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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10614 of 2014

(Arising out of OIA-AHM-SVTAX-000-APP-255-13-14 dated 25.11.2013 passed by Commissioner of Service Tax-Ahmedabad)

AMNEAL PHARMACEUTICALS COMPANY I PVT LTD ...Appellant

PLOT NO. 882/1 & 871, NR. HOTEL KANKAVATI,
VILLAGE : RAJODA, TALUKA : BAVLA,
AHMEDABAD
GUJARAT

VERSUS

C.S.T.-SERVICE TAX-AHMEDABAD ...Respondent

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:

Shri Vikash Agarwal, Chartered Accountant appeared for the Appellant
Shri H.P. Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12775 /2023

DATE OF HEARING: 28.11.2023
DATE OF DECISION:28.11.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit on the outdoor catering service in respect of canteen service provided by the catering contractor in the premises of the service provider.

2. Shri Vikash Agarwal, learned Chartered Accountant appearing on behalf of the appellant submits that the refund of the service tax paid on catering service under Rule 5 was denied on the ground that the service has no nexus with the output service. He submits that since the service provider is located in the remote area the canteen service is necessary to run the overall operation of the appellant. Therefore, the canteen service is essential for providing the output service. Hence, the cenvat credit as well as refund thereof should be allowed. He placed reliance on the larger bench judgment in the case of GTC Industries

Limited reported at 2008-TIOL-1634-CESTAT-MUM-LB and Ultratech Cement Limited reported at 2010-TIOL-745-HC-MUM-ST.

3. Shri H.P. Shrimali, learned (Superintendent) Authorized Representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. The issue in hand has been considered by the Larger Bench in the case of GTC Limited (supra) and also by the Hon'ble Bombay High Court in the case of Ultratech Cement Limited (supra), according to which the outdoor catering service provided in the premises of manufacturer/ service provider is admissible as input service. Moreover, I observe that the issue of admissibility of input service was raised when the appellant have filed a refund claim, however if at all the department is of the view that there is no nexus of input service with the output service, separate show cause notice should have been issued first to decide whether the service in question is admissible as input service or otherwise under Rule 14 of the Cenvat Credit Rules which exercise was not carried out by the department, therefore, at the stage of refund, the refund of the input service cannot be disputed. Considering my above observation, I am of the view that the appellant are entitled for the cenvat credit and consequently, refund of the same in respect of the outdoor catering service. Accordingly, the impugned order is modified to the above extent. Appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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