

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. I

Service Tax Appeal No. 40496 of 2019

(Arising out of Orders-in-Appeal No. 498, 499, 500, 501, 502, 503 & 504/2018 (CTA-II) dated 25.10.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Shell India Markets Pvt. Ltd.,

: Appellant

Shell Business Service Centre,
Floor Nos. 2 to 9 of Campus 4A,
RMZ Millenia Business Park,
143, Dr. MGR Road, Perungudi,
Chennai – 600 096

VERSUS

The Commissioner of G.S.T. & Central Excise,

: Respondent

Chennai Outer Commissionerate,
Newry Towers, No. 2054/1, 2nd Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040

WITH

- (i) Service Tax Appeal No. 40497/2019 (M/s. Shell India Markets Pvt. Ltd.);**
- (ii) Service Tax Appeal No. 40498/2019 (M/s. Shell India Markets Pvt. Ltd.);**
- (iii) Service Tax Appeal No. 40499/2019 (M/s. Shell India Markets Pvt. Ltd.);**
- (iv) Service Tax Appeal No. 40500/2019 (M/s. Shell India Markets Pvt. Ltd.);**
- (v) Service Tax Appeal No. 40501/2019 (M/s. Shell India Markets Pvt. Ltd.);**
- (vi) Service Tax Appeal No. 40502/2019 (M/s. Shell India Markets Pvt. Ltd.);**

(Arising out of Orders-in-Appeal No. 498, 499, 500, 501, 502, 503 & 504/2018 (CTA-II) dated 25.10.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

APPEARANCE:

Shri. Vikram Kumar, Consultant for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)****FINAL ORDER NOS. 40814-40820 / 2019**

DATE OF HEARING: 07.05.2019

DATE OF DECISION: 07.05.2019

This is the batch of appeals filed by the assessee against the common Orders-in-Appeal Nos. 498, 499, 500, 501, 502, 503 & 504/2018 (CTA-II) dated 25.10.2018 passed by the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai.

2. Though different periods were involved, considering the fact that common issues were also involved, the Commissioner (Appeals) chose to consolidate the same and pass a common Order covering the entire period and the issues as well. Hence, for the sake of convenience, the same is also adopted here.

3. The common facts which are also not disputed by both the assessee as well as the Revenue are that the appellant is engaged in providing a host of taxable services and are registered with the erstwhile Large Taxpayer Unit, Mumbai; that they filed refund claims under Rule 5 of the CENVAT Credit Rules, 2004 ('CCR' for short) read with Notification No. 27/2012-C.E. (N.T.) dated 18.06.2012 being the unutilized CENVAT Credit pertaining to various periods from April 2014 to March 2015, which are clearly given in the table at page 2 (page 32 of the appeal paper book) of the impugned order; that the Assistant Commissioner only partially sanctioned the refund claims and against those rejected, appeals were filed before the Commissioner (Appeals), who vide impugned common Order have further partial relief. The issues on which refund was rejected as ineligible, are :

- I. Construction Service;
- II. Interior Decorator Service;
- III. Works Contract Service;
- IV. Air Travel Service; and
- V. Rent-a-Cab Service

The present appeals are therefore filed against the partial rejection vide impugned order by the Commissioner (Appeals).

4. Today when the matter was taken up for hearing, Shri. Vikram Kumar, Ld. Consultant, appeared on behalf of the assessee and Shri. L. Nandakumar, Ld. AR, appeared on behalf of the Revenue. I have heard the rival contentions, gone through the orders of lower authorities and have also gone through the orders of various Benches of the Tribunal.

5. At the outset, I am of the opinion that the present issues are no more *res integra* as the same have been considered and decided by the co-ordinate benches which are required to be applied and followed for consistency.

6.1 The first issue is with regard to Construction Service and the reasons for rejection by the authorities below are that the assessee did not substantiate as to the nature of work; that no documentary evidence was filed to substantiate the nature of work involved and that no nexus established between input service and the output.

6.2.1 It is the case of the assessee that the Construction Service was used towards modernization, renovation and repairs of its premises which was used for providing output services which, according to the Ld. Consultant, was very much covered under the definition of 'input service' as per Rule 2(l) of the CENVAT Credit Rules, 2004.

6.2.2 There is also force in the contention of the appellant that the requirement of establishing nexus between input service and the output has been done away with by the Board itself vide D.O.F. No. 334/1/2012-TRU dated 16.03.2012. The above issue has been considered by this very Bench in the case of ***M/s. Mckinsey Global Services India Pvt. Ltd. Vs. Commissioner of G.S.T. & C.Ex. (Chennai Outer) in Appeal No. ST/42732/2018 vide Final Order No. 40805/2019 dated 07.05.2019*** wherein after considering various decisions/orders, it has been held that there is no requirement to demonstrate the nexus between the input services and the output.

6.2.3 Moreover, the fact that the above Construction Services were used in modernization and renovation of the premises has not been doubted by the Revenue.

6.3 For the above reasons, I am of the considered view that the appellant is entitled to refund and the rejection is not in order. The rejection therefore, is set aside.

7.1 With regard to Interior Decorator Services, the authorities below have held that the same was not an input service covered by the inclusive part of the definition and not even under the illustration of activities relating to business as defined under Rule 2(I) of the CCR, 2004; that Interior Decorator Service was nowhere related to the registered output service. The authorities below therefore rejected the refund holding that there was no nexus between the input and the output, with Interior Decorator Service not being a must for carrying out the appellant's output service.

7.2 Assailing the above, Ld. Consultant for the appellant submitted that the Interior Decorator Services were used along with the Construction Services only towards the modernization, renovation and repair of the appellant's premises, which was an essential part to upkeep the premises. In fact, the said issue has been decided by the Hon'ble High Court of Gujarat in the case of ***Commissioner of C.Ex., Ahmedabad-II Vs. M/s. Cadila Healthcare Ltd. reported in 2013 (30) S.T.R. 3 (Guj.)*** to hold that Interior Decorator and Commercial or Industrial Construction Services were covered in the inclusive part of the definition of 'input service' in relation to renovation or repairs of factory or office relating to it. I find that the Ld. Consultant is correct in his assertion that the same issue has been decided by the Hon'ble Gujarat High Court (*supra*) and that the above view of the Hon'ble High Court has also been adopted by other Benches of the Tribunal in the cases of ***M/s. Reliance Industries Ltd. Vs. Commissioner of C.Ex. & S.T., LTU, Mumbai reported in 2016 (45) S.T.R. 383 (Tri. – Mumbai)*** and ***Commr. of C.Ex., Delhi & Delhi-III Vs. M/s. Convergys India Services Pvt. Ltd. reported in 2017 (48) S.T.R. 173 (Tri. – Chan.)***.

7.3 Following the above ratio, the impugned denial of refund cannot sustain and therefore, the same is set aside.

8.1 With regard to Works Contract Services, the common reason given by the authorities below is that the definition of 'input service' as per Rule 2(I) of the CCR, 2004 specifically excludes the same.

8.2.1 However, Ld. Consultant for the appellant submitted that the Works Contract Services were used towards modernization, renovation and repairs of their premises along with the above other services. He also invited my attention to the following orders :

- (a) *M/s. Ion Exchange (I) Ltd. Vs. Commr. of Cus., C.Ex. & S.T., Surat-II - 2018 (12) G.S.T.L. 302 (Tri. - Ahmd.)*;
- (b) *M/s. Sundram Fasteners Ltd. Vs. Commr. of C.Ex., Puducherry - 2017 (51) S.T.R. 19 (Tri. - Chennai)*;
- (c) *Commr. of S.T., Mumbai-II Vs. M/s. WNS Global Services - 2016 (44) S.T.R. 454*;

8.2.2 On going through the Order-in-Original, I find that though the appellant has given details which are also noted by the adjudicating authority, the said contention has not been held to be wrong, but the only reason for denial is that the same was excluded by Rule 2(l) *ibid*. On going through the definition in terms of Rule 2(l) *ibid* as amended with effect from 01.04.2011, I find that the provision makes it clear that the services utilized in relation to modernization, renovation and repair of the factor would definitely fall within the meaning of input services even though the construction of a building or of a civil structure or part thereof is placed under the exclusion clause. The above has also been clarified by the Board vide Circular No. 943/04/2011-CX dated 29.04.2011 wherein the input service used in modernization, renovation or repair has been clarified to be eligible for credit.

8.2.3 This aspect has been considered in the cases relied on by the Ld. Consultant *supra* and in one of the cases and in *M/s. Ion Exchange (I) Ltd. (supra)*, the Ahmedabad Bench of the Tribunal, it has held as under :

"8. A plain reading of the said provisions makes it clear that service utilized in relation to modernization, renovation and repair of the factory are definitely fall within the meaning of 'input service' even though; construction of a building or civil structure or part thereof has been placed under exclusion clause of the said definition of 'input service'. After amendment to the definition of the 'input service', a clarification issued by the Board vide Circular No. 943/4/2011-CX, dated 29-4-2011 whereunder answering to the questions raised on the eligibility of credit of service tax paid on construction service as an 'input service' used in modernization, renovation or repair, it has been clarified that the said services being provided in the inclusive part of definition of 'input service' are definitely eligible to credit. Thus, harmonious reading of the inclusive part of the definition and the

exclusion clause mentioned at clause (a) relating to construction service of the definition of 'input service', it is clear that the construction service relating to modernization, renovation and repair of the factory continued to be within the meaning of 'input service' and accordingly, the Service Tax paid on such service is eligible to credit. Undisputedly, the appellant carried out modernization/renovation work to meet USA, FDA guidelines for manufacture of their products therefore, the service tax paid on such construction service is eligible to credit. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per the law."

8.2.4 From the above, the issue on hand is settled and in the absence of any contrary orders or judgements, following the above views, I hold that the rejection by the authorities below even on this count cannot sustain, for which reason the impugned order is set aside.

9.1 With regard to Air Travel Services, the Revenue has again denied the refund on the ground that the appellant was unable to establish the nexus.

9.2 As noted by me in the earlier paragraphs of this order, the Board itself has clarified vide D.O.F. No. 334/1/2012-TRU dated 16.03.2012, which is binding on the authorities below and the authorities below having not followed, the impugned order cannot sustain. Hence, the same is set aside.

10.1 With regard to Rent-a-Cab Services, Ld. Consultant submits that it was not an issue taken up for adjudication and therefore, the Commissioner (Appeals) has gone beyond the scope of both the Show Cause Notice as well as the adjudication order.

10.2 After going through the orders of the lower authorities, I find that the same was never an issue right from the beginning, the same was also not even a part of the grounds of appeal urged before the first appellate authority and also before this forum. Therefore, no order is passed.

11. The appeals of the assessee are allowed with consequential benefits, if any, as per law.

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

(P. DINESHA)
MEMBER (JUDICIAL)