

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10057 of 2013

Service Tax Miscellaneous (CO) Application No. 12367 of 2013

(Arising out of OIO-06/STC/COMMR/BRC-I/2012 dated 17/09/2012 passed by
Commissioner of Central Excise and Service Tax-VADODARA-I)

C.C.E. & S.T.-Vadodara-i

.....Appellant

1st Floor...Central Excise Building,
Race Course Circle, Vadodara,
Gujarat - 390007

VERSUS

Charotar Gas Sahakari Mandali Ltd

.....Respondent

Gas House, 11, Gidc, Janta Crossing,
Near Cng Station, Vithal Udhyognagar,
Anand, Gujarat

APPEARANCE:

Shri Tara Prakash, Deputy Commissioner for the Appellant
Shri Devang N Suthar, Advocate for the Respondent

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

Final Order No. A/ 10372 /2023

DATE OF HEARING: 01.11.2022
DATE OF DECISION: 28.02.2023

RAJU

This appeal has been filed by the Revenue against dropping of demand of cenvat credit availed by the Respondent assessee on transportation charges paid to GSPL.

2. Learned AR argued that a demand of Rs. 85,60,750/- of cenvat credit and a demand of service tax amounting to Rs. 25,10,648/- was raised against the respondent. Both the said demand has been dropped by the impugned order. The respondents are engaged in distribution of Natural Gas from the pumping station to the customers place or to the CNG stations. The respondents receive gas through pipelines of GSPL. Thereafter they supply the same to the customers place or CNG stations. The respondents has availed cenvat credit of the service tax paid in respect of service of transportation of natural gas received from GSPL. The respondents are engaged in purchasing the gas and receiving the same through pipeline. Thereafter they supply by way of sale to their customers. He pointed out that this activity of the sale of gas to the customers is not an activity liable to service tax. He argued that it is purely a trading activity and it is

not covered within the definition of output service as defined under Rule 2 (b) of Cenvat credit rules, 2004. He argued that since the trading activity is not covered within the definition of output service therefore the service of gas through pipeline used for such activity is not covered within the definition of input service. He pointed out that the respondents are registered for the purpose of service tax in respect of the activities like installation of new gas pipeline, Gas meters at the customer's end. The respondents also registered for repair and maintenance of pipelines network, Annual maintenance of gas pipeline network, sales promotion to GSPC or sale of CNG at the CNG pumps.

2.1 He argued that for the said output services, the services of supply of gas through pipeline is not an input service therefore no credit of the same could have been allowed. He argued that the Commissioner has held that since the respondents could not have availed the credit it was not possible for the respondents to utilize the said credit for payment of service tax on the services for which they were registered viz. like installation of new gas pipeline, Gas meters at the customer's end, repair and maintenance of pipelines network, Annual maintenance of gas pipeline network, sales promotion to GSPC etc.

3. Learned Advocate appearing for the Respondent argued that there is no need to establish one to one correlation between the input services received and the output services provided. He argued that the plain reading of Rule 3 of Cenvat Credit Rules, 2004 would indicate that there is no one to one correlation necessary between input services and output services for availing Cenvat credit of input services. He argued that any input services received by the provider of output service is admissible as Cenvat credit and can be utilized for payment of Cenvat credit of service tax for any output service. He relied on the decision of the Tribunal in the case of M/s Sri Sri Plastics Pvt. Ltd - 2002 (150) ELT 547.

3.1 He further argued that the department has wrongly relied on the Circular No. 98/1/2008 - ST dated 04.01.2008 where Cenvat credit of services used for construction of immovable property was disallowed for providing output service of Renting of Immovable Property .

3.2 He further argued that the term " activities relating to business" was omitted from the definition of input services with effect from 01.04.2011 therefore, prior to 01.04.2011 the respondents were eligible to Cenvat credit for all the services received by them in the

category of the activities relating to the business of the respondents. In the instant case the demand is for the period up to December- 2010 and therefore during that period the definition of input service included the term "activities relating to business".

3.3 Learned Counsel further pointed out that the input cost of output service included the cost of transportation and therefore to avoid the cascading effect on taxes, credit of the service tax paid on the transportation of gas through pipeline could have been allowed. He relied on the decision of the Tribunal in the case of CST vs. Convergys India Pvt. Ltd – 2009 (16) STR 198 (Tri.- Del). He further relied on the decision of the Tribunal in the case of M/s. Valco Industries Limited – 2012 (28) STR 457 (Tri.- Del) and in the case of M/s. Navratna S.G. Highway Prop. Pvt. Ltd. – 2012 (28) STR 166 (Tri. Ahmd) to hold that the Circular No. 98/1/2008 – ST relied by the Revenue held to be the correct interpretation in the above decisions.

3.4 He further argued that the extended period of limitation could not have been invoked as the department was aware of availment of cenvat credit on transportation charges on the strength of bills received from GSPL. He further argued that the demand of Rs. 25,10,648/- being the amount of cenvat credit utilized for payment the service tax on output services was rightly used as the credit on transportation service was rightly availed by the respondents. All these figures have been disclosed in the ST-3 returns. He further argued that since the entire cenvat credit has been demanded from the respondents, a second demand of the amount utilized resulted in duplication of demand and therefore the same cannot be sustained.

