]

In this case following the Maruti Suzuki Ltd. case, a ld. Single Member of the Tribunal held that any service to be brought within the ambit of definition of input services should be one which satisfies the essential requirement contained in the main part of the definition. This requirement was equally applicable to the various items mentioned in the inclusive part of the definition. We observe that this view is inconsistent with the view taken by the Hon'ble High Court of Bombay in Coca Cola India Pvt. Ltd. case. The Tribunal held that the Coca Cola case judgment stood overruled by the Maruti Suzuki Ltd. judgment.

b. Vikram Ispat vs. CCE, Raigad [2010-TIOL-900-CESTAT-MUM]

In this case, the ld. Single Member of the Tribunal followed his own decision in the Vikram Ispat vs. CCE, Aurangabad [2009-TIOL-997-CESTAT-MUM].

c. Maruti Suzuki Ltd. vs. CCE, Delhi-III [2009 (240) ELT 641 (SC)]

In this case, the apex court considered the definition of 'input' contained in Rule 2(k) of Cenvat Credit Rules. The apex court held that the items appearing in the inclusive part of the definition also had to satisfy the definition contained in the specific and substantive part of the definition.

d. Chemplast Sanmar Ltd. vs. CCE, Salem [2010-TIOL-180-CESTAT-MAD]

In this case, the a ld. Single Member of the Tribunal found that the provision contained in Section 37(2) of the Act under which Cenvat Credit Rules were framed enabled the Government to frame rules for providing credit of service tax paid or payable on taxable services "used in, or in relation to, manufacture of excisable goods". The services which were used by the manufacturer subsequent to completion of manufacture and for sale of goods cannot be considered as input service.

e. CCE, Nagpur vs. Manikgarh Cement Works [2009-TIOL-2059-CESTAT-MUM]

In this case, a ld. Single Member of the Tribunal held the same view as he held in the Vikram Ispat case (supra).

f. CCE, Chennai vs. Sundaram Brake Linings [2010(19) STR 172 (tri. Chennai)]

In this case the Tribunal held as under:-

" 19…….. On the contrary, the same expression having been used for inputs and input services by the Legislature, the test laid down in Maruti Suzuki (supra) for interpreting the expression "used in, or in relation to the manufacture of excisable goods would have to be followed in respect of input services also. The law permits credit of duty / tax in respect of inputs / input services only when the same are used in, or in relation to manufacture of excisable goods. The law does not provide any other basis. It does not provide for credit on the basis that the value of input / input service is included in the value of finished excisable goods. Hence, the tests laid down in Maruti Suzuki (supra) cannot be overlooked. Use of the input service must be integrally connected with the manufacture of the final product. The input service must have nexus with the process of manufacture. It has to be necessarily established that the input service is used in or in relation to the manufacture of the final product. One of the relevant test would be can the final product emerge without the use of the input service in question. When these tests are applied following the decision of the Hon'ble Supreme Court in Maruti Suzuki (supra), one finds that the impugned outdoor catering service does not meet the same in relation to the manufacture of the finished excisable goods listed in the Table in paragraph 2."

13. We find that in the judgment in the Coca Cola India Pvt. Ltd.the Hon'ble High Court of Bombay analysed the definition of input service in detail and held that activities related to business included diverse activities not covered by the main part of the definition or did not figure in the list of services specified in the

inclusive part. What was necessary was that the nexus between the manufacture and the service was established. We find that the definitions of input and input service are not structured similarly. The relevant provisions are reproduced below:-

Rule 2(k) “input” means-

(i) All goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1.- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

The inclusive part of the definition is a short and finite list of goods which could find multifarious uses other than in manufacture also. The definition of input service under Rule 2(l) is reproduced below:-

Rule 2(l) "input service" means any service,-

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 productsupto 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 upto 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 rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

