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

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Appearance :

Shri R. Venkatraman, Sr.Advocate
assisted by Ms.Lakshmi Sriram & Shri B. Sivaraman, Advocates
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon’ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon’ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 05.06.2018

FINAL ORDER No. 41784-41792 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that M/s.Bata India Ltd., the appellants herein, are engaged in the manufacture of footwear and were paying excise duty under Section 4A of the Central Excise Act, 1944. Appellants had availed cenvat credit on inputs as well as inputs services which included service tax based on the challans issued for distribution of service tax credit by their Regional Distribution Centres (RDCs) and Corporate Office. The marketing net work consists of these RDCs, and retail shops at gross root levels and RDCs were located at Faridabad for Northern Region, Calcutta for Eastern Region, Bangalore for Southern Region and Thane for Western Region. The types of services of which input service credit was availed related to transport, courier, car hire, telecom, maintenance etc. All these services were rendered either at the Corporate office or at the Regional Distribution Centres. Department took the view that these input services were not in or in relation to manufacture of the final product. It was also alleged that Section 4A of the Act which governs clearance of goods by the appellant does not envisage concept of 'place of removal' unlike provisions of Section 4 of the Central Excise Act, 1944 and that “place of removal” is used only in the definition of ‘input services’ under the provisions of Rule 2(l) of Cenvat Credit Rules, 2004; hence appellant could not have availed input service credit in respect of services received at the RDCs and Corporate office. Accordingly, 11 show cause notices were issued for various periods right from April 2008 to August 2015. After due process of adjudication, the demand proposals made in the SCNs were confirmed by the adjudicating authorities concerned with interest and penalties were imposed under various provisions of law. Aggrieved, the appellants are before this forum. The details of the SCNs, adjudication orders thereto and also connected appeals, as provided by the appellants are as under :

1.	**Appeal No.**	**E/419/2010**
	Period	**September, 2008 to November, 2008**
	Amount Involved	Rs.1,16,91,358/- Penalty Rs.2000/- U/R 15 (3) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A(1) & Section 11 AB of Central excise Act, 1944.
	Show Cause Notice	SCN No.68/2009 dated 16.09.2009
	Reply/Objections filed	12.10.2009
	Period	**April, 2008**
	Amount Involved	Rs.24,88,915/- Penalty Rs.2000/- U/R 15 (3) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A(1) & Section 11 AB of

		Central excise Act, 1944.
	Show Cause Notice	SCN No.42/2009 dated 04.05.2009
	Reply/Objection filed	30.06.2017
	Period	**March, 2009 to September, 2009**
	Amount Involved	Rs.1,30,72,738/- Penalty Rs.2000/- U/R 15 (3) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11A(1) & Section 11 AB of Central excise Act, 1944.
	Show Cause Notice	SCN No.12/2010 dated 18.02.2010
	Reply/Objection filed	03.03.2010
	Order-in-Original	**Common O-in-O No.5/2010 (CE) dated 10.05.2010**
2.	**Appeal No.**	**E/193/2012**
	Period	October, 2009 to June, 2010
	Amount Involved	Rs.96,82,781/- Penalty Rs.9,67,190/- U/R 15 (1) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11 AB of Central excise Act, 1944.
	Show Cause Notice	SCN No.58/2010 dated 01.11.2010
	Reply/Objections filed	23.11.2010
	Additional Reply/Objection filed	22.11.2011
	Order-in-Original	**O-in-O No.105/2011 (CE) dated 30.11.2011**
3.	**Appeal No.**	**E/279/2012**
	Period	July, 2010 to December, 2010
		Credit Rules, 2004 r/w Section 11 AB of Central excise Act,

