IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal Nos. 41748 to 41750/2016

(Arising out of Order in Appeal No. 211 to 213/2016 (CXA – II) dated 31.5.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

Hindustan Unilever Ltd. **Appellant**
Skin Care Unit
NH – 45A, Vadamangalam
Puducherry – 605 102.

Vs.

Commissioner of GST & Central Excise **Respondent**
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry -605 001

APPEARANCE:

Shri M.N. Bharathi, Advocate, for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 40740 to 40742/2025

Date of Hearing: 15.04.2025
Date of Decision: 16.07.2025

This appeal is filed by the appellant against Order in Appeal No. 211 to 213/2016 dated 31.5.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai.

2. Brief facts of the case are that the appellants are manufacturers of cosmetics falling under Chapters 33 and 27 of the CETA, 1985. During the course of verification of ER-1 returns for the periods December 2012 to February 2013 to March 2013 to June 2013, the appellant had availed CENVAT credit of the service tax on various services namely Godown Rent, Godown Maintenance, Loading and Unloading, Outside Godown Maintenance, Diesel Purchase for Genset,

DG hire charges, Electricity charges, factory compliance etc. It appeared that the various services were not eligible input services and it also appeared that in terms of Notification No. 25/2012-ST dated 20.6.2012, carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer is exempted from the whole of service tax leviable thereon. Therefore, it appeared that the service as job work received by the appellant cannot be termed as input service inasmuch as the said services are exempted. Three Show Cause Notices were issued for the period December 2012 to February 2013 and two Show Cause Notices for the period March 2013 to June 2013 for demanding duty and for imposing penalty. After due process of law, the Ld. Original Authority confirmed the duty demands amounting to Rs.3,49,549/-; Rs.4,36,947/- and Rs.3,91,173/- and imposed penalties. Aggrieved by the orders, the appellant preferred appeals before Ld. Commissioner (Appeals) who rejected the same. Hence the present appeals.

3. Shri M.N. Bharathi, Ld. Counsel appeared for the appellant and Shri Anoop Singh, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Counsel for the appellant Shri M.N. Bharathi submitted that for the period from Dec 2012 to June 2013 the issue is no more res integra in view of the decision of the Tribunal in the appellant's own case reported in M/s. Hindustan Unilever Ltd Vs Commissioner of Central Excise, Puducherry (**Hindustan Unilever–I**) [2017 (10) TMI 843-CESTAT CHENNAI] and Hindustan Unilever Ltd Vs Commr. Of C.Ex &S.T., Pondicherry (**Hindustan Unilever–II**) [2019 (370) E.L.T. 914

(Tri-Chennai)]. The Ld. Counsel submitted that all the said services are related to their manufacturing activity and form an integral part of their Cost of Production, which in turn forms part of value of products on which excise duty is paid. Therefore, credit is admissible. Further to take credit, the governing Rule 3 read with Rule 2(l) of CCR only states that, service used in relation to manufacture of final products, other than specific exclusions are input services. Hence, in the present case, once the dept does not dispute that the disputed services are used for manufacturing activity and is not covered under any of the exclusions of Rule 2(l), CCR, credit cannot be denied. Without prejudice to the above submissions, in any case, the demand is barred by limitation, as extended period is not invocable, in the absence of any conscious and deliberate suppression of fact, mis-statement, etc., He prayed that the impugned order be set aside.

3.2 Shri M. Selvakumar, Ld. Authorized Representative has reiterated the findings given in the impugned order.

4. I have heard the rival parties and have gone through the appeal memorandum and connected documents. I find that the facts not in dispute has been paraphrased by the Ld. Commissioner Appeals thus;

> "The facts not in dispute are that the godowns in question had been taken on rent for doing the job work processes by the various job workers of the appellant. The godown rent / maintenances were all therefore used only for the job work purposes by the job workers. Same is the case with Diesel Purchase for Genset, DG hire charges, electricity charges and also the loading and unloading charges. In fact, the appellant themselves have stated in their grounds of appeal that the above charges were borne only by their job workers. Therefore, by no stretch of imagination can the above services be stated to be used by the appellant. In fact, all the services had been used only by their job workers and these services would therefore be input services only to the job works who had used such services during the process of manufacturing the job worked goods. The appellant in turn were taking the CENVAT credit on the job charges which included in its ambit all the above disputed services.'

5. The department alleges that firstly the above services were used by the appellant's job workers, whose services are exempt under notification 25-2012-ST dated 20.06.2012. Hence the question of allowing CENVAT credit on such services does not arise. Secondly, as for 'management service' and 'factory compliance service' the same pertained to compliance like PF, ESI, Etc. of the employee which the department opines are in no way related to the manufacturing activity of the appellant and hence the same are not eligible for CENVAT credit.

6. I find that the first issue was examined and decided by this Tribunal in the appellants own case in **Hindustan Unilever–I** (supra), which is reproduced below.

> 3. The appellant has been denied the Cenvat credit of service tax paid on Job Work Godown Rent/Electricity Charges, Diesel Purchase for Genset, Diesel Purchase for Job Work purposes, DG Gen Set Hire Charges, on the ground that these are input services for the job-workers and not for appellants (principal manufacturer) and on the ground that job-work manufacturers are exempt under Notification No.25/2012-ST, dated 20.06.2012.
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> 3.1 They have further denied the credit of service tax paid on Loading & Unloading Charges (at job-workers' premises) on the ground that it is an expense of job work incurred during manufacture and which cannot be separately quantified as service for allowing credit.
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> 3.2 Further, Cenvat credit has been denied on service tax paid on Godown Maintenance (wrongly mentioned as Outside Godown Maintenance) on the ground that service is outside the premises of factory and tax paid on Photography Service and availed based on ISD invoices, on the ground that no nexus stand proved with process of manufacture.
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> 4.2 The credit of service tax paid by the job workers has been denied on the ground that various input services availed by job-worker are input services to the job-workers and not to the appellants and that job-work is exempted service under Notification No.25/2012-ST, dated 20.06.2012.
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> 4.3 In this connection, the appellants submit that Rule 3(1) of Cenvat Credit Rules, 2004 specifically allows credit of service tax paid on input services used in the manufacture of intermediate products by a job-worker availing the benefit of exemption under Notification No.214/86-CE, dated 25.03.1986 and received by the manufacturer for use in or in relation to manufacture of final product,

4.4 In support reliance is placed on the following judgments, wherein it is held that principal manufacturer is entitled to avail credit on services used by job worker manufacturing goods on behalf of the principal manufacturer availing exemption under Notification No.214/96-CE, dated 25.03.1986:

(a) Commissioner of Central Excise, Delhi-III Vs Interface Microsystems reported as 2016-TIOL-2457-CESTAT-CHD; and

(b) MRF Ltd Vs Commissioner of Central Excise & Service Tax, LTU, Chennai reported as 2013 (31) S.T.R. 689 (Tri-Chennai).

4.5 Further, once service tax paid by job-worker even though it was not required to be paid by them or, for that matter, the services were exempted Cenvat credit of service tax so paid by job-worker cannot be denied to the principal manufacturer, based on the following judgments:-

(i) YG1 Industries (India) P. Ltd. Vs Commissioner of Central Excise, Mumbai-III reported as 2013 (30 S.T.R. 146 (Tri.-Mum.);

(ii) Multi Organics Pvt Ltd. Vs Commissioner of Central Excise, Nagpur reported as 2011 (21) S.T.R. 695 (Tri.-Mumbai);

(iii) SPIC (HCD) Ltd. Vs Commissioner of Central Excise, Chennai-I reported as 2006 (201) E.L.T. 3846 (Tri. -Chennai);

(iv) Royal Touch Aluminium Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad reported as 2013 (30) S.T.R. 375 (Tri.-Ahmd.);

(v) Commissioner of Central Excise, Aurangabad Vs Laxmi Metal Pressing Works Pvt. Ltd. reported as 2010 (18) S.T.R. 149 (Tri.-Mumbai); and

(vi) Federal Mogul Goetze India Ltd. Vs Commissioner of Central Excise, Bangalore reported as 2015 (318) EL.T.340 (Tri. -Bang.).

4.6 It is further submitted that there is no bar from paying service tax in absence of provisions alike to section 5A(1A) of the Central Excise Act, 1944, under service tax provisions and section 5A(1A) is also not made applicable to service tax provisions, as held by the Hon'ble Court in following cases:-

(i) Commissioner of Central Excise, Bangalore-II Vs Federal Mogul TPR Ltd., reported as 2016 (42) S.T.R. 427 (Kan.);

(ii) Deloitte Haskins & Sells Vs Commissioner of Central Excise, Thane-I, reported as 2015 (38) S.T.R. 1220 (Tri.-Mumbai); and

(iii) Crown Products Pvt Ltd Vs Commissioner of Central Excise, Nashik reported as 2012 (28) S.T.R. 406 (Tri. -Mumbai).

4.7 In the appellant's own case - very same Unit, the learned Commissioner vide Order-in-Original No.07 to 14/2017(C)(CEx), dated 08.03.2017, while adjudicating number of show-cause notices issued for the period Aug.' 10 to Apru'15, has held that credit of service tax paid on the job-charges as well as on various

> reimbursable expenses by the job-workers is admissible to the appellants, since the job-work activities are directly in relation to manufacture of final products.
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> 5. After hearing the learned departmental representative, I find that all the issues involved has been decided by Tribunal's precedent decision as quoted by learned counsel. Further, in respect of Photography Service, the Commissioner has already taken a view in favour of the assessee and there is no to show that the said decision of the commissioner has been appealed against by revenue.
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> 6. In view of the above, I set aside the impugned order and allow all the three appeals with consequential relief to the appellants."

6.1 Similarly the issue pertaining to compliance like PF, ESI, Etc. were examined in **Hindustan Unilever–II** (supra), at para 2.1 of the said order, which is as below.

> 2.1 Apart from the above, one of the disputed service is Factory Compliance (Employees services). The said services stand availed by the appellant in respect of compliance with their statutory industrial obligations like payment of ESI and PF, renewal of licence and obtaining permission etc., through a private agency called Aparajitha Corporate Services. The lower authorities have denied the credit that the same are for the welfare of the individual employee and as such ineligible input services.'

6.2 Both the issues have hence been examined and decided in the appellants favour.

7. No orders of a superior Court modifying or annulling the above orders has been brought to my notice. Judicial discipline hence requires that I follow the said decisions. I hence set aside the impugned order and allow the appeal with consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 16.07.2025)

(**M. AJIT KUMAR**)
Member (Technical)

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