Obviously, several items that figure in the inclusive part of the definition of input service do not conform to the substantive and specific part in the definition of input service. Activities such as credit rating, share registry do not have any impact whatsoever on the manufacturing and clearance of finished goods by a

manufacturer. Therefore, as regards input service the items appearing in the inclusive list need not necessarily satisfy the requirement prescribed in the main part of the definition. Since the apex court did not consider " input service" of Rule 2(l) of Cenvat Credit Rules but decided what is "input" under Rule 2(k) of the definition, the ratio of the Maruti Suzuki Ltd. (supra) judgment cannot be applied to interpret the scope Court of Bombay is binding on us. We hold that the Commissioner has to decide admissibility to credit in the disputed cases remanded to him in the light of the judgment of the Bombay High Court judgment in the Coca Cola India Pvt. Ltd. case (supra).

14. In the Coca Cola India Pvt Ltd. case (supra), the appellant manufactured beverage concentrates and incurred expenditure on advertisement of bottled beverages including service tax. The issue was whether the appellant was entitled to credit of service tax paid on advertising. Their lordships of the Hon'ble High Court of Mumbai examined the following questions and answered them in the affirmative.

(a) Whether services of advertising and marketing procured by the Appellants in respect of advertisements for aerated waters are covered by the definition of the words 'Input services" as defined in Rule 2(l) of the CENVAT Credit Rules, 2004, when admittedly the Appellants manufacture concentrates exclusively used for the manufacture of the respective aerated water which are advertised by the Appellants?

(b) Whether the advertisement or sales promotion of aerated waters undertaken by manufacturer of concentrate is covered by the inclusive part of the definition of "input service" contained in Rule 2(l) of the Cenvat Credit Rules, 2004?

15. The Hon'ble High Court considered expressions used in the definition of input service pertinent to decide the controversy. The definition of input service used the terms 'means' and 'includes'. Relying on Regional Director vs. High Land Coffee Works-1991 (3) SCC 617, the High Court held that the expression 'means and includes' was exhaustive. By the word 'includes' services which may otherwise have not come within the ambit of the definition clause were included and by the words 'means' these were made exhaustive. The next expression considered from the definition was 'such as '. The words 'such as ' were held as illustrative and not exhaustive. In the context of business, those were services, related to the business. The expression business was an integrated/ continuous activity and was not restricted to mere manufacture of the product. Therefore, activities in relation to business could cover all the activities that were related to the functioning of a business. The term business could not be given a restricted definition to say that business of a manufacturer was to manufacture final products only. The term "business" therefore, particularly in fiscal statutes was of wide import. The definition of input service employed the phrase activities relating to business. The words 'relating to' further widened the scope of the expression activities relating to business. Similarly, the use of the word activities in the phrase activities relating to business further signified he wide import of the phrase "activities relating to business". The Rule making authority had not employed any qualifying words before the word activities like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business fell within

the definition of input service provided there was relation between the manufacturer of concentrate and the activity.

16. What followed from the above discussion was that the credit could be availed on the tax paid on the input service, as long as the manufacturer could demonstrate that the advertisement services availed had an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. Once the cost incurred by the service had to be added to the cost, and was so assessed, it was recognition by Revenue of the advertisement services having connection with the manufacture of the final product. This test would also apply in the case of sales promotion. We find that this observation on the link with the assessable value of the final product was incidental in the facts of that case and that the language of the definition and the reading of their lordships do not find such a requirement for services to qualify as input services. It would, therefore, appear that all services which constitute activities related to business need not have a nexus with manufacture in a manner different from what was found in the Coca Cola India Pvt. Ltd. case by the Hon'ble High Court to become input service.

17. In the instant cases, we find that the issues involved are complex and do not lend themselves to one clear interpretation. We find that the appellant is entitled to a lenient treatment as to its penal liability. We set aside the penalties. The Commissioner has to decide the question raised by the appellant on his jurisdiction to decide the impugned show-cause notices. Except where we have specifically rejected the plea of the appellant or allowed its prayer for relief, all other matters have to be considered by the Commissioner afresh. It will be open to the assessee to canvass its claim relating to any particular activity such as that falling under GTA or any other activity also under the head " activities relating to business". We thus allow the appeal filed by M/s TCECL by way of remand for taking a fresh decision on the issues remanded in terms specified by, us after hearing the party.