		1944.
	Show Cause Notice	SCN No.28/2011 dated 28.07.2011
	Order-in-Original	**O-in-O No.8/2012 (CE) dated 31.10.2012**
4.	**Appeal No.**	**E/41035/2013**
	Period	January, 2011 to June, 2011
	Amount Involved	Rs.46,23,857/- Penalty Rs.4,62,390/- U/R 15 (3) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11 AB/11AA of Central excise Act, 1944.
	Show Cause Notice	SCN No.46/2011 dated 22.11.2011
	Reply/Objections filed	22.12.2011
	Addl.Reply/Objection filed	27.12.2012
	Order-in-Original	**Common O-in-O No.2 & 3/2013 (CE) dated 18.12.2013**
5.	**Appeal No.**	**E/41036/2013**
	Period	July, 2011 to May, 2012
	Amount Involved	Rs.3,88,09,537/- Penalty Rs.38,80,950/- U/R 15 (3) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11AA of Central excise Act, 1944.
	Show Cause Notice	SCN No.28/2012 dated 28.08.2012
	Reply/Objections filed	25.09.2012
	Addl.Reply/Objection filed	27.12.2012
	Order-in-Original	**Common O-in-O No.2 & 3/2013 (CE) dated 18.12.2013**
6.	**Appeal No.**	**E/41366/2015**
	Period	January, 2013 to June, 2013

	Amount Involved	Rs.79,05,548/- Penalty Rs.7,90,555/- U/R 15 Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11AA of Central excise Act, 1944.
	Statement of Demand	SOD No.64/2013 dated 11.11.2013
	Reply/Objections filed	04.12.2013
	Order-in-Original	**Common O-in-O No.13&14/2014 (CE) dated 31.12.2014**
7	**Appeal No.**	**E/41367/2015**
	Period	July, 2013 to December, 2013
	Amount Involved	Rs.56,78,421/- Penalty Rs.5,67,842/- U/R 15 Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11AA of Central excise Act, 1944.
	Statement of Demand	SOD No.34/2014 dated 22.05.2014
	Reply/Objections filed	18.08.2014
	Order-in-Original	**Common O-in-O No.13 & 14/2014 (CE) dated 31.12.2014**
8	**Appeal No.**	**E/42520/2016**
	Period	January, 2014 to November, 2014
	Amount Involved	Rs.1,35,18,045/- Penalty Rs.10Lakhs U/R 15 (1) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11AA of Central excise Act, 1944.
	Statement of Demand	SOD No.25/2015 dated 07.08.2015
	Reply/Objections filed	15.06.2016
	Order-in-Original	**Common O-in-O No.46&47/2016 (CE) dated**

		23.06.2016
9	**Appeal No.**	**E/42521/2016**
	Period	December, 2014 to August, 2015
	Amount Involved	Rs.99,86,448/- Penalty Rs.8 Lakhs U/R 15 (1) Interest Levied Rule 14 of Cenvat Credit Rules, 2004 r/w Section 11AA of Central excise Act, 1944.
	Statement of Demand	SOD No.1/2016-CE- dated 01.01.2016
	Reply/Objections filed	16.06.2016
	Order-in-Original	**Common O-in-O No.46 &47/2016 (CE) dated 23.06.2016**

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Senior Counsel Shri R. Venkatraman assisted by Ms. Lakshmi Sriram made oral and written submissions which can be broadly summarized as under :

i) The appellant did not distribute the input service credit exclusively on foot wears that were exempt.

ii) Appellant has taken cenvat credit only based on ISD challans issued by their Headquarters and RDCs.

iii) In respect of credit availed on GTA beyond the RDCs, Ld. Senior Advocate/counsel submits that for the period prior to 1.4.2008, the Hon'ble Apex Court in *CCE Belgaum Vs Vasavadatta Cements Ltd.* – [2018] (52

GSTR 232 (SC) has clearly laid down that such credit availed for transport of final product from the place of removal upto depot or customer's premises is very much allowable.

iv) For the period after 1.4.2008, notwithstanding the amendment brought about to the Rule 2(l) of CCR 2004 as they are not hit by the exclusion clauses in the second half of the definition, the credit of such GTA services availed beyond the place of removal would also still be allowable. Ld. Counsel submits that *Ultratech* judgement of the Hon'ble Apex Court [(2018) 2 SCC 721 = 2018 (9) GSTL 337 (SC)] followed the *Vasavadatta Cements* ruling; that however the latter judgment addressed only first part of the definition which had been in appeal.

v) Appellants have availed and utilized the service tax credit only in relation to RDCs and the Corporate office have not availed any credit relating to services received at the retail shops.

vi) Ld. Advocate drew our attention to the definition of 'place of removal' in Rule 2 (a) of CCR to point out that place of removal would include depot, premises of consignment agent or any other place of premises from where the excisable goods are to be sold after their clearances from the factory. In the circumstances, the credit availed in respect of the GTA services even beyond the RDCs, retail shops should be allowable. In respect of other disputed input services, Ld.counsel submits that there are services which have been found eligible in a number of Tribunal decisions. He placed reliance on the following case laws :

(a) The Judgement of Hon'ble High Court of Madras in the case of *Rane TRW Steering System Ltd. Vs CCE Chennai* in CMA No.65 and 66 of 2018 and CMP Nos.937 & 938 of 2018, dated 12.02.2018.

(b) The Tribunal's decision in *CCE & ST (LTU) Vs Lupin Ltd*. in Final Order dated 20.4.2012 of CESTAT Mumbai.

(c) Tribunal Final order No.20699/2017 dt. 17.5.2017 in the case of *Bhoruka Park Private Ltd. Vs CST Bangalore*.

3. On the other hand, on behalf of the respondent, Ld. A.R Shri A.Cletus made the following submissions :

i) As laid down by the Hon'ble Apex Court in *Ultra Tech Cement* (supra), there is no question of eligibility of credit in respect of GTA services availed beyond the place of removal.

ii) Input services involving maintenance of air conditioners, glass supply services, cab operator service etc. are not 'activities relating to business'. He submits that the term 'activities relating to business' was not in or in relation to manufacture of final products. Ld. AR points out that the phrase 'relating to business' which forms part of the definition of 'input services' in Rule 2(l) does not find any place in the amended definition w.e.f. 1.4.2011.

iii) The services received at the depot like cab operator service for bringing the office staff of RDCs / corporate office and other services received at the RDCs are not services in or in relation to manufacture of the goods and they will not be eligible.

iv) The concept of 'place of removal' does not find a place in Section 4A of the Central Excise Act, 1944 which concerns clearance of goods under M.R.P. Valuation. As the appellant's goods are under M.R.P they cannot have a place of removal as RDCs and hence credit availed on these services that have been received beyond the factory gate and upto the RDCs will not be eligible.

3. Heard both sides and have gone through the facts.

4. From the facts, it is seen that the disputed services are as follows :

a) <u>At the Regional Distribution Centre from North (Faridabad) :</u>

i) Telecom – telephones installed and used at Faridabad

ii) Maintenance and repair : - Repair and maintenance of office and office equipments at Faridabad.

iii) Security services :- Security personnel engaged at distribution centre at Faridabad.

iv) Manpower recruitment services :- Manpower engaged for the work at Faridabad.

v) Courier services : Courier engaged at Faridabad.

vi) Transport :- Freight charges incurred for the transport of goods from Faridabad to various retail shops.

vii) Glass supplier charges :- Glass items supplied to centre at Faridabad for use at their centre.

viii) AC Maintenance : Maintenance of air-conditioner at Faridabad.

ix) UPS Maintenance :- Maintenance of UPS at Faridabad.

x) Franchise Commission :- Commission for Franchise outlet i.e. shops run by franchisees under the areas North Centre.

b) <u>At the Regional Distribution Centre (from South (Bangalore) :</u>

i) Telecom :- Telephones installed and used at Bangalore.

ii) Maintenance and repair :- Repair and maintenance of office and office equipments at Bangalore.

iii) Security services :-Security personnel engaged at distribution centre at Bangalore.

iv) Manpower recruitment services :- Manpower engaged for the work at Bangalore.

v) Courier services : Courier services engaged at Bangalore.

vi) Transport :- Freight charges incurred for the transport of goods from Bangalore to various retail shops.

vii) Cab Operators :- Cabs used at Bangalore for transport of officials of centre

viii) Services in relation with works contract :- Engaging persons for work under contract at Bangalore.

ix) Consultancy :- Consultancy on legal matters pertaining to centre and Bangalore.

c) <u>At the Regional Distribution Centre from West (Thane):</u>

i) Telecom :- Telephones installed and used at Thane.

ii) Maintenance :- Repair and maintenance of office and office equipments at Thane.

iii) Courier services : Courier services engaged at Thane.

iv) Transport :- Freight charges incurred for the transport of goods from Thane to various retail shops.

v) Car hire :- Cabs used at Thane for transport of officials of centre.

vi) Providing temporary hand and Mathadi :- This service is nothing but the loading and unloading charges of materials incurred at Thane.

d) <u>At the Regional Distribution Centre from East (Kolkata):</u>

i) Telecom :- Telephones installed and used at Kolkata.

ii) Maintenance:- Repair and maintenance of office and office equipments at Kolkata.

iii) Courier services : Courier services engaged at Kolkata.

iv) Transport :- Freight charges incurred for the transport of goods from Kolkata to various retail shops.

v) C & F :- Engaged for dispatch of materials from the Centre at Kolkata to various places.

vi) Security services :-Security personnel engaged at distribution centre at Kolkata.

vii) Manpower recruitment services :-Manpower engaged for the work at Kolkata.

e) <u>At the Corporate Office, Gurgaon</u>

i) C & F :- Charges incurred for the goods cleared from Corporate office to different RDC's at various places.

ii) Rent : rental charges of corporate office building

iii) General Insurance : Insurance of materials at Corporate Office at Gurgaon

iv) Maintenance :- Maintenance charges of Corporate office

v) Security:- Security personnel engaged for the services at corporate office

vi) Courier and Cargo : Courier engaged at corporate office and cargo for movement of goods from corporate office to various places .

vii) Testing services :- This service is rendered at corporate office for the testing being carried out on the products found to be defective at the hands of customers from different places

viii) Life insurance services : Services relating to Mediclaim of the staff

ix) Commission :- Commission being paid to the various business Agents doing business at Corporate office

x) Business Auxiliary services :- Other miscellaneous services rendered at corporate office

xi) Interior Decorator :- Decorations and interiors done at Corporate office

xii) Packing services :- Packing of goods and other materials at corporate office

xiii) Cab :- Cabs used at corporate office for transport of officials of centre

xiv) Telecom :-Telephones installed and used at corporate office

xv) Servicing of Motor vehicles :- Service tax paid on the services of motor vehicles used at corporate office for transport of officials of corporate office

xvi) Transport :- Freight charges incurred for the transport of goods from corporate office to various distribution Centres / retail shops.

xvii) Photography :- Photography services utilized at corporate office

xviii) The other services which were also rendered at the corporate office includes Management Consultant, Chartered and Cost Accountant Advertisement services, Banking and Financial services, Business support services, Company secretary services, Royalty.

5.1 In the first place, we intend to address the controversy as to whether in case of clearance under Section 4A, the Depot can be considered as a 'place of removal'?. In this regard, we find that the CBEC vide letter No.137/3/200-CX dt. 2.2.2006, inter alia had clarified as under :

> "4. In view of the above, the undersigned is directed to state that, in case of depot sales of goods, the credit of service tax paid on the transportation of goods up to such depot would be eligible, irrespective of the fact, whether the goods were chargeable to excise duty at specific rates or ad valorem rates on the basis of valuation under section 4 or 4A of the Central Excise Act."

This being the case, there should not be any doubt that eligible services availed upto the depot /RDCs by the appellant in this case would be eligible for availment of input service credit.

5.2 On the dispute concerning GTA services availed beyond the RDCs, there are two different situations, one before 1.4.2008 and after that date, by virtue of amendment vide clause (ii) of Rule 2(l) by Notification No.10/2008-CE (NT) dt. 1.4.2008. By this amendment, the phrase "**from** the place of removal" was substituted "**up to** the place of removal". The issue of whether the assessees are eligible for service tax credit in respect of the GTA services beyond place of removal has been mired in litigation for quite some time. However by the Hon'ble Apex Court's two land mark judgments in *Ultratech* and *Vasavadatta Cements* (supra) the issue has now been settled once for all. The Apex Court in *Vasavadatta Cements* has held that credit in respect of such GTA services is eligible prior to the amendment i.e. prior to 1.4.2008. In *Ultratech Cement* (supra), the Apex Court held that benefit which was admissible even beyond the place of removal prior to 1.4.2008 gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. Viewed in this light, we have no hesitation in holding that the appellants will be eligible for input service credit in respect of GTA services availed beyond their RDCs but only upto 31.3.2008. For all services availed on or after 1.4.2008, they then by consequence cannot avail input service credit on such GTA services. We find that the earliest period in all these SCNs is 1.4.2008, in which case, the law as laid down by the *Ultra Tech Cement* judgement (supra) will apply. Hence appellants cannot avail input service credits. The appeals on this score will therefore fail. All the impugned orders denying such input service credit on the GTA service beyond RDCs from 1.4.2008 are upheld.

5.3 Coming to other disputed services, we find that these services have been provided either to the Corporate Office or to the RDCs. Ld. A.R was at pains to point out that these are not services which can be considered as in or in relation to manufacture of the final product and hence such services provided at the RDCs or Corporate office cannot be eligible. However, a reading of the definitions of "input service" under Rule 2(l) before and after 1.4.2008, will indicate that the said definition has always been an inclusive one. While laying down that the input services would be those inter alia used by manufacturer whether directly or indirectly in relation to manufacture of final product and clearance of final product upto place of removal, the definition is also an inclusive definition. The list of eligible input services given therein are therefore only examples of the genre of services which would fall within the ambit of 'eligible services' for the purposes of Rule 2(l) ibid. Even a cursory analysis of this definition would indicate that there are many input services which would necessitate being performed outside the place of removal, like auditing, advertising, coaching and training etc. that are included for the purpose of Rule 2(l) ibid. No doubt, outward transportation services beyond the place of removal has been specifically excluded by the amendment caused w.e.f. 1.4.2008. Be that as it may, higher appellate forums including Tribunal, High Courts and the Supreme Court in a number of decisions have consistently held that the services which have been disputed in these appeals are very much eligible for the purpose of availing Cenvat input service credit. The case laws relied upon by the Ld. counsel also reiterate this point**.**

6. Accordingly, we hold that all the input services which have been disputed except for GTA beyond the RDCs are very much eligible services for the purpose of Rule 2(l), whether before 1.4.2011 or after that date.

7. Coming to the matter of penalty, as already discussed earlier, issues relating to eligibility of cenvat credit of many of these input services were a matter of litigation. Hence the matter has to be considered as one of interpretation. This being the case, following settled law, we hold that there cannot be any penalty in respect of these cases. So ordered.

8. To sum up, appeals are partly allowed on the following terms, with consequential benefits, if any, as per law :

i) Input service credit availed by the appellant in respect of the GTA services beyond RDCs / Corporate office from 1.4.2008 are not eligible for the purpose of Rule 2(l) as it stood after that date. The impugned orders confirming the demands in respect of these input services with applicable interest are upheld and the appeals on this score are dismissed.

ii) Input service credit availed in respect of all the other disputed services are found eligible for the purpose of Rule 2(l) before and after 1.4.2011. Impugned orders denying credit availed on these services will therefore not sustain and will have to be set aside which we hereby do. Appeals in respect of these input services succeed and are allowed with consequential benefits, if any, as per law.

iii) Penalties imposed under various provisions of Finance Act, 1994 are set aside.

iv) As all the appeals get disposed by this order, the MA seeking stay of operation of the respective impugned order is dismissed as infructuous.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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