

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

EXCISE APPEAL NO. 10842 of 2016

(Arising out of OIO-BHR-EXCUS-000-COM-065-066-15-16 dated 29.02.2016 passed by Commissioner of Central Excise, Customs & Service Tax- Bharuch)

UPL Ltd.

UPL HOUSE, VISHWAS BLDG., PLOT CST NO. 610-B/2,
H/E WARD, WESTERN EXPRESS HIGHWAY,
NEAR TEACHERS COLONY, OFF ALI YAVAR JUNG MARG,
BANDRA (EAST), MUMBAI-MAHARASHTRA

.....Appellant

VERSUS

C.C.E Bharuch

VADODARA-II,GST BHAVAN,SUBHANPURA,VADODARA
VADODARA GUJARAT-390023

.....Respondent

APPEARANCE:

Shri Prakash Shah & Mohit Raval, Advocates appeared for the Appellant
Shri S.S.Vikat, Assistant Commissioner (Authorized Representative) for the
Respondent

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

Final Order No. 10043/2024

DATE OF HEARING: 14.12.2023

DATE OF DECISION:03.01.2024

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for cenvat credit on the general insurance service related to building, plant and machinery, equipment, computers, workmen compensation, group accident policy, transit insurance etc.

2. Shri Prakash Shah, Learned counsel with Shri Mohit Raval appearing on behalf of the appellant at the outset submits that the issue is no longer res integra as in various cases the cenvat credit of service tax paid on the general insurance service is admissible as cenvat credit. He placed reliance on the following judgments:-

- Dharti Dredging & Infrastructure Ltd vs. Commissioner of Central Tax, Secunderabad – GST, 2022 (59) GSTL 171 (Tri. Hyd)
- Coca Cola India Pvt Ltd vs. CCE, Pune – 2009 (15) STR 657 (Bom)

- Commissioner of C.Ex, Bangalore –II vs. Millpore India Pvt Ltd – 2012 (26) STR 608 (Tri. Del)
- Hindustan Zinc Ltd vs. Commissioner of Central Excise, Jaipur – 2015(37) STR 608 (Tri. Del)
- Ganesan Builders Ltd vs. Commissioner – 2019 (20) GSTL 39 (Mad.)
- Reliance Industries Ltd vs. CCE & ST – Vadodara- I – 2019 (6) TMI 194 – CESTAT Ahmedabad
- Commissioner of Central Excise, Mumbai vs. Reliance Inds. Ltd – 2018 (15)GSTL 366 (Tri.- Mumbai)
- Reliance Industries Ltd vs. Commissioner of C. Ex. & ST., LTU Mumbai – 2016 (45) STR 383 (Tri. Mumbai)
- Cantabil Retail India Ltd vs. Commissioner of Central Excise, Delhi – I, 2018 (17) GTSL 275 (Tri. Del)
- Universal Medicap Ltd vs. CCE & ST –Vadodara –II – 2022 (6) TMI 818 – CESTAT Ahmedabad
- International Flavours & Fragrance India Pvt Ltd vs. Commr. Of GST & Central Tax, Chennai South- 2022 (67) GSTL 581 (Tri. Chennai)

2.1. He also submits that the demand of cenvat credit was raised invoking the extended period i.e. beyond normal period of one year. Since there is no fraud, collusion, suppression of fact or contraventions of any of the provisions with intention to evade duty, the demand for extended period is not sustainable on the ground of limitation also. He submits that the availment of credit was clearly disclosed in the monthly ER -1 return. Thus there is no suppression of fact in availment of credit.

3. Shri S.S. Vikat, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the cenvat credit on general insurance service availed by the manufacturing unit has been considered time and again in various judgments. Some of the judgments are reproduced below:-

- **CCE Bangalore vs Millopore India Private Limited 2012 (26) STR 514 (Kar.)**

6. Therefore, it is clear that those factors have to be taken into consideration while fixing the costs of the final products. If services tax is

paid in respect of any of those services which forms part of the costs of the final products certainly the assessee would be entitled to the cenvat credit of the tax so paid.

7. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection there- with, would form part of the input services. The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees. Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof. In that view of the matter, we do not see any infirmity in the order passed by the Tribunal. Accordingly, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. The appeal is dismissed.