(Pronounced in open court on ----------)

Per: P G Chacko:

18. After careful perusal of the text of the order recorded by learned brother, I agree with his decision to remand to the adjudicating authority the issues discussed in sub-para (i) (Air Travel Agent's Service), sub – para (ii) (Rail Travel Agent's Service) sub – para (iii) (Car hiring / rent-a-cab service) sub – para (iv) (Authorized Service Station Service) of para 9.1 inasmuch as in the impugned order, the learned. Commissioner denied CENVAT credit on these services to the assessee solely on the ground of lack of evidence to establish entitlement.

19. Insofar as the services discussed in sub – para (v) Management consultancy Service) sub – para (vi) Maintenance or Repair Services) sub – para (vii) Recovery Agent's Service, sub – para (viii) (Insurance and Courier Service) and sub – para (xii) (Courier Service) of para 9.1 are concerned, I note that the learned brother has allowed CENVAT Credit on these services to the assessee by holding that these services qualify to be brought under "activities relating to

business" within the meaning of this expression used in the definition of "input service" under Rule 2(l) of CENVAT Credit Rules, 2004. He has obviously, relied on the decision of the Hon'ble Bombay High Court in the case of Coca Cola India Pvt. Ltd. vs. CCE [2009(242) ELT 268 (Bom.)] discussed in paragraphs 14 and 15. Accordingly, it has been held that any activity relating to business would fall within the definition of 'input service' provided there is a relation between the manufacture and the activity. Nagpur Bench of the Hon'ble High Court concurred with the decision in Coca Cola case in its recent judgment in Central Excise Appeal No. 7/2010 (Commissioner of Central Excise, Nagpur vs. M/s Ultratech Cement Ltd. & Another), dated 25.10.2010. What was held by the High Court in Coca Cola case was that the expression "activities in relation to business" in the inclusive part of the definition of 'input service' widened the scope of 'input service' so as to cover all services used in the business of manufacturing the final product. The Nagpur Bench added the rider of 'integral connection' vide para 29 of its judgment, which reads as follows:

"29 The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2 (l) of the 2004 Rules."

In another context, the Nagpur Bench clarified certain observation contained in Coca Cola judgment by stating that such observation had to be construed to mean that, where input service was integrally connected with the business of manufacturing the final product and the cost of the input service formed part of the cost of the final product then credit of service tax paid on such input service would be admissible to the manufacturer. What is thus discernible form the Hon'ble High Court's judgment in Coca Cola case as clarified in the case of Ultratech Cement Ltd. is a binding judicial view to the effect that, if the activity is not integrally connected with the business of manufacture of final product, the service would not qualify to be an input service under Rule 2(l) for the purpose of CENVAT Credit. Therefore, I am unable to concur with the view (as expressed in para 16) that "all services which constitute activities related to business need not have a nexus with manufacture in a manner different from what was found in the Coca Cola India Pvt. Ltd.case by the Hon'ble High Court to become input service." I do not forget that when the learned . Member (Technical) recorded the order, the decision of the Nagpur Bench of the Hon'ble High Court was not available. Nevertheless, the law as interpreted by the Hon'ble High Court requires to be followed. Therefore, I am of the view that the issues discussed in sub-paragraphs (v) to (viii) and sub-para (xii) of para 9.1 also have to be remanded to the lower authority with a direction to decide afresh on the admissibility of CENVAT Credit on the services to the assessee after giving them a reasonable opportunity to establish that the relevant services/ activities were integrally connected with the business of manufacturing the final products.

20. As regards the issue discussed in sub-para (ix) (Professional Fee Service) of para 9.1, I agree with the remand order for reason similar to the one stated in para 18. With regard to AMC in respect of photocopying machines (sub-para (x) of para 9.1), I observe that the ld. JCDR failed to rebut the arguments which were made by the learned counsel on the strength of case law. Therefore, I am in

agreement with the conclusion reached by learned brother. Further, I am in full agreement with him in respect of Club Association Service [sub para (xi) of para 9.1]. There is no disagreement with the view taken in relation to GTA services [sub-para (xiii)] and packing Expenses [sub para (xiv)]. I also endorse the decision on the penalty related issue.

21. Reverting to the Hon'ble High Court's judgment in Coca Cola case, I note that the Hon'ble High Court analyzed the definition of 'input service' by dividing it into 5 limbs/categories in relation to a manufacturer and held that each limb/ category of the definition of 'input service' could be considered as an independent benefit available to the manufacturer vide para 39 of the High Court's judgment. It was held that, if an assessee could satisfy any one of the five limbs then credit of service tax paid on the input service would be available to them. Their Lordships, in this context, further observed thus: "This would be so even if the assessee does not satisfy the other limb/ limbs of the above definition." On the other hand, in para 43 of the Hon'ble High Court's judgment, it was held that, for availing the benefit of Cenvat Credit on service tax paid on advertisement services, a manufacturer should demonstrate that such services had an effect or impact on the manufacturing of the final product and should establish the relationship between the services and the manufacture of the final product. Noticeably, the view taken by the Hon'ble High Court in para 43 ibid is in conformity with the ratio of the Hon'ble Supreme Court's judgment in the case of Maruti Suzuki Ltd (supra). It is also noticed that, in the case of Ultratech Cement (supra), the Nagpur Bench of the Hon'ble Bombay High Court has expressed the view that, while interpreting the words used in the definition of 'input service' , only the ratio laid down by the apex court (in Maruti Suzuki case)in the context of the definition of 'input' would apply and not the judgment in its entirely. Be that as it may, what is relevant for the present purpose, according to me, is the view taken by the Nagpur Bench of the High Court with regard to the expression "activities in relation to business" in the definition of input service under Rule 2(l). It is therefore, necessary that a manufacturer claiming the benefit of Cenvat Credit on any service under Rule 2(1) on the premise that the service is covered by the above expression should establish an integral connection between the activity/ service and the business of manufacturing the final product. This is the reason why I have found it necessary to widen the scope of the remand order made by the learned brother.

22. Without prejudice to the views expressed by me hereinbefore, I observe that neither in the case of Coca Cola India Pvt. Ltd. nor in the case of Ultratech Cement Ltd. did anybody bring to the notice of the Hon'ble High Court the relevant provisions of Section 37 of the Central Excise Act, which authorized the Central Government to make rules, inter alia, to provide for "credit of service tax paid or payable on taxable service used in, or in relation to, the manufacture of excisable goods". The question whether the inclusive part of the definition of 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004 is within the scope of the legislative authority delegated to the Central Government by Parliament under Section 37 and, if so to what extent, was not debated before the Hon'ble High court.

POINTS OF DIFFERENCE

(a) Whether, in respect of the services discussed in sub-para (v) (Management Consultancy Service), Sub Para (vi) (Maintenance or Repair Service), sub-para (vii) (Recovery Agent's Service), sub-para (viii) (Insurance and Courier Service), sub-para (xii) (Courier Service) of para 9.1, the appeal should be allowed as held by the learned Member (Technical)

OR

The case should be remanded as held by the learned Member (Judicial)

(b) Whether, in the remanded matters, the appellant should be required to establish integral connection between the service and the manufacture of final products for the benefit of Cenvat Credit on the service as held by the learned Member (Judicial) relying on the Hon'ble High Court's judgment in the case of Ultratech Cement Ltd (vide supra).

OR

The appellant should be required only to show that the service relates to their business as held by the learned Member (Technical) relying on the Hon'ble High Court's judgment in the case of Coca Cola India Pvt. Ltd. (vide supra).

Records are directed to be placed before the Hon'ble President for reference to third Member.

MISC ORDER NO. 570/2012

Date of Hearing : 03.08.2012

[Order per : M. Veeraiyan]

23. The matter stands listed before me as, third member, in view of the differences of opinion recorded in Misc. Order No. 01/2010 dated 22.9.2010.

24. The relevant facts have been recorded in detail in the Misc. Order, dated 22.9.2010. However, it would be appropriate to recapitulate certain facts in brief to consider the referred issues which are as follows :

(a) The appellants are manufacturing construction equipment, excavators and cranes etc. in their factory situated at Dharwad coming under the jurisdiction of the Commissioner of Central Excise, Belgaum. They have their corporate office/Head office at Bangalore which is registered as "Input Service Distributor" under Rule 4A of the Service Tax Rule, 1994.

(b) The dispute relates to the credit taken for various input services by the factory at Dharwad which was distributed by the appellant from its Head office. The

Commissioner has disallowed the CENVAT credit on various grounds and demanded service tax totally amounting to Rs. 2,17,29,461/- (Rs. 1,23,22,725/- + Rs. 94,06,736/-) along with interest and imposed penalties based on two show-cause notices dated 5.11.207 and 2.9.2008. The period of dispute is from October 2006 to March 2008.

(c) The appellant has challenged the order of the Commissioner before the Tribunal on various grounds.

25. While hearing the appeal there were differences of opinion which were formulated as follows :

(a) Whether, in respect of the services discussed in sub-para (v) (Management Consultancy Service), sub-para (vi) (Maintenance of Repair Service) sub-para (vii) (Recovery Agent's Service), sub-para (viii) (Insurance and Courier Service) and sub-para (xii) (Courier Service) of para 9.1. The appeal should be allowed as held by the learned Member (Technical)

OR

The case should be remanded as held by the learned Member (Judicial).

(b) Whether in the remanded matters, the appellant should be required to establish integral connection between the service and the manufacture of final product for the benefit of CENVAT credit on the service as held by the learned Member (Judicial relying on the Hon'ble High Court's judgment in the case of Ultratech Cement Ltd. (vide supra).

OR

The appellant should be required only to show that the service relates to their business as held by the learned Member (Technical) relying on the Hon'ble High Courts judgment in the case of Coca Cola India Pvt. Ltd. (vide supra).

26.1. The learned advocate for the appellant submits that the credit on "Management Consultancy Services", "Maintenance or Repair Services", "Recovery Agents Services", "Insurance Services" and "Courier Services" should be allowed and in this regard, he made the following submissions service-wise :

(a) Management Consultancy Services : Referring to the findings of the Commissioner under the head "Management Consultancy Services", he submits that the services were rendered by M/s Watson Wyatt and India Life Capital Pvt. Ltd. in matters relating to gratuity valuation , superannuation valuation, Bhavisya Kalyan Yojana Scheme valuation, leave encashment valuation, post retirement valuation, etc. which are part of welfare measures of the employees. He further submits that the "consultancy services" in relation to the above areas are in the nature of verification, certification which

come under audit and therefore, should be treated as part of business related activities. However, he fairly concedes that the nature of activities undertaken by the provider of the "input service" have not been properly spelt out to decide whether the same should be entitled to CENVAT credit as input service.

(b) Maintenance or Repair Services : The learned advocate submits that there are two type of services under this category. In respect of services rendered during warranty period, the customers get free services through their dealers. The dealers raise invoices for the free service rendered to the customers and the appellant pays to the dealers. The price of the goods sold take into account amounts which may be incurred towards the free service to be rendered during the warranty period and Excise duty stands paid on the full value and, therefore, the services rendered by the dealers should be treated as input services towards manufacture of machines with respect to which the free warranty service has been rendered.

In respect of the post-warranty period, the appellants enters into Annual Maintenance Contract(AMC) with the customers who have purchased the machineries but the services are rendered through their dealers. The customers do not pay to the dealers who undertake the service. The dealers who undertake the services raise the bills on the appellants and they pay service tax. The service tax so paid by the dealers are taken as credit, inasmuch as the appellants are paying service tax on the entire amount towards AMC collected by the appellants from the customers. In this regard, the learned advocate relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Vododara-II vs. Danke Products [2009 (16) S.T.R. 576 (Tri.-Bang.)].

(c) Recovery Agency Services : The learned counsel submits that the appellants had utilised services of recovery agents for recovery of amounts due from the defaulting customers to whom the goods were sold and these services should be treated as coming under activities relating to business and, therefore, should be held to have nexus for the purpose of treating such services as input services in terms of Rule 2 (l) of CENVAT Credit Rules, 2004.

(d) Insurance Services : He submits that insuring the business premises like godown, branch office and stock held and the insurance against loss due to fire, machinery break-down, accident are activities related to business. He further submits that the insurance services includes medical insurance of their employees. In support of his claim, he relies on the decision of the Tribunal in the case of Commissioner of Central Excise, Bangalore-III vs. Stranzen Toyotesu India Pvt. Ltd. [2011 (23) S.T.R. 444 (Kar.)].

(e) Courier Services : The learned counsel submits that inasmuch as the services are utilised for transportation of materials from their warehouse to their branches to enable sale of such goods to dealers, for replacement of materials during the warranty period and for use while undertaking maintenance or repair services in the form of AMC.

These services should be treated as activities related to business and, therefore, these services should be allowed.

26.2. The learned advocate submits that the decision of the Honble Bombay High Court in the case of Coco Cola India Pvt. Ltd. vs. Commissioner of Central Excise, Pune-III [2009 (15) S.T.R. 657 (Bom.)] has clearly held in paragraph 39 that the credit is available once input services fall under any one of the mentioned categories. This decision has not been disturbed by the Hon'ble Supreme Court. The decision of the Bombay High Court in the case of Commissioner of C. Excise, Nagpur vs. Ultratech Cement Ltd. [2010 (260) E.L.T. 369 (Bom.)] prescribing direct nexus or integral connection between input services and manufacturing goods cannot take away the benefit granted by the decision of the Hon'ble High Court in the case of Coco Cola. These two judgments should be read harmoniously. He also submits that the decisions of the Hon'ble Karnataka High Court in Stranzen Toyotetsu case, Honble Gujrat High Court in the case of Commissioner of C. Ex. & Customs vs. Parth Poly Wooven Pvt. Ltd. [2012 (25) S.T.R. 4 (Guj.)] and in the case of Commissioner of C. Excise, Bangalore vs. Millipore India Pvt Ltd. [2012 (26) S.T.R. 514 (Kar.)] also support the case of the appellants that integral connection as a condition may not be necessary and as long as the input services are related to business activities of the assessee, the credit should be extended.

26.3. He further submits that the issue of jurisdiction of the Commissioner, Belgaum to adjudicate the dispute regarding input service credit distributed by the Bangalore based ISD distributor stands remanded to the original authority.

27. The learned Commissioner (AR) made the following submissions: (a) In his opinion, the most important question to be decided is whether availability of credit on service depends upon establishing integral connection between the service and the business of manufacture of final products. On this issue, he submits that the decision of the Honble Bombay High Court in Ultratech Cement case very clear which has been rendered after taking into account the decision in Coco Cola case as could be seen from paragraphs 37 & 38. There is no conflict between the two decisions. In the decision in case of Coco Cola one of the five limbs of the definition as service used in relation to activity relating to business has been identified. On the other hand, the decision in Ultratech Cement case explains the scope of activity relating to business. He further submits that the Honble High Court of Bombay in its decision dated 11.10.2010 in the case of Commissioner of C. Ex., Nagpur vs. Manikgarh Cement [2010 (20) S.T.R. 456 (Bom.)] has also held that -

However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression relating to businessin Rule 2 (l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

(b) He submits that the decisions in the cases of Stranzen Toyotesu, Parth Poly Wooven and Millipore India Ltd. deal with specific services and did not interpret the phrase activity relating to business which has been done only in the case of Ultratech Cement and Manikgarh Cement.

(c) If the concept of nexus between the services and the business of manufacturing is waived, then the inclusive part of the definition would make the substantive part of the definition of input services totally redundant. Such an interpretation should be avoided.

28. I have carefully considered the submissions of both sides on the points of difference arising out of the order proposed by the Honble Member (Technical) and that of the Honble Member (Judicial).

29. At the outset, I find that the appellants have challenged the jurisdiction of the Commissioner, Belgaum to decide the show-cause notices proposing to disallow and recover credit of service tax distributed by input service distributor based in Bangalore. The Tribunal in the Misc. order dated 22.9.2010 has unanimously held as follows :

The Commissioner has to decide the question raised by the appellant on his jurisdiction to decide the impugned show-cause notices.

30.1 In respect of 9 out of 14 disputed services, the matter stands remanded to the Commissioner for fresh consideration. In respect of other 5 services, learned Member (Technical) held that the appellants are eligible for the credit whereas the learned Member (Judicial) held it appropriate to remand the issue of eligibility of credit to these services also to the Commissioner for fresh consideration.

30.2. The proposed order by the Honble Member (Technical) allowing the credit in respect of five services and the proposal to remand for fresh consideration of the eligibility of nine services has been made in the light of decision in Coco Cola case holding that

“all services which constitute activities related to business need not have a nexus with manufacture in a manner different from what was found in the Coco Cola India Pvt. Ltd. case by the Honble High Court to become input service”.

On the other hand, Honble Member (Judicial) took note of the decision in the case of Ultratech Cement Ltd. relevant portion of which reads as follows :

29. The expression activities in relation to business in the definition of input service postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture

of final product, the service would not qualify to be a input service under Rule 2 (l) of the 2004 Rules.

In view of the above judgement, he was of the opinion that a manufacturer claiming the benefit of CENVAT credit on any service under rule 2 (l) on the premise that the service is covered by the above expression should establish an integral connection between the activity / service and the business of manufacturing the final product.

31.1. I find that the decision in the case of Coco Cola analyses the definition of input services in 5 limbs and holds that each limb of the definition of input service can be considered as providing an independent benefit or concession or exemption. One of the limbs considered related to services used in relation to activities relating to business .. However, the scope of the term activities relating to business was not spelt out in the said decision.

31.2. However, the latter decision of the Honble High Court of Bombay, Nagpur Bench in the case of Ultratech Cement Ltd. has dealt with the scope of the said phrase and held as under :

29. The expression activities in relation to business in the definition of input service postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2 (l) of the 2004 Rules.

It is also relevant to note that the decision in the case of Ultratech Cement Ltd. has been rendered after considering the decision in the case of Coca Cola case (Paragraphs 37 & 38).

31.3. It is further noticed that the Honble High Court of Bombay in the case of Manikgarh Cement has also interpreted the expression relating to businessand held as under :

However to qualify as an input service, the activity must have nexus with the business of the assessee. The expression relating to businessin Rule 2 (l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

31.4. On the other hand, a close perusal of the decisions relied upon by the learned advocate for the appellant, reveals that the said decisions did not interpret the expression ‘relating to business’.

31.5. In view of the above, the appellant should be 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 as held by the learned Member (Judicial) relying on the Honble High Courts judgement in the case of Ultratech Cement Ltd.

31.6. The above requirement should also be met in respect of the five services mentioned in para (a) of points of differences.

32. In view of the above, I prefer to concur with the opinion of the Honble member (Judicial) on both the points.

33. The file is returned to the regular Bench for final decision in view of the foregoing findings.