

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

Appeal No. E/42616/2017

(Arising out of Order-in-Appeal No.46/2017-CE dated 27.9.2017
passed by the Commissioner of Central Excise (Appeals),
Coimbatore)

M/s. Global Pharmatech Pvt. Ltd.

Appellant

Vs.

CCE, Salem

Respondent

Appearance

Shri V.Raghuraman, Advocate for the Appellant

Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **04.06.2018**

Final Order No. **41717 / 2018**

The appellant is engaged in business of manufacture of Pharma products and is availing CENVAT credit on inputs and input services under the provisions of CENVAT Credit Rules, 2004. Show cause notice was issued proposing to disallow credit availed on service tax paid on rental charges for their Mumbai office for the period January 2012 to March 2015. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Id. counsel Shri V. Raghuraman submitted that the office at Mumbai operates as procurement / marketing office for the appellant since all the orders for manufacturing unit are procured by their Mumbai office. The appellants have only one manufacturing unit which is located at Hosur and their office at Mumbai procures the orders which is essential for the purpose of receiving orders from various pharmaceutical companies. All these activities done at the Mumbai office are either directly or indirectly in or in relation to manufacturing activity carried out at Hosur factory. Hence the rental charges for the Mumbai office is eligible, as such services cover under the definition of input services. The allegation that the credit of such rental charges of Mumbai office are not used directly or indirectly, in or in relation to finished goods is without any basis and not legally tenable. He relied upon the decision in HID India Pvt. Ltd. Vs. Commissioner of Central Excise – 2017 (52) STR 385 (Tri. Bang.) and argued that in the said case the credit availed on office rental as well as rental charges paid to car parking space which was outside the factory was allowed for the period April 2012 to September 2012 and October 2012 to September 2013. Similar issue was considered in Carrier Air Conditioning & Refrigeration Ltd. Vs. Commissioner of Central Excise, Delhi – 2016 (41) STR 824 (Tri.Chan.) wherein the Tribunal held that when the branch offices were dealing with not only procurement of orders and delivery of goods but also for

provision of erection, commissioning and installation services and repair and maintenance service, the credit availed on the rent paid for such branch office cannot be denied. In the case of Intent Design Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore – 2016 (46) STR 579, it was observed that there is no requirement as far as input services are concerned that the same should have been received in the manufacturing premises and the premises where received should be registered one. In the said case, the service tax paid on rentals paid on premises outside the manufacturing premise was held to be eligible. In Thiru Arooran Sugars Ltd. Vs. Commissioner of Central Excise, Puducherry – 2017 (51) STR 25, this Bench had allowed the credit of service tax paid on godown which was used for storing of goods outside the factory. The case of Deepak Fertilizers & Petrochemicals Corpn. Ltd. Vs. Commissioner of Central Excise, Belapur – 2013 (32) STR 532 (Bom.) was relied by the Id. counsel to explain that even if the services are not received within the factory, the same would be eligible for credit. To explain, there is no restriction with regard to input services that the services have to be availed within the factory. The Id. counsel also argued on the ground of limitation. He submitted that though show cause notice was issued invoking section 11(5), he submitted that when there is proper disclosure of all facts for their ERI returns and accounts, the department without

basis, alleged that there is suppression of facts with intent to evade payment of duty. That the demand itself is time-barred.

3. The Id. AR Shri K.P. Muralidharan supported the findings in the impugned order. He submitted that the said services of renting of immovable property were not received within the manufacturing premises of the appellant and therefore the authorities below have rightly disallowed the credit.

4. Heard both sides.

5. The Id. counsel has explained that the manufacturing activities carried out in their factory located at Hosur, Tamilnadu and they are mainly engaged in undertaking manufacturing of pharmaceutical products on loan license basis or contract manufacturers for other companies. The Mumbai office operates as a procurement office for the Hosur factory. Therefore, procurement of orders / products being the starting point for the manufacturing activities is performed at the Mumbai office without which there can be no manufacturing activity at its factory in Hosur. The Tribunal in the case of Carrier Air Conditioning and Refrigeration Ltd. (supra) had analyzed a similar issue and observed as under:-

"4. We have considered the contentions of both sides. The Cenvat credit in respect of renting of immovable property was denied on the ground that renting of immovable property service relating only to the office of the factory could be eligible for such credit and that the said service was utilised beyond the place of removal and hence credit in respect thereof is not admissible. We find that the adjudicating authority has not dealt with the contention of the appellant that the branch offices which were taken on rent were used not only for procuring orders

and delivery of the goods but also for provision of erection commissioning and installation service and repair and maintenance service. The definition of input service prior to 1-3-2011 and after 1-3-2011 as given in Rule 2(l) of Cenvat Credit Rules which is reproduced below :

Prior to 1-3-2011

"Input service " means any service, -

(i) Used by a provider of taxable service for providing an output service, or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacturer 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".

W.e.f. 1-3-2011

"Input service " means any service, -

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

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacturer 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, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business, exhibition, legal services, 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), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of Section 65 of the Finance Act (hereinafter referred as specified services), insofar 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 (zzzzj) of clause (105) of section 65 of the Finance Act, insofar as they relate to a 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;”

5. The aforesaid definitions clearly state that input service *inter alia* means any service used by provider of taxable service for providing an output service. The appellant contended that it used the branch offices which were taken on rent, not only for procurement of orders and delivery of goods but also for provision of ECIS and repair and maintenance service. This contention has been duly recorded in the impugned order but has not been adverted to and dealt with by the adjudicating authority. CESTAT in the case of Oracle Granito Ltd. (*supra*), Bharat Fritz Werner Ltd. (*supra*) held that renting of immovable property for marketing offices was allowed to be treated as input service for the purpose of taking credit. In the case of Wipro Limited - Final Order Nos. 25798 & 25799/2013 CESTAT held that such service is eligible for input service credit. Seen in this light, denial of Cenvat credit by the adjudicating authority is clearly untenable specially when the other ground pleaded by the appellant that the branch offices were also used for provision of ECIS and repair and maintenance service has not been adverted to by it. Thus, having regard to the nature of the use for which these branch offices were taken on rent, we are of the view that the said service clearly qualifies to be covered within the scope of input service as defined in Rule 2(I) of the Cenvat Credit Rules, 2004.”

6. The Hon'ble High Court of Bombay in the case of Deepak Fertilizers and Petrochemicals Corpn. Ltd. (supra) had held that the assessee would be eligible for credit on the services used in relation to storage of inputs outside the factory. The relevant portion is reproduced 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."

7. The other decisions cited by the Id. counsel also have held the issue in favour of the assessee. Following the ratios laid down in the above cases, I am of the view that the denial of credit is unjustified. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

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