

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12803 of 2018

(Arising Out Of OIA-CCESA-SRT-APPEAL-PS-107-2018-19 Dated 25/06/2018 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Huhtamaki Ppl Ltd

.....Appellant

(Formerly The Paper Products Ltd.),
S.No. 33/1, At Post Umerkoi,
Silvassa, Dadra & Nagar Haveli(UT)

VERSUS

C.C.E. & S.T.-Surat-I

.....Respondent

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

With

Excise Appeal No.10072 of 2019

(Arising Out Of OIA-CCESA-SRT-APPEAL-PS-386-2018-19 Dated 04/09/2018 Passed By Commissioner (Appeals) Commissioner Of Central Excise, Customs And Service Tax-SURAT-I)

Huhtamaki Ppl Ltd

.....Appellant

(Formerly The Paper Products Ltd.),
S.No. 33/1, At Post Umerkoi,
Silvassa, Dadra & Nagar Haveli

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

APPEARANCE:

Shri. Mihir Mehta & Shri. Mohit Raval, Advocates for the Appellant
Shri Vinod Lukose Superintendent (AR), Shri. Sanjiv Kinker, Superintendent (AR)
for the Respondent

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

Final Order No. A/ 11676-11677 /2021

DATE OF HEARING: 15.04.2021
DATE OF DECISION: 27.04.2021

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of excisable goods falling under chapter 39,47,48 and 76 of the Central Excise Tariff Act, 1985 and for the said purpose has a factory located in Silvassa, Daman. Due to short of storage space within the factory

premises, the appellant outsourced storage facility from Akash Warehousing Corporation, Bhiwandi and Pioneer Logistics Kilwani which are outside the factory on rental basis for storing the imported inputs before bringing the same factory for further processing and manufacture of final product. The appellant in respect of Service Tax paid on warehousing service availed the cenvat credit and same was informed vide two letters dated 16.02.2010 and 10.02.2011 to the Learned Jurisdictional superintendent of Central Excise and the Learned Jurisdictional Deputy Commissioner of Central Excise about the availment of Cenvat Credit of the Service Tax paid on the storage/warehouse services availed for storing the imported inputs. In the said letter it was also stated that Rule 8 of the Cenvat Credit Rules, 2004 is not applicable in their case. The said letters are annexed with the appeal paper. An EA-2000 audit was conducted on the Appellant's record and it was observed that the appellant has wrongly availed the credit of Service Tax in respect of the rent paid for warehouse / godown used for storing the imported inputs since the warehouse / godown had separated from Central Excise registration and were not registered as a first stage /second stage dealer by the appellant for storage of its goods, out of the total Cenvat Credit on storage and warehousing services which pursuant to the audit report, the appellant deposited Rs.3,27,392/- along with the interest of Rs. 24,227/- pertaining to the services received from Pioneer Logistics Kilwani, prior to the issuance of the show cause notice. Subsequently, the appellant were issued a show cause notice dated 26.08.2015 proposing to demand and recover the ineligible Cenvat Credit of Service Tax paid on the renting of warehouse / godown along with applicable interest and penalty. The said show cause notice was adjudicated vide Order-In-Original dated 29.12.2015 wherein the Learned adjudicating authority confirmed the entire demand of ineligible Cenvat Credit of Rs. 2,29,992/- and appropriated amount of Rs. 3,27,392/- paid by the appellant along with interest under Rule 14 of the Cenvat Credit Rules read with Section 11A (4) of the Central Excise Act, 1944 and imposed equivalent penalty of Rs. 5,57,384/- under Rule 15 (2) of the Cenvat Credit Rules read with Section 11AC (1)(c) of the Central Excise Act, 1944. The appellant filed an appeal before the Learned Commissioner (Appeals) who vide his Order-In-Appeal dated 25.06.2018 dismissed the appeal. Therefore, the present appeal filed by the appellant.