• **Hindustan Zinc Ltd. 2015 (37) STR 608 (Tri. Del.)**

8. The period of dispute in these appeals is from October, 2004 to December, 2008. During this period, the definition of "input service" as given in Rule 2(l) of Cenvat Credit Rules, 2004 was as under :-

"Input Service" means any service -

used by a provider of taxable service for providing an output service,

or;

used by the manufacturer, whether or directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal;

and includes services used in relation to setting up of 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 upon the place of removal;

With effect from 1-4-2011, the definition of "input service" was amended and the amended definition is as under :-

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

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to 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, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal service, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services :-

(A) specified in sub-clauses (p), (zn), (ztl), (ztlm), (zzq), (zzzh) and (zzzza) of clause (105) of Section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzz) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]"

Thus, the main difference between the definition of 'input service' as it existed during the period prior to 1-4-2011 and it existed during the period w.e.f 1-4-2011 is that expression is "activities relating to business" in the inclusive portion has been deleted and some services have been specifically excluded from the purview of the term "input service". However, the period of dispute in this case is the period prior to 1-4-2011. The Commissioner has disallowed the Cenvat credit in respect of various insurance services on the two grounds -

- (a) A service for being qualified as "input service" in terms of its definition as given in Rule 2(l) of the Cenvat Credit Rules, 2004 must have been used in or in relation to the manufacture of final product i.e. should have nexus with the manufacture of final products and insurance services, in question, do not have any nexus whatsoever with the manufacture of final product.
- (b) Though the term 'activities relating to business' has been deleted w.e.f. 1-4-2011, this amendment has to be treated as of clarificatory nature and accordingly, even for the period prior to 1-4-2011, the "activities relating to business" would not be covered by the definition of 'input services'.

8.1 Coming first, to the finding of the Commissioner that service for being Cenvatable, must have been used in or in relation to the manufacture of final product and that insurance services having no nexus whatsoever with the manufacture of final product are not eligible for Cenvat credit, we find that this finding of the Commissioner is contrary to the law laid down by the Hon'ble Bombay High Court in the case of *CCE v. Ultra Tech Cement* (supra), wherein the Hon'ble Bombay High Court while considering the eligibility of outdoor catering service for Cenvat credit, has in para 28, 29 and 30 held that -

- (a) the definition of "input service" is very wide and covers not only the services which are used directly or indirectly in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to manufacture of final products or after the manufacture of final products - to put it differently, the definition of 'input service' is not restricted to services used in or in relation to the manufacture of final products but extends to all services used in relation to the business of manufacture of final product;
- (b) the expression 'activities relating to business' in the definition of 'input service' postulates activities which are integrally connected with the business of assessee and if an activity is not integrally connected with the business of the manufacture of final product, that service would not qualify to be an input service under Rule 2(l) of the Cenvat Credit Rules; and
- (c) the expression "activities relating to business" in the inclusive portion of the 'input service' widens the scope of 'input service' so as to cover all services used in the business of manufacturing of final product and that the said definition is not restricted to the services enumerated in the main definition part of the 'input service' and the Revenue's contention that a service to qualify as input service must be used in or relation to the manufacture of final product is not correct, as any service used in or in relation to the business of manufacture of final products would be an eligible 'input service'.

In this judgment, the Hon'ble Bombay High Court also considered the Apex Court's judgment in the case of *Maruti Suzuki Ltd.* reported in [2009 \(240\) E.L.T. 641](#) (S.C.) and observed that Revenue's contention based on this judgment of the Apex Court that 'input service' in order to qualify for Cenvat credit must be only those services which have nexus with the manufacture of final products is not correct as unlike the definition of 'input' which is restricted to the input used directly or indirectly in or in relation to the manufacture of final products, the definition of 'input service' not only means service used directly or indirectly in or in relation to the manufacture of the final products but also includes services used in relation to business of manufacturing. In view of this judgment of the Hon'ble Bombay High Court the Commissioner's finding that a service for being Cenvatable must be used in or in relation to the manufacture of final product whether directly or indirectly is not correct and any service having nexus with the business of manufacture which has been used by a manufacturer would qualify as an input service. Insurance of plant and machinery, goods in transit, cash in transit and insurance of vehicles and laptop, is an integral part of manufacturing business, as no manufacturer would carry on manufacturing operations without insurance of plant & machinery, cash in transit, goods in transit, vehicles & computers, etc. against any loss due to accident, natural calamities, etc. In view of this, the services of plant and machinery, transit insurance of goods, insurance of cash in transit, laptop, etc. have to be treated as an activity related to the business and would be eligible for Cenvat credit.

- **Dharti Dredging & Infrastructure Ltd. 2022 (59) GSTL 171 (Tri. Hyd.)**

23. From the above, we find that the present case is identical to the case of *Ganesan Builders* decided by the Hon'ble High Court of Madras inasmuch the policy in question pertains to the workmen compensation scheme. The insured, as can be seen from the insurance policies is the assessee/appellant and not the individual employees. In other words, the benefit of the policy, if any, goes to the assessee and not to the individual employees. It is not like health insurance taken for the benefit of employees. We find from the Workmen's Compensation Act, 1923 that Section 3 places the liability for compensation upon the employer. Section 4 determines the amount of compensation to be paid. If the assessee had not taken this insurance policy the

employees would still be eligible for full compensation as per Sections 3 and 4 of the Workmen's Compensation Act, 1923. What is sought to be covered by these insurance policies in the present case is the liability of the assessee against any potential claim under Sections 3 and 4 of the Act.

24. This is one of the insurance policies where the potential liability of the insured is indemnified by the insurance company. A few other such policies are:

- (a) **Reinsurance policies** where the beneficiary is the primary insurer whose risk is partly covered by the reinsurance company.
- (b) **Third party insurance taken in respect of motor vehicles** in which the beneficiary is not the third party who may be hit in an accident by the vehicle but the owner of the vehicle who will be liable to pay compensation to such third party with or without insurance.
- (c) **Professional liability insurance** taken by a doctor where the beneficiary is not the patient who may at some stage suffer because of faulty performance of services by the doctor but the doctor himself. The patient who suffered will be eligible for compensation from the doctor as decided by the Courts. The doctor either has to pay the compensation out of his own pocket or take insurance policy to cover the risk. In the latter case, the doctor is the beneficiary (insured) and not the patient.
- (d) **Product liability insurance:** If the product of a manufacturer was found to be defective causing large consequential damage, he will have to pay enormous compensation. The product liability insurance indemnifies him against such a liability.

25. In all such cases, by paying a small premium the employer, the insurance company, the doctor or the manufacturer cover their potential liability.

- **Reliance Industries Ltd. 2019 (6) TMI 194 – CESTAT AHM**

"4. Heard both the sides and perused the records. We find that the Appellant has taken the general Insurance policies to safeguard its petroleum Complex. The services of insurance as found from the list are integral to the safety. The value of plant and machinery running into thousands of crores are required to be safeguarded against various risks. Without such insurance services in case of any mis - happening, the enterprise would be at great loss and can never restart its operations. We also find that the cost of such services stands included in the cost of production/ value of goods as certified by the Cost Accountant. We have no doubt in our mind that the services are integral part of cost of goods manufactured and would merit classification as "Input Service". Unless and until a business is safeguarded against risk and losses it cannot work continuously. Moreover we find that in the Appellant's own case the Tribunal vide Order dt. A/10371-10373/2017 dt. 20.01.2017 has allowed the credit on advertising agency service, insurance auxiliary service, air travel agent service, cable operator, clearing and forwarding agent services etc. by relying upon Appellant's own case as reported in 2016 (45) STR 383. The Tribunal in case held that the services used in relation to business activity would merit consideration as "Input Service". We find that in case of Anglo French Drugs & industries 2017 (3) GSTL 147 (TRI), the credit on impugned services were allowed by the Tribunal. In the Appellant's own case as reported in 2018 (15) G.S.T.L 366 (TRI), the Tribunal, on being satisfied that the cost of service is

included in cost of production, has allowed the credit. The relevant paras of the findings are as under :

"9. This is 2nd round of litigation. The dispute is regarding the eligibility to avail Cenvat credit on the Service Tax paid by various service providers who are insurance Companies. The insurance policies are taken by the respondent-assessee in respect of plant and machinery, inputs, other goods and factory building and building & residential township. It is also undisputed that the cost of such insurance is included in the valuation of the final product manufactured by them. We find that in the 1st round of litigation when the matter came before this Bench and this Bench while remanding the matter back to the adjudicating authority in paragraph No. 5.1 has recorded as under :-

"5.1 Prima facie, we find that the costs of various services availed forms part of the assessable value of the goods manufactured and sold by the appellant. Therefore, there is no reason to deny Cenvat credit of the duty/taxes paid on the various inputs/input services availed by the appellant for undertaking their business operations. The appellant has also furnished Cost Accountant's certificates certifying the above. For any reason, if the department does not want to place reliance on these certificates, under Section 14AA of the Central Excise Act, they can conduct special audit where the credit of duty availed of or utilised is not within the normal limits or such credit has been availed by reason of fraud, collusion or any willful misstatement or suppression of facts. The department has not invoked these powers available to it. In these circumstances, we are of the view that the matter has to go back to the adjudicating authority either to consider the Cost Accountant's Certificates furnished by the appellant or to undertake special audit in terms of the powers of Section 14AA of the Central Excise Act and satisfy himself as to the eligibility of the credit taken by the appellant on these various services. Accordingly, we remand the case back to the adjudicating authority for de novo consideration."

