CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH : COURT NO - 3

Excise Appeal No. 11762 of 2018-SM
(Arising out of OIA No. CCESA-SRT-APPEALS-PS-541-542-2017-18 dated 29.01.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Classic Marble Company Pvt. Ltd. ...Appellant

S No. 130/1/2, Village-Athal,
SILVASSA,DADRA & NAGAR HAVELI
396230.

-Versus-

C.C.E. & S.T.-Daman ...Respondent

3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi,Gujarat,396191

WITH

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Arvindkumar Amichand Shah ...Appellant

Authorised Signatory, M/s Classic Marble Company Pvt Ltd., S No. 130/1/2,
Village-Athal, SILVASSA,
DADRA & NAGAR HAVELI, 396230.

-Versus-

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3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
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Vapi, Gujarat,396191

Present For the Appellant : Ms. Dimple Gohil, Advocate

Present For the Respondent : Shri L. Patra, Authorised Representative

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. A/12054-12055/2019

Date of Hearing: 22/10/2019
Date of Decision: 31/10/2019

RAMESH NAIR

The issue involved in the present case is the admissibility of Cenvat Credit in respect of following services:

(1) Cab Operator
(2) Commercial and industrial construction for canteen
(3) Tarpaulin shed supply of tangible goods for use
(4) Air Travel Agency
(5) Cleaning Activity
(6) Travel Agency
(7) Courier Service

2. Ms. Dimple Gohil, Learned Advocate appearing on behalf of the appellant submits that as regard the Cenvat Credit of Rs.1,00,435/- in respect of Commercial and Industrial Construction for Canteen services, the appellant is not contesting as

the same use pertains to the period from April 2011 to June, 2013. She submitted input services use are as under:

(1) **Cab operator**- This service is used as travelling expenses of employees of the company for the company's work while doing outside work on duty and not spent on individual/personal use of the employee. Expenses form part of the business expenses and reflect in the profit and loss of the company. She relies on the following judgments:

i. Principal Commissioner vs Essar Oil Ltd. 2015-TIOL-2768-HC-AHM-CX
ii. CCE vs Stanzen Toyotetsu India (P) Ltd. 2011 (23) STR 444 (Kar)
iii. CCE v Lupin Ltd. 2012 (285) LT 221 (Tri- Mum)
iv. Dr. Reddy Lab Ltd. Vs CCE, 2010 (19) STR 71 (Tri- Bangalore)
v. Emcon Technologies Pvt Ltd. 2013 (31) STR 441 (Tri- Bangalore)

(2) **Commercial and Industrial Construction** – It is an eligible input service for the period prior to 01/04/2011. During that period, the credit of Rs. 91,179/- is admissible. This service was used for construction of Canteen under the Category of Commercial and Industrial Construction service. She placed reliance on the judgment of Gujarat High Court in the case of CCE vs Cadila Healthcare Ltd. 2013 (30) STR 3 (Guj.)

(3) **Erection of Tarpaulin Shed**- This service was classified under the head of supply of tangible goods for use. Tarpaulin Shed is a temporary structure in the factory for the purpose of protection of the raw material and finished goods from the rain. Therefore, it is an input service. She placed reliance on the following judgments:

i. TML Industries Vs CCE & ST Vadodara 2017 (48) STR 485 (Tri-Amd.)
ii. Sesa Sterlite Limited vs C.C.E & S.T. Vapi passed by the Hon'ble Tribunal, Ahmedabad vide Order No. A/13397/2017 dated 09.11.2017
iii. Kitec Industries (I) Ltd. Vs CCE, 2015 (38) STR 223 (Tri-Ahmedabad)
iv. Hi Tech Power & Steel Vs CCE 2014 (34) STR 276 (Tri-Del)
v. Coca Cola India Pvt. Ltd. Vs CCE 2009 (15) STR 657 (Bom.)

(4) **Air Travel Agency-** This service was used for travelling of the executives of the company by air for company's business and the same business form part of profit and loss account. She takes support from the following judgments:

i. Force Motors Ltd. vs Commissioner of Central Excise, Pune 2010 (18) STR (50), (16) STR 591 & (13) STR 692 (Tri- Mumbai)

ii. Sanmar Foundries Ltd. vs CCE, Trich 2016 (43) S.T.R. 362 (Tri-Chennai)

(5) **Cleaning Activity-** This service directly relates to manufacture business, keeping the facility healthy and hygienic is directly responsible for rendering better output by the employees/ workers especially in the unit of marble manufacturing. It is an integral part of marble manufacture which is prone to heavy dust particle. Therefore, cleaning/pest control are eligible for Cenvat credit as held in the following judgments:

i. Reliance Industries Ltd. vs CCE, LTU, Mumbai 2016 (45) S.T.R. 383 (Tri- Mumbai)

ii. Essar Oil Ltd. vs CCE & ST, Rajkot vide CESTAT, Ahmedabad Order no. A/11416/2017 dated 19.07.2017

iii. Loreal India Pvt. Ltd. vs Commissioner of Central Excise, Pune-I 2011 (22) STR 89 (T-M)

iv. Heartland Bangalore Transcription Ser. (P) Ltd. vs. CST, Bangalore 2011 (21) S.T.R 430 (Tri- Bangalore)

(6) **Travel Agency-** This Travel agency service is used by the employees of the company towards performing outdoor duties of the company. She placed reliance on the following judgments.

i. Commissioner of Service Tax, Mumbai-II vs WNS Global Services 2016 (44) STR 454 (Tri- Mumbai)