2. Shri. Mihir Mehta Learned Counsel along with Shri. Mohit Raval advocate appeared on behalf of the appellant. Shri Mihir Mehta submits that as per the adjudication order as well as Commissioner (Appeals) order the Cenvat Credit was denied in respect of warehousing and storage on the ground that this service has no nexus with the manufacture of final product for the reason that the said warehouse/ godown are located out of the premises of the appellants factory. In respect of such warehouses permission under Rule 8 of the Cenvat Credit Rules was not obtained. He submits that the input which is stored in the warehouse / godown is directly meant for use in the manufacture of final product, therefore the service for warehousing and storage used for such input has direct nexus with the manufacture of final product. He further submits that it is a settled law that location of service received is not material as irrespective of location of receipt of service it should have nexus with the manufacture and in the business activity of the assessee. Therefore, even though the warehouse and godown are located outside the factory premises but the same are admittedly used for storage of inputs which is used for manufacture of final product. The said services are clearly covered under the definition of input service. In support of this submission, he placed reliance on the following judgments:-

- Jubilant Life Sciences Ltd Vs. Commissioner of Cus. C. Ex. & S.T.,Noida,-2019 (29) G.S.T.L. 319 (Tri.-All.)

Affirmed by the Hon'ble Supreme Court reported at Commissioner Vs. Jubilant Life Sciences Ltd-2019 (29) G.S.T.L J74 (S.C.)

- Triveni Engineering & Industries Ltd. Vs. C.C.E. & S.T., MEERUT-II- 2017 (3) G.S.T.L. 140 (Tri. - All.)

2.1 He further submits that the Rule 8 of Cenvat Credit Rule was not invoked in the show cause notice, therefore, on this ground the adjudicating authority as well as Commissioner (Appeals) could not have decided the matter. In this regard, he placed reliance on the Hon'ble Supreme Court judgment in the case of Commissioner Of C. Ex., Nagpur Vs. Ballarpur Industries Ltd.- 2007 (215) E.L.T. 489 (S.C.). As regard the issue that if the input service is received out of the factory premises whether the same is

eligible for Cenvat Credit. He placed reliance on the Hon'ble Bombay High Court judgment in the case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. C.C.Ex., Belapur- 2013 (32) S.T.R. 532 (Bom.) He placed reliance on the following judgments:-

- Commr. Of C. Ex., Vadodara-Ii Vs. Siemens Healthcare Diagnostics Ltd.- 2014 (36) S.T.R. 192 (Tri. - Ahmd.)
- Commissioner of Central Excise Vs. Dyenamic Industries Ltd-2014 (35) STR 674 (Guj.).

2.3 He also made submission that the entire demand is time bar in as much as the details of availment of Cenvat Credit and even payment of certain amount of such Cenvat Credit was well within the knowledge of department. In this regard, he placed reliance on the following judgments:-

- Caprihans India Ltd Vs. Commissioner of Central Excise, Surat-2015 (324) E.L. T 8 (S.C)
- Commissioner of Central Excise, Mumbai-III Vs. Huhtamaki Ppl Ltd.- 2018 (19) G.S.T.L. 274 (Tri. - Mumbai)
- DCB Bank Ltd Vs. Commission er of Service Tax, Mumbai-I-2019 (21) G.S.T.L. 498 (Tri.- Mumbai)

2.4 He further submits out of the total Cenvat Credit involved of Rs. 5,57,384/- the appellant had pad Rs. 3,27,392/- along with interest. As regard, the said amount of Cenvat Credit the appellant do not contest in the present appeal. However, they are contesting entire penalty including the penalty corresponding to the amount of Rs. 3,27,392/- paid by them

3. On the other hand, Shri. Vinod Lukose, Learned Superintendent (Authorized Representative) and Shri. Sanjiv Kinker, Learned (Authorized Representative) appearing for the Revenue reiterates the finding of the impugned order. Shri. Vinod Lukose Learned Superintendent (AR) filed a written submission dated 12.04.2021 reiterating the impugned order. He also placed reliance on the following judgments:-