9.1 It can be seen from the above reproduced paragraph that we had directed the adjudicating authority either to consider the Cost Accountant's certificates furnished by the assessee are to undertake special audit in terms of Central Excise Act, 1944. The adjudicating authority has exercised his option of accepting the Cost Accountant's certificates as furnished by the assessee and satisfied himself as to the fact that the value of the insurance cost has been included in the pricing of the final product. It is also recorded by the adjudicating authority that the order of the Tribunal is accepted by Revenue. On this factual matrix, we find that the findings as recorded by the adjudicating authority are in consonance of the law as has been settled by this Bench in the respondent assessee's similar case. The factual findings of the adjudicating authority that the cost of the insurance as indicated in the valuation of the final products remain undisputed. We find that this Bench in the respondent assessee's own case by order dated 15-10-2015 has relied upon various judgments of the Hon'ble High Court of Bombay, and held that when the cost of any service is included to determine the valuation of the final product, Cenvat credit cannot be denied of such tax paid on the services. We do not find any reason to deviate from such a view already taken.

9.2 We also find that our earlier order dated 3-3-2014 has been accepted by the department as recorded in order-in-original, if that be so, in the absence of any contest to the option chosen by the adjudicating authority on the direction of Tribunal, in our considered view, cannot be contested now by the Revenue.

10. In view of the foregoing, we find that the impugned orders are correct and legal and do not suffer from any infirmity.

11. Accordingly appeals filed by Revenue are rejected and the impugned orders are upheld."

5. In view of above citations and the use of the impugned service we thus hold that the Appellant are eligible to avail credit of service tax paid on Insurance Services as all are related to secure the plant and machinery and thus merit consideration as "Input Services". Resultantly the impugned order is set aside and the appeal is allowed with consequential reliefs, if any."

• **CCE Mumbai-I vs Raliance Inds. Ltd. 2018 (15) GSTL 366**

"9. This is 2nd round of litigation. The dispute is regarding the eligibility to avail Cenvat credit on the Service Tax paid by various service providers who are insurance Companies. The insurance policies are taken by the respondent-assessee in respect of plant and machinery, inputs, other goods and factory building and building & residential township. It is also undisputed that the cost of such insurance is included in the valuation of the final product manufactured by them. We find that in the 1st round of litigation when the matter came before this Bench and this Bench while remanding the matter back to the adjudicating authority in paragraph No. 5.1 has recorded as under :-

"5.1 *Prima facie*, we find that the costs of various services availed forms part of the assessable value of the goods manufactured and sold by the appellant. Therefore, there is no reason to deny Cenvat credit of the duty/taxes paid on the various inputs/input services availed by the appellant for undertaking their business operations. The appellant has also furnished Cost Accountant's certificates certifying the above. For any reason, if the department does not want to place reliance on these certificates, under Section 14AA of the Central Excise Act, they can conduct special audit where the credit of duty availed of or utilised is not within the normal limits or such credit has been availed by reason of fraud, collusion or any willful misstatement or suppression of facts. The department has not invoked these powers available to it. In these circumstances, we are of the view that the matter has to go back to the adjudicating authority either to consider the Cost Accountant's Certificates furnished by the appellant or to undertake special audit in terms of the powers of Section 14AA of the Central Excise Act and satisfy himself as to the eligibility of the credit taken by the appellant on these various services. Accordingly, we remand the case back to the adjudicating authority for *de novo* consideration."

9.1 It can be seen from the above reproduced paragraph that we had directed the adjudicating authority either to consider the Cost Accountant's certificates furnished by the assessee are to undertake special audit in terms of Central Excise Act, 1944. The adjudicating authority has exercised his option of accepting the Cost Accountant's certificates as furnished by the assessee and satisfied himself as to the fact that the value of the insurance cost has been included in the pricing of the final product. It is also recorded by the adjudicating authority that

the order of the Tribunal is accepted by Revenue. On this factual matrix, we find that the findings as recorded by the adjudicating authority are in consonance of the law as has been settled by this Bench in the respondent-assessee's similar case. The factual findings of the adjudicating authority that the cost of the insurance as indicated in the valuation of the final products remain undisputed. We find that this Bench in the respondent-assessee's own case by order dated 15-10-2015 has relied upon various judgments of the Hon'ble High Court of Bombay, and held that when the cost of any service is included to determine the valuation of the final product, Cenvat credit cannot be denied of such tax paid on the services. We do not find any reason to deviate from such a view already taken."

4.1 From the above judgments it can be seen that in many cases the identical issue has been considered and it has been consistently held that the service tax paid on the general insurance service is admissible as cenvat credit as the service is directly or indirectly related to manufacture of the final product in the appellant's factory. Accordingly we are of the view that the issue is no longer res integra. Since we have decided the matter on merit, we do not incline to address the issue on limitation.

5. Hence the demand is not sustainable. Therefore the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 03.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha