CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Service Tax Appeal No. 20563 of 2015

(Arising out of OIO No.HYD-EXCUS-002-COM-39-14-15 dt.11.12.2014passed by Commissioner of Central Excise, Customs& Service Tax, Hyderabad)

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020
......Appellant

VERSUS

Commissioner of CentralTax
Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004
......Respondent

with

Excise Appeal No. 22293 of 2015

(Arising out of OIO No.HYD-EXCUS-002-COM-012-15-16 dt.24.08.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020
......Appellant

VERSUS

Commissioner of Central Tax
Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004
......Respondent

with

Application No. E/CO/30386/2016
in Excise Appeal No. 30020 of 2015

(Arising out of OIO No.HYD-EXCUS-002-COM-012-15-16 dt.24.08.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Commissioner of Central Tax
Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004
......Appellant

VERSUS

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020
......Respondent

with

Application No. E/CO/30459/2016
in Excise Appeal No. 30026 of 2016

(Arising out of OIO No.HYD-EXCUS-002-COM-022-15-16 dt.29.09.2015 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Commissioner of Central Tax
Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004
......Appellant

VERSUS

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020
......Respondent

with

Excise Appeal No. 31124 of 2018

(Arising out of OIA No.HYD-EXCUS-SC-AP2-0032-17-18 dt.30.05.2018 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020 **......Appellant**

VERSUS

Commissioner of Central Tax Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004 **......Respondent**

with

Excise Appeal No. 30300 of 2019

(Arising out of OIA No.HYD-EXCUS-SC-AP2-0075-18-19 dt.29.11.2018 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

VST Industries Ltd
Azamabad, Hyderabad,
Andhra Pradesh – 500 020 **......Appellant**

VERSUS

Commissioner of Central Tax Secunderabad
LB Stadium Road, Basheerbagh,
Hyderabad – 500 004 **......Respondent**

Appearance
Mrs. L. Maithili, Advocatefor the Appellant.
Shri Chittaranjan Wagh Prakash, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30361-30366/2023

Date of Hearing: 06.10.2023
Date of Decision: 06.10.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved in these Appeals by Assessee, including Cross Objection and Cross Appeals, is whether Appellant/Assessee have rightly reversed the proportionate Cenvat credit attributable to exempt turnover/services. Further issue involved is of eligibility of credit on some of the input services, in the Impugned Orders.

3. The amount in dispute in each of the Appeals is as follows:

S.No.	Appeal No.	Appeal filed by	OIO/OIA No. & date	Period involved	Disputed Amount in Rs.
1	E/22293/2015	Assessee	OIO No. HYD-EXCUS-002-COM-012-15-16 dt.24.08.2015	01.05.2008 to 30.9.2011	68,16,783/- (45,83,810/- (+) 22,32,973/-)
2	E/30020/2015 E/CO/30386/16-By Assessee	Department		01.05.2008 to 30.9.2011	61,08,434/-
3	ST/20563/2015	Assessee	OIO No. HYD-EXCUS-002-COM-39-14-15 dt.11.12.2014	Oct 2012 to Sep 2013	67,37,898/-
4	E/30026/2016 E/CO/30459/16-By Assessee	Department	OIO No. HYD-EXCUS-002-COM-022-15-16 dt.29.09.2015	Oct 2013 to Sep 2014	76,55,492/-
5	E/31124/2018	Assessee	OIA No. HYD-EXCUS-SC-AP2-0032-17-18 dt.30.05.2018	Aug 2015 to Mar 2016	60,49,463/-
6	E/30300/2019	Assessee	OIA No. HYD-EXCUS-SC-AP2-0075-18-19 dt.29.11.2018	Apr 2016 to Mar 2017	76,22,946/-

Appeal No. E/22293/2015 (filed by Assessee) & E/30020/2015 with E/CO/30386/2016 (filed by Revenue) for the period 01.05.2008 to 30.09.2011 against OIO No. HYD-EXCUS-002-COM-012-15-16 dt.24.08.2015:

4. In these Appeals, the issue relates to eligibility of input service credit on about 34 services. The learned Commissioner has allowed the credit of Rs.1,47,72,712/- with respect to credit taken on 19 input services during the period May 2008 to March 2011, out of the input services viz., (i) Auditing & Accounting, (ii) Banking & Financial Service, (iii) Branding and Market Research, (iv) C & F service, (v) Courier service, (vi) Credit Rating Agency service, (vii) Cylinder Printing service – surface design, (viii) Pack design service – Brand, (ix) Installation & Commissioning service, (x) Legal & Taxation, (xi) Maintenance & Repair service, (xii) Placement service, (xiii) Training & Development service, (xiv) Secretariat service, (xv) Stock Exchange service, (xvi) Technical Testing & Reporting service, (xvii) Telecommunication service, (xviii) General Insurance – Factory & (xix) Marine Insurance – for goods in transit. So far these services are concerned, the total credit involved is

Rs.1,47,72,712/-, on which credit has been allowed. In the Revenue's Appeal the eligibility to credit of this amount on these services is not disputed. Hence attained finality.

5. As regards (i) Consulting service – Production, (ii) Hiring services – Machinery, (iii) Factory Canteen – Outdoor Catering, (iv) Business Subscription – Trade bodies, (v) Travel Ticket service – Business, (vi) General Insurance – Mediclaim, (vii) Rent-a-Cab services, learned Commissioner has allowed part of the credit up to 31.03.2011 and have disallowed balance credit for the period from 01.04.2011 to 30.09.2011 as follows:

Sl.No	Services	Credit allowed for Period 1.5.2008 to 31.03.2011 Rs	Credit disallowed for Period 1.4.2011 to 30.9.2011 Rs	Total Rs
1	Consultancy Service – Production & Management Related	-	46,649	46,649
2	Hire Service – Machinery	-	11,938	11,938
3	Factory Canteen – Outdoor Catering	2,69,882	-	2,69,882
4	Travel Ticket Service – Business	-	26099	26099
5	General Insurance – Mediclaim	40,66,031	-	40,66,031
6	Rent-a-Cab	1,63,211	-	1,63,211
		Total		45,83,810

6. Learned Counsel for Appellant further urges that the eligibility of credit on aforementioned services for the subsequent period (post 01.04.2011), has been considered by the Commissioner (Appeals) in OIA dated 30.05.2018 for the period 01.08.2015 to 31.03.2016 and in OIA dated 29.11.2018 for the period from 01.04.2016 to 31.03.2017, wherein, the learned Commissioner (Appeals) have held on merits that each of the aforementioned services has been used in manufacture of cigarettes and are eligible for credit, and held that save and except the Appellant is required to reverse the proportionate credit with respect to their trading turnover, ignoring the fact that the Appellants had already reversed the credit. Learned Counsel further draws our attention to Adjudication Order No. 09/2019 dated 18.09.2019 passed by Deputy Commissioner for the period April 2017 to June 2017 and Adjudication Order No.10/2019 dated 03.10.2019. In the said Order, the Deputy Commissioner took notice of the precedent orders of adjudication, most of which were passed by officers superior in rank, and after considering the issue of input service and its

eligibility in detail, has held that each of the aforementioned services are related to the manufacturing business of the Appellant either directly or indirectly and accordingly, held that the Appellant is entitled to Cenvat credit. Further held in favour of the Appellant the quantification of reversal of the proportionate credit with respect to their trading turnover as per Rule 6(3A) of Cenvat Credit Rules, 2004. These two OIO's were not appealed by the Department, and have thus attained finality.

7. Learned Counsel also draws our attention to the precedent order of this Tribunal in their own matter being Final Order No. 564/2011 dated 19.09.2011, where also similar issue of Cenvat credit and its eligibility on input service was involved. This Tribunal, in the said Final Order, have referred to ruling of the Bangalore Bench in ITC Ltd vs CCE [2010 (17) STR 146)], wherein also, similarly ITC for maintaining regular supply of soft wood for manufacture of paper and paper boards, had received certain services, which were held to be input services. This Tribunal took notice after perusal of agreement of the Appellant with one M/s SDSS, and found that services have been used by tobacco