4. We have considered the rival submissions. It is seen that the respondents are purchasing gas from GSPC and receiving the same through the network of pipeline of GSPL. The respondents are paying service tax on the services of transportation of gas from GSPC to the respondent's premises. The said gas is sold by the respondent to various customers and supplied through the network of pipelines. It is quite clear that the respondents are engaged in the trading activity i.e. buying and selling of gas. The respondents are also involved in

- a. Installation and administration charges of gas pipe lines up to the end of customers.
- b. Annual Maintenance Charges of gas pipelines.

c. Service charges received for sales promotion for sale of gas at CNG pumps tax.

4.1 It is seen that the network of supply from the respondent premises to the customer is an independent network which is not owned by GSPL. The respondents are paying service tax on the aforesaid activities in respect of the said network. The respondents are also engaged in promoting sales of the CNG pumps and paying service tax on the service charges received for the said sale promotion from the CNG pumps.

4.2 The definition of input services under Rule 2(I) of CCR, 2004 at the material time is read as under:

"(I) "input service" means any service,-

- 1. used by a provider of taxable service for providing an output service; or*
- 2. used by the 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 setting up, 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 upto the place of removal;"*

4.3 The term output service is defined under Rule 2 (P) of CCR, 2004 at the material time as under :-

"(p) "output service" means any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly;"

4.4 It is observed that the impugned order relies on the decision of the Tribunal in the case of Ultratech Cement Ltd – 2010 (20) STR 577 (Bom.) wherein para 29 following has been held :-

"29. *The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the*

service would not qualify to be a input service under Rule 2(l) of the 2004 Rules."

4.5 The impugned order holds that the activity of transportation of gas is integrally connected with the business of the respondent and therefore credit could not have been denied under the category of activity relating to the business. Impugned order also holds that the cost of transportation of natural gas from the premises of GSPC to the pumping station of the respondent was recovered from their customers. It has been argued that since the said cost has been recovered from the customers there cannot be a reason to disallow the Cenvat Credit on taxes paid for procuring such input services. For this argument reliance has been made on the decision of the Tribunal in the case of *Convergys India Pvt. Ltd – 2009 (16) STR 198 (Tri.-Del)* wherein particular reliance has been made in 7.1 which reads as follows:-

"7.1 *In common parlance, if the cost of such goods and services becomes part of the cost of the final product or the cost of the output services, as the case may be, then they are understood as input and input services in relation to said final products or the output services."*

4.6 The reliance placed by the Commissioner on the decision of Hon'ble High Court of Bombay in the case of *Ultratech Cement Ltd – 2010 (20) STR 577 (Bom.)* is based solely on the reading of para 29 of the order which reads as follows:-

"29. *The expression "activities in relation to business" in the definition of "input service" postulates activities which are integrally connected with the business of the assessee. If the activity is not integrally connected with the business of the manufacture of final product, the service would not qualify to be a input service under Rule 2(l) of the 2004 Rules."*

4.7 It is seen that it fails to take notice of Para 28 , 34 and 35 of the said decision which reads as follows:-

28. *In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of "input service". The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes*

services rendered in relation to business such as auditing, financing etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used 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 the 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 manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product.

34. *Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.*

35. *The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing..... etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it*

would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal."

4.8 A combined reading of para 28, 29, 34 & 35 would show that the term "business" would apply only to the business activities which are of the nature which become liable to excise duty or service tax. The term activity related to business has to be read in relation to the activities which are related to the business which is of the nature which is taxable either under excise or under service tax. Moreover, the service of transportation of gas from the supplier of gas namely GSPC to the respondent premises is used to the fullest extent in the trading of gas. The trading of gas is not an activity leviable to service tax and therefore even in terms of Rule 6(1) of the CCR, 2004 no credit of the same would be admissible.

4.9 The Commissioner has relied on the decision of the Tribunal in the case of Convergys India Pvt. Ltd (Supra) the commissioner has observed that the value of transportation is recovered from the customers. It is apparent that the value of transportation is recovered from the customers who buy the gas from the respondent. The value of transportation of gas is included in the cost of the gas sold by the respondent. No service tax or excise duty is levied on the cost of gas sold and therefore there is no cascading effect of service tax if the credit of service tax is denied to the respondent. In view of the above the decision of Convergys India Pvt. Ltd (Supra) is not applicable to the instant case. The decision of Convergys India Pvt. Ltd (Supra) was in the circumstances where the cost of input service was included in the cost of output service which in turn was leviable to service tax. In the instant case the facts are different and therefore the decision of Convergys India Pvt. Ltd (Supra) has no application.

4.11 It is seen that the impugned order has not examined the issue of limitation and second demand relating to utilization of said credit for payment of service tax.

5. Consequently, the impugned order is set aside and matter is remanded to the Commissioner for fresh adjudication in the light of the observations above. CO also stands disposed of.

(Pronounced in the open court on 28.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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