

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
AHMEDABAD**

**REGIONAL BENCH, COURT NO. 3**

**EXCISE APPEAL NO. 11690 OF 2018**  
*(E/CROSS/10878/2018)*

[Arising out of OIA-CCESA-AUDIT-SRT-VK-024-2017-18 dated 20/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

**C.C.E. & S.T.-DAMAN**

**Appellant**

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

Vs.

**UNIQUE PHARMACEUTICAL LABORATORIES**

**Respondent**

(a Division Of J.b. Chemicals & Pharmaceuticals Ltd.),  
S. No. 101/2 & 102/1, Daman Industrial Estate, Village-Kadaiaya,  
Daman,  
Gujarat

**Appearance:**

Shri A R Kanani, Superintendent (AR) for the Appellant  
Shri Yogesh B Desai, Advocate for the Respondent

**CORAM:**

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

**HON'BLE MR. C. L. MAHAR, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 12750/2024**

Date of Hearing : 03.07.2024  
Date of Decision : 20.11.2024

**RAMESH NAIR**

This appeal filed by the revenue is directed against order in original in appeal No ND/AC/REF/024/14-15/R dated 18.07.2024 passed by Commissioner (Appeals) whereby the learned commissioner (Appeals) rejected the revenue's appeal filed against order-in-original wherein the respondent's refund claim filed under Rule 5 of Cenvat credit rules had been sanctioned.

1.1 The brief facts of the case are that the appellant had availed Cenvat credit on various input services. i.e. (i) Business Auxilary Service (ii) Banking

and Financial Service (iii) Chartered Accountant Service (iv) Legal Consultancy Service (v) Renting of Immovable Property Service and (vi) Legal and Professional Service etc.

1.2 The appellant against the export of goods wherein these services said to be used filed refund claim under Rule 5 of Cenvat credit rules 2004. The adjudicating/ sectioning authority sectioned the refund claim after detailed scrutiny of the claim. The revenue filed appeal before the Commissioner (Appeals) on the ground that the said services on which Cenvat credit was availed do not have nexus with the final product which have been exported. The learned commissioner appeals on the ground that since, no proceeding under rule 14 of Cenvat Credit Rules, 2004 for deciding inadmissibility of the Cenvat credit thereof has been initiated, at the stage of refund dispute of the nexus cannot be raised. Accordingly, the appeal of revenue was rejected. Therefore the present appeal filed by the revenue.

2. Shri A R Kanani Learned Superintendent AR appearing on behalf of the revenue reiterates the grounds of appeal thereof. He submits that the adjudicating authority while sanctioning the refund claim, did not examine the admissibility of input service on which the Cenvat credit was availed and subsequently, claim was sanctioned under Rule 5, therefore the sanction of refund is not correct and legal.

3. On the other hand Shri Yogesh B Desai, learned counsel appearing on behalf of the respondent assessee submits that the adjudicating authority after considering the nature of service and convincing regarding use of service in the manufacture of goods sanctioned the refund claim. He submits that no show cause notice on the issue of admissibility of Cenvat credit in respect of the input service in question was raised therefore at the stage of review this issue cannot be raised. Accordingly, the impugned order is correct and legal, which cannot be upset. He placed reliance on the following judgments:

- *KKR India Advisors Pvt. Ltd. vs. Commissioner of CGST, Mumbai Central and vice-versa-2018 (6) TMI 797 CESTAT MUMBAI*
- *Warburg Pincus India Pvt. Ltd. vs. Commissioner of Service Tax-1, Mumbai-2018 (4) TMI 482-CESTAT MUMBAI*
- *Shaily Engineering Plastics Ltd vs. C.C.E. & S.T.-Vadodara-Order No. A/13519-13530/2017 dated 15.11.2017*
- *Unisys Global Services India vs CST, Bangalore - 2017 (11) TMI 1403 - CESTAT-BANGLORE.*
- *M/s Samsung India Electronics Pvt. Ltd. vs. Commissioner of Central Excise & Service Tax, Noida 2024 (1) TMI 333 ALLAHABAD CESTAT*
- *State Street Syntel Services Pvt. Ltd. vs. Commissioner of CGST & Service Tax, Navi Mumbai-2023 (12) TMI 569 CESTAT MUMBAI*
- *Microsoft Global Services Center (India) Private Limited and Microsoft India (R & D) Pvt. Ltd. vs. Commissioner of Customs, Central Excise & Service Tax Hyderabad-IV-2020 (10) TMI 57 HYDERABAD CESTAT*
- *Commissioner of Customs, Central Excise and Service Tax vs. FTD India Pvt Ltd 2017 (10) TMI 22 CESTAT HYDERABAD*
- *EXL Service. Com (India) Pvt. Ltd. vs. CCE & ST-LTU, Delhi - 2017 (10) TMI 1058 CESTAT NEW DELHI*
- *Computer Science Corporation India Pvt. Ltd. vs. Commissioner of Central Excise, Noida 2017 (7) TMI 760CESTAT ALLAHABAD*
- *Commissioner of Service Tax, Mumbai vs. M/s Technip India Ltd (formerly known as Technip E & C (India) Ltd)2017-TIOL-3708-CESTAT-MUM*
- *Commissioner of Central Excise, Customs & Service Tax, Tirupati vs. Bellry Iron One Pvt Ltd-2018 (2) TMI 1492-CETSAT-HYDRABAD*
- *M/s. Mckinsey Global Services India Pvt. Ltd. vs. Commissioner of GST & Central Excise, Chennai 2019 (2) TMI 595 CESTAT CHENNAI*
- *J.P. Morgan Services (1) Pvt. Ltd vs. Commissioner of S.T., Mumbai - 2016 (42) S.T.R. 196 (Tri.-Mumbai)*

4. We have carefully considered the submissions made by both the sides and perused of records. We find that the entire case of the revenue before the commissioner appeals as well as before this tribunal is that input service involved in the refund claim has no nexus with the manufacture of export goods therefore both the authorities below have wrongly allowed the refund. We find that it is undisputed that at any stage the revenue has not issued

any show cause notice or adjudicated thereupon the issue of admissibility of input service in terms of rule 14 of Cenvat Credit Rules, 2004 therefore the allowance of the credit on the input service in question attained finality and when this be so then by filing the appeal against the sanctioned order of the refund dispute about admissibility of the service for purpose of allowing the Cenvat credit cannot be raised. The learned Commissioner (Appeals) on this very ground rejected the appeal of the revenue. The relevant finding of the commissioner (Appeals) order is reproduced below:

*"Para-7. The appellant contention regarding the inadmissibility of Cenvat credit on the account that the services used, do not fall in the ambit of input services as defined in the Rule 2(1) of Cenvat Credit Rules, 2004 is not admissible at this stage. In this regard I find that if, there is a dispute regarding availment of credit on ineligible input/input service, a show cause notice for demand and recovery of wrongly availed cenvat credit should have been issued under Rule 14 of Cenvat Credit Rules, 2004 separately. Rule 5 of Cenvat Credit Rules, 2004 does not empower to recover the wrongly availed credit, while processing the refund claim. As the adjudicating authority have verified the admissibility of the Cenvat Credit it cannot be denied later without invoking the provisions laid down under Rule 14 for demand and recovery. In support of my findings I relied upon following decision of higher forums-*

*Commissioner of Customs, Central Excise & Service Tax vs FTD India Pvt. Ltd. 2017 (10) TMI 22- CESTAT M/s EXL Services. Com (India) Pvt. Ltd. vs Commissioner of Central Excise Noida 2017 (8) TMI 1002 (Tri)"*

From the above findings of the Commissioner (Appeals) it can be seen that the Commissioner (Appeals) rejected the appeal of the revenue on the threshold point that the department has not taken any action under rule 14 for disputing the admissibility of input service in question. The findings of the learned commissioner (Appeals) based on various judgments. Therefore, this issue is no longer res-integra. Without prejudice, we also find that all the service which were questioned by revenue are admissible input service as held in various judgment as cited by the appellant in their synopsis.

4.1 We further find that though the revenue in the appeal before the Commissioner (Appeals) as well as before this tribunal reiterated that the input services involved in present case have no nexus with the manufacture of the export goods, however, no reasoning is given that why these services

are not essential in or relation to the manufacture of exports goods. For this reason also the revenue's appeal is hollow and without any basis. As per the above discussion, we do not find any infirmity in both the orders passed by authorities below.

5. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Order pronounced in the open Court on 20.11.2024)

**(RAMESH NAIR)**  
**MEMBER ( JUDICIAL )**

**(C. L. MAHAR)**  
**MEMBER ( TECHNICAL )**