- Khaitan Electricals Ltd-2011 (21) STR 184 (Tri. Lol)
- Market Creators Ltd-2014 (36) STR 386
- NITCO Ltd.-2014 (34) STR 835 (Tri.-Mumbai)

- Orion Appliances-2010 (19) STR 205 (Tri-Abad)
- Landis+GYR Ltd-2013 (290) ELT 47 (Tri-KOL)
- Lacto Cosmetics -2013 (30) STR 107 (Tri-Abad)
- Metro Shoes P Ltd -2008 (10) STR 382 (Tri-Mum)
- Sundaram Brake Linings -2010 (19) STR 172 (Tri.-Chennai)
- Maruti Suzuki Ltd 2009 (240) ELT 641 (SC)
- Vikram Ispat-2012 (277) ELT 218 (Tri-Mum)
- Vandana Global -2010 (253) ELT 440 (Tri-LB)

4. I have carefully considered the submissions made by both the sides and perused the records. There is no dispute that the appellant have outsourced the warehousing and storage of their input in the rented warehouse and godown. It is also not in dispute that the said warehouse / godown was used for storage of inputs which are meant for use in the manufacture of final product. Both the lower authorities have denied the credit on the renting of immovable property service on the ground that the warehouse is located outside the premises of the factory. The appellant have not obtained permission under Rule 8 of Cenvat Credit Rules, 2004 for storage of inputs outside the factory and the input service in question has no nexus with manufacture of final product, hence, does not qualify as input service defined under Rule 2 (I) of the Cenvat Credit Rules, 2004. On going through the Show cause notice, I find that the only allegation in the Show cause notices that since, the renting of immovable property service is not included in the definition of input service. Accordingly, the said service used by the appellant neither falls under scope definition of input service nor has nexus with manufacturing activity. However, in the adjudication order and order of Commissioner (Appeals) both the authorities have travelled beyond the scope of show cause notice. In as much as the Cenvat credit was denied on the ground that the godown / warehouse where the input is stored is outside the factory premises and the appellant have not obtained the permission under Rule 8 of Cenvat Credit Rules, 2004. Since, the above reasoning is not flowing from the show cause notice even without going into the legality of the above two issues, the orders of the both the authorities does not sustain, for the reason that any issue which were not raised in the show cause notice, cannot be imported into the adjudication order or Commissioner (Appeals) order. Even for academic discussion if I consider

that whether for the reason that warehouse /godown are located outside the factory premises and appellant have not obtained the permission under Rule 8, credit can be denied. I find that unlike inputs in case of Service Tax it is not necessary that warehouse is the location of receipt of service should be in factory only. The only aspect to be seen is that whether the service even though received outside the factory is in relation to the manufacturing activity of the appellant. In the present case there is no dispute that the warehouse / godown outside the factory premises was taken on rent for storage of input which is meant for production of final product, therefore, there is a direct nexus of warehousing / storage service with the manufacturing activity of the appellant. As regard, Rule 8 of Cenvat Credit Rules, 2004 the same is reproduced below:-

"RULE 8. *Storage of input outside the factory of the manufacturer-* The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT Credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input."

4.1 From the plain reading of the above rule it is clear that the appellant is required to obtain the permission for storage of inputs outside the factory premises, only in a cases where the Cenvat Credit on such input has been availed. In the present case, there is no allegation that the appellant have availed the Cenvat Credit in respect of the inputs lying in warehouse outside the factory. Therefore, in the given facts Rule 8 is not applicable, moreover, as regard the Cenvat Credit in respect of input services Rule 8 does not come into the play, for the reason that as discussed above the location of the receipt of service is not material and Rule 8 is not relevant for the

purpose of availing the Cenvat Credit on the input service namely renting of immovable property. The same issue has been considered by Hon'ble Bombay High Court in the case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. (Supra) Wherein question NO. (II) was framed as under:-

"(II) Whether in the facts and circumstances of the case, the Appellate Tribunal was correct and justified in holding that services used in relation to storage of inputs outside the factory will not be eligible for credit as services are received outside the factory?"

The above question was answered by the Hon'ble Bombay High Court as under:-

5. Now at the outset it must be noted that Rule 3(1) allows a manufacturer of final products to take credit inter alia of Service Tax which is paid on (i) any input or capital goods received in the factory of manufacturer of the final product; and (ii) any input service received by the manufacturer of the final product. The subordinate legislation in the present case makes a distinction between inputs or capital goods on the one hand and input services on the other. Clause (i) above provides that the Service Tax should be paid on any input or capital goods received in the factory of manufacture of the final product. Such a restriction, however, is not imposed in regard to input services since the only stipulation in clause (ii) is that the input services should be received by the manufacturer of the final product. Hence, even as a matter of first principle on a plain and literal construction of Rule 3(1) the Tribunal was not justified in holding that the appellant would not be entitled to avail of Cenvat credit in respect of services utilized in relation to ammonia storage tanks on the ground that they were situated outside the factory of production. The definition of the expression 'input service' covers any services used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. The words 'directly or indirectly' and 'in or in relation to' are words of width and amplitude. The subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(I) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(I) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The Tribunal, proceeded to interpret the inclusive part of the definition and held that the Legislature restricted the benefit of Cenvat credit for input services used in respect of inputs only to these two categories viz. for the procurement of inputs and for the inward transportation of inputs. This interpretation which has been placed by the Tribunal is ex facie contrary to the provisions contained in Rule 2(I). The first part of Rule 2(I) inter alia covers any services used by the manufacturer directly

or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(I) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(I). Rule 2(I) must be read in its entirety. The Tribunal has placed an interpretation which runs contrary to the plain and literal meaning of the words used in Rule 2(I). Moreover as we have noted earlier, whereas Rule 3(1) allows a manufacturer of final products to take credit of excise duty and Service Tax among others paid on any input or capital goods received in the factory of manufacturer of the final product, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of the final product. This must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(I). The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products. The appellant, it is undisputed, manufactures dutiable final products and the storage and use of ammonia is an intrinsic part of that process.

4.2. The above judgment being on absolutely identical issue directly applicable to the facts of the appellant's case. As regard the issue that whether the Cenvat Credit is admissible on the input service received outside the factory various judgments were passed. In the case of Jubilant Life Sciences (Supra), even though the input service received and consumed by the assessee's research and development center though situated out of the factory premises and providing scientific and Technical Consultancy Services to their own units for manufacturing drug was held eligible to Cenvat Credit. Their judgment has been affirmed by the Hon'ble Supreme court reported at 2019 (29) GSTL 774 (S.C). In case of Triveni Engineering & Industries Ltd, the Security Service utilized for safe keeping of sugar cane purchased at cane collection center which is outside the factory of the assessee's sugar manufacturing unit, the Tribunal, Allahabad in this fact allowed the Cenvat Credit on the ground that even though the service was used outside the factory but it is used in relation to procurement of inputs and fall within including part of definition of input service. In case of Khaitan Electricals Ltd (Supra), the fact was that the appellant have received certain services outside the factory at that depot and credit on such service was availed by the assessee's factory, which was allowed, all the judgments relied upon by the Learned authorized representative are either not on the same facts nor on identical law, therefore, the same are not applicable in the present case.

We note that the appellant out of the total Cenvat Credit of Rs. 5,57,384/- paid an amount of Rs. 3,27,392/- along with interest and same was not contested by them, therefore, the amount paid by the appellant is maintained as not contested. However, the demand of Rs. 2,29,992/- and entire penalty and corresponding interest are set aside.

5. The appeal is allowed in the above terms.

(Pronounced in the open court on 27.04.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi