

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

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 40435 of 2019

(Arising out of Orders-in-Appeal No. 563 & 564/2018 (CTA-II) dated 10.12.2018 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. Cenza Technologies Pvt. Ltd., : **Appellant**
No. 8, Perungudi Industrial Estate,
Chennai – 600 096

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai South Commissionerate,
No. 692, Anna Salai, MHU Complex,
Nandanam, Chennai – 600 035

WITH

Excise Appeal No. 40436 of 2019

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APPEARANCE:

Shri. Karthik Sundaram, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 40885-40886 / 2019

DATE OF HEARING: 13.06.2019

DATE OF DECISION: 13.06.2019

Brief facts of the case are that the appellant is a Software Technology Park (STP) duly registered and engaged in the exportation of online information and database access/retrieval services and that there is no dispute as to the fact that the appellant is engaged in the export of online information and database access services. The appellant had filed two refund claims under Rule 5 of the CENVAT Credit Rules, 2004 in respect of the period from October 2016 to December 2016 and January 2017 to March 2017.

2. The Adjudicating Authority passed two Orders-in-Original bearing Nos. 40/2018 (R) and 41/2018 (R) dated 26.07.2018 partly allowing the claim, against which the assessee preferred appeals before the Commissioner of G.S.T. and Central Excise (Appeals-II), Chennai. After considering the plea of the assessee, the First Appellate Authority vide the impugned Order Nos. 563 and 564/2018 (CTA-II) dated 10.12.2018 rejected the appeals. Aggrieved, the assessee has preferred the above appeals.

3. Today when the matter was taken up for hearing, Shri. Karthik Sundaram, Ld. Advocate, appeared on behalf of the assessee and Shri. B. Balamurugan, Ld. AR, appeared on behalf of the Revenue.

4.1 Shri. Karthik Sundaram, Ld. Advocate, contended that the issue involved in this case is no more *res integra* as the same has been considered and allowed in favour of the taxpayer in a number of cases by various judicial fora. He also relied on the following decisions to buttress his arguments :

- (i) *M/s. Maruti Suzuki Ltd. Vs. C.C.E. – 2009 (240) E.L.T. 641 (S.C.);*
- (ii) *C.C.E. Vs. M/s. Ultratech Cement Ltd. – 2010 (20) S.T.R. 577 (Bom.);*
- (iii) *M/s. Integra Software Services Pvt. Ltd. Vs. C.C.E. – 2017 (48) S.T.R. 137 (Tri. – Chennai);*
- (iv) *M/s. Lenovo India Pvt. Ltd. Vs. C.C.E. – 2017 (52) S.T.R. 63 (Tri. – Chennai);*
- (v) *C.C.E., Coimbatore Vs. M/s. Pricol – 2018 (16) G.S.T.L. 187 (Mad.);*
- (vi) *M/s. Cenza Technologies Pvt. Ltd. Vs. C.S.T. – 2017 (4) G.S.T.L. 150 (Tri. – Chennai);*
- (vii) *C.C.E. Vs. M/s. Intimate Fashions India (P) Ltd. – 2017 (7) G.S.T.L. 192 (Mad.);*

(viii) *M/s. One Advertising & Communication Services Ltd. Vs. C.S.T., Ahmedabad – 2012 (27) S.T.R. 344 (Tri. – Ahmd.)*;

(ix) *C.C.E., Guntur Vs. M/s. CCL Products (I) Ltd. – 2012 (277) E.L.T. 177 (Tri. – Bang.)*;

(x) *C.C.E., Visakhapatnam Vs. M/s. Andhra Pradesh Paper Mills – 2010 (254) E.L.T. 354 (Tri. – Bang.)*

(xi) *C.C.E. Vs. M/s. HCL Technologies Ltd. – 2016 (42) S.T.R. 48 (Tri. – Del.)*;

(xii) *C.C.E. Vs. M/s. HCL Technologies – 2015 (37) S.T.R. 716 (All.)*;

4.2 He further contended that an amount of Rs. 2,00,775/- had not at all been considered for refund although the same was specifically claimed in the appellant's refund application in Form-A; that the appellant having debited the above amount before claiming the refund in terms of Notification No. 27/2012-C.E. (N.T.) dated 18.06.2012, the Revenue should be directed to consider the above and grant refund.

5. *Per contra*, Shri. B. Balamurugan, Ld. AR, supported the findings of the lower authorities, but however, was fair enough to point out that the authorities below have not considered the claim of the appellant with regard to the refund of Rs. 2,00,775/-.

6. I have considered the rival contentions, perused the documents placed on record as well as the orders of lower authorities and have also gone through the orders/judgements relied on by the Ld. Advocate.

7. I find the assertion of the Ld. Advocate for the appellant to be correct as the above issue has been considered and laid to rest by various judicial fora. The common issue in both these appeals relate to the claim for refund of Service Tax credit in respect of the following heads :

Appeal No.	Order-in-Original No. & Dt.	Head	Refund amount rejected
E/40435/2019	40/2018 (R) dt. 26.07.2018	Room/Laundry Service	Rs. 1,986/-
		Insurance	Rs. 54,530/-
		APR Certification	Rs. 725/-
		AMC of lift	Rs. 5,300/-
TOTAL			Rs. 62,541/-

E/40436/2019	41/2018 (R)	Legal Expenses	Rs. 15,950/-
	dt. 26.07.2018	Insurance	Rs. 49,300/-
TOTAL			Rs. 65,250/-

Hence, for the sake of convenience, both the appeals are taken up together for common disposal.

8.1 In respect of Room/Laundry Service, the Ahmedabad Bench of the Tribunal in the case of *M/s. One Advertising & Communication Services Ltd. (supra)* has held as under :

"4. I heard both the sides and also considered the various records. As regards Catering service, the authorized representative submitted that the Catering service was taken for the purpose of hosting a party for the client for business promotion and therefore credit has been taken correctly. However, the Id. A.R. pointed out that this point was not raised before both the lower authorities and was not mentioned in the appeal also. It was explained to authorized representative that in such event, an application for considering the additional grounds is required to be filed. The Id. authorized representative submitted that since the amount involved is small, he would not like to increase the additional paper work and he is willing to accept that CENVAT Credit is not admissible in respect services received and involved in the present appeal. As regards Pathological Laboratory services, it was submitted that the appellant has about 150 employees and the Company conducted blood-test and health-check for the benefit of employees and it was submitted that this will help to boost the employees' morale and would result in improved business and therefore the credit is admissible. Id. A.R. relied upon the decision of Hon'ble High Court of Gujarat in the case of CCE v. Gujarat Heavy Chemicals Ltd. - [2011 \(22\) S.T.R. 610](#) (Guj.), wherein a view has been taken that Service Tax paid on welfare activity are not admissible as CENVAT Credit. At this stage, the authorized representative submitted that since the amount involved is small, he would not like to contest this issue as far as this appeal is concerned. As regards Hotel services, the Id. authorized representative submitted that the Service Tax was paid in respect of Hotel rent for the stay of their Chief Executive for the purpose of business and meeting the clients. Even though, it was contested by Id. AR, I find that the issue is directly relatable to the business of the appellant and has a nexus and therefore is admissible.

5. As regards Decorator service, the Id. authorized representative submitted a copy of invoice raised by M/s. Gandhi Associates as decorator when the company has provided event management service to M/s. Gujarat Alkalies & Chemicals Ltd., Ahmedabad. It was submitted that from the invoices raised by M/s. Gandhi Associates and the appellant, it can be seen that the service received from Gandhi Associates formed a part of the expenses claimed from M/s. Gujarat Alkalies & Chemicals Ltd., which would clearly show that there is a clear nexus between output service and input service. I find myself in agreement with this submission.

6. *In view of the above discussions, except for the Service Tax paid on both Pathological Laboratory Service and Catering Service, CENVAT Credit taken in respect of other services is held as admissible."*

8.2 In respect of Insurance and AMC charges, the Bangalore Bench of the Tribunal in the case of *M/s. CCL Products (India) Ltd. (supra)* has held as under :

"6.1 *The issue involved in all these appeals is denial of cenvat credit on the Service Tax paid by the respondent to the services rendered to them in respect of Insurance premium, repair of vehicles, AMC charges, courier, etc. It is seen that the services which are availed by the respondent are in respect of the business activity that is being conducted by them i.e. manufacturing and exporting coffee powder. We find that the Larger Bench of the Tribunal in the case of CCE, Mumbai-V v. M/s. GTC Industries Ltd. - 2008-TIOL-1634-CESTAT-MUM-LB = [2008 \(12\) S.T.R. 468](#) (Tri.-LB) has held that all the elements of costs which are required to be included in the cost of final product has to be considered. We may reproduce the said paragraph.*

"4.1 Cost of Production : Cost of production shall consist of material consumed, direct wages and salaries, direct expenses, works overheads, quality control cost, research and development cost, packing cost, administrative overheads relating to production. To arrive at cost of production of goods dispatched for captive consumption, adjustment for stock of work-in-process, finished goods, recoveries for sales of scrap, wastage, etc., shall be made."

6.2 *We also find that the said decision of the Larger Bench was followed in Final Order No. 1290/2008, dated 18-11-2008 [[2009 \(13\) S.T.R. 616](#) (Tri.) = [2009 \(236\) E.L.T. 145](#) (Tri.)] wherein this Bench held as under.*

"5. On a very careful consideration of the issue, I find that CAS-4 has considered all the services such as medical benefit, subsidized food, education allowance, canteen bill, etc., to form part of the cost of the final products. Therefore, I agree with the learned Chartered Accountant that these services which have been received have been rendered only in relation to the manufacture of the final products. The definition of 'input service' is very broad and on a proper appreciation of the same, the argument that even landscaping is in relation to manufacture of final product, is acceptable. This is so because, by virtue of the definition of 'input service', even modernization, renovation, repair, etc., of the office premises are included. In that view of the matter, one can include even landscaping the surroundings of the factory as 'input service'. In these days, much importance is given to keeping the environment of a factory in a proper manner. In view of the above observations, I hold that the appellants are rightly entitled to the credit on the services in the impugned order. Hence, I allow the appeal with consequential relief."

6.3 *On careful reading and consideration of the facts of the issue, we find that all the services which are availed by the respondent are in respect of manufacturing activity i.e., manufacturing and exporting of coffee powder, which is their final product. We agree with the submissions made by the learned counsel for the respondent that these services have been received or rendered only in relation to the manufacture of final products. In view of this, since the issue is squarely covered by the ratio of the decision of Tribunal and Larger Bench, we uphold the impugned orders and reject the appeals filed by the revenue."*

8.3 In respect of APR Certification/CA Services, the Bangalore Bench of the Tribunal in the case of *M/s. Andhra Pradesh Paper Mills Ltd.* (*supra*) has held as under:

"2. *Heard both sides and perused the records.*

3. *The Commissioner (Appeals) has allowed the appeals filed by the assessee and set aside the Orders-in-Original which confirmed reversal of Cenvat credit of service tax paid on the cab services, telephones and professional charges raised by the Chartered Accountants.....*

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5. *On a careful consideration of the submissions made by both sides and perusal of the records, I find that the issue is now squarely settled by various decisions of the Tribunal, including this Bench decision in the cases of Keltech Energies Ltd. v. CCE, Mangalore [[2008 \(10\) S.T.R. 280](#) (Tri. - Bang.)] and Stanzen Toyotetsu India Pvt. Ltd. v. CCE, Bangalore-III [[2009 \(14\) S.T.R. 316](#) (Tri. - Bang.)]. On a specific query from the Bench, both sides submit that there are no contrary decision on the issue. In the above two cases, I find that the issue of eligibility of Cenvat credit of service tax paid on telephone service as well as Rent-a-cab service has been settled in favour of the assessee. As regards the professional charges paid by the assessee to the Chartered Accountants, it can be directly related to the business."*

8.4.1 With regard to Legal Expenses, the Co-ordinate Bench of the Tribunal in the case of ***Commissioner of Central Excise, Noida Vs. M/s. HCL Technologies Ltd. reported in 2016 (42) S.T.R. 48 (Tri. – Del.)*** has after considering various decisions, held as under :

"6. *As regards the second appeal, I find that services on which the credit has been allowed are medical group insurance, legal consultancy*

services, outdoor catering services and subscription for international taxation. All the said services stand covered by decisions of the Courts including various High Courts and as such, no infirmity is found in the view of the Commissioner (Appeals). Accordingly, the Revenue's appeal is rejected."

8.4.2 Further, even the Hon'ble High Court of Judicature at Allahabad in the case of ***Commissioner of Central Excise Vs. M/s. HCL Technologies reported in 2015 (37) S.T.R. 716 (All.)*** has held as under :

"6. *As regards Consultancy Services, these were comprised of the payment of invoices of the charges involved in relation to the filing of the tax return in the US. The Commissioner held that the service was governed by the definition of "input service". The second related to Legal Consultancy Services which have also been held to fulfill the definition of the expression "input service". Both are admissible."*

9. On the other hand, Ld. AR was unable to distinguish the applicability of the above case-laws nor did he file any contrary decisions/orders and therefore, following the above orders/judgements I am of the opinion that the appellant is entitled for refund and rejection of the same cannot sustain. The impugned orders are set aside and the claim of refund is allowed.

10. With regard to the other claim of Rs. 2,00,775/- being not considered for refund, I find that there is no finding given by both the lower authorities and therefore, in the interests of justice, this requires fresh adjudication. This issue is therefore set aside and remanded to the file of the Adjudicating Authority who shall pass a *de novo* order on this issue after considering all the contentions urged by the appellant.

11. In the result, the appeals are treated as partly allowed and partly remanded on the above terms.

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

(P. DINESHA)
MEMBER (JUDICIAL)