(7) **Courier Service-** This service is used for movement of small quantity of materials such as samples, raw material etc to further use in processing, including receipt of some high-value inputs. Courier services are used for placing orders, filing quotations, marketing, dispatch of instructions, issuing cheques, sending stop transfer documents to depots, etc. Therefore courier services are essential for the office as well as the manufacturing unit. Reliance is placed on the following:

i. Commissioner of Service Tax, Mumbai-II vs WNS Global Services 2016 (44) S.T.R. 454 (Tri- Mumbai)

ii. Heartland Bangalore Transcription Ser. (P) Ltd. vs. CST, Bangalore 2011 (21) S.T.R 430 (Tri- Bangalore)

iii. CCE vs CCL Products (I) Ltd. 2009 (16) STR 305 (Tri- Bang)

iv. CCE vs APAR Industries Ltd. 2010 (20) STR 624 (Tri- Ahmedabad)

2.1 She submits that the impugned order is a non speaking order as it does not consider or deal with any of the contentions urged by the appellant. She submits that the definition of input services is very wide definition and must not be read restrictively. This is a settled position of law in the following judgments:

i. CCE Nagpur vs. Ultratech Cement Ltd. 2010 (260) ELT 369 (Bom.)
ii. Coca Cola (India) Pvt. Ltd. v CCE, 2009 (15) STR 657 (Bom.)
iii. CCE vs. Stanzen Toyotetsu India Pvt. Ltd. 2011 (23) STR 444 (Kar.)
iv. CCE vs Cadila Healthcare Ltd. 2013 (30) STR 3 (Guj.)
v. Deepak Fertilizers & Petrochemicals Corp. Ltd. 2013 (30) STR 3 (Guj.)
vi. Deepak Fertilizers & Petrochemicals Corp. Ltd. vs CCE, 2013 (32) STR 532 (Bom.)
vii. CCE vs Lupin Ltd. 2012 (285) ELT 221 (tri- Mum)

2.2 She submits that as per the usage and explanation above, all the services were used directly or indirectly in relation to the manufacturing activity of the appellants and thus credit taken by the appellants was clearly admissible. She also submits that since the issue involved related to interpretation of certain provisions, thus, penalty cannot be imposed in view of the order of GHCL Ltd. vs CCE 2009 (16) STR 89 (Tri- Ahm). The appellant has been filing returns. Thus, extended period of limitation cannot be invoked while issuing the Show Cause Notice in view of the judgment in the case of Parekh Plast (I) Pvt. Ltd. Vs CCE 2012 (25) STR 46 (Tri- Ahmedabad).

3. Shri L. Patra, Learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the appellant, at no point of time have established the actual use of inputs. Therefore, Adjudicating Authority as well as Commissioner (Appeals) have rightly denied the Cenvat Credit. He placed reliance on the following judgments:

i. Commissioner of C.Ex., Ahmedabad-II vs Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)
ii. SKD Lakshmanan Fireworks Industries vs. CCE, Tirunelveli 2016 (42) STR 359 (Tri-Chennai)
iii. CCE Vs. Gujarat Heavy Chemicals Ltd. 2011 (22) STR 610 (Guj.)
iv. Eimco Elecon (India) Ltd. vs CCE, Vadodara-I 2017 (52) STR 316
v. CCE, vs. Ultratech Cement Ltd. 2018 (9) 337 (SC)
vi. Ultratech Cement ltd. vs Commissioner 2018 (13) GSTL J101 (SC)
vii. Alkraft Thermo Technologies P Ltd. Vs CCE, Chennai 2018—TIOL-2226-Cestat Del- Pee Cee Cosma Sope Ltd. vs CCE, Jodhpur.

4. I have carefully considered the rival submission made by both the sides and perused the records. I find that as per the use of services explained by the appellant, the appellants are entitled for the Cenvat Credit. The cab operator service is used by the employees for attending outside work. And the same is not used for their personal use or consumption. Therefore, having considering the exclusion clause which came into force from 01 April, 2011, cab operator service is

indeed used for the business of the appellant's company. Therefore, it is an eligible input service.

4.1 The Commercial and Industrial Construction service was used for construction of canteen which is a part of setting-up of factory which is specifically included in the exclusion clause of definition of input services up to 01 April, 2011. The appellant have given up the claim of credit on these services amounting to Rs. 1,00,435/- for the period after 01 April, 2011. Therefore, the demand of the same is upheld.

4.2 As regard the erection of Tarpaulin shed, it is observed that temporary shed is used for storage of raw material and finished goods for protection of the goods from rain water. Therefore, it is directly used in or in relation to manufacture of final product.

4.3 As regard Air Travel Agency, the air travelling is used by the employees of the company for company's business work. Therefore, it is not the service which is used for individual, the service is used in or in relation to the business of the company. Hence, use of service is for the company and not for the individual.

4.4 As regard cleaning activity, since it is marble manufacturing industry, it creates lot of dust and particles which needs to be cleaning on regular basis to carry uninterrupted production activity. Similarly, the pest control is also very much necessary for such pollution prone industries. Therefore, cleaning activity is directly used in the manufacture of the final product.

4.5 Travel agency service is again used for the employees for performing the outside duties for the companies. Therefore, it is used for the overall business of the company not for the individual's personal use.

4.6 Courier service is used for movement of samples, raw materials and mostly for authorized documents such as orders, quotations, marketing documents, instruction, cheques, etc. These activities are directly used in or in relation to manufacture as well as business of the appellant's company. Revenue could not bring anything on record contrary to the use of services presented by the appellant. In respect of all the services, there are various judgments passed by Tribunal and High Courts. Therefore, I am of the view that all the services are indeed input services and eligible for Cenvat Credit. Accordingly, the impugned order is set aside, appeals are allowed.

(Pronounced in the open court on)

(Ramesh Nair)
Member (Judicial)

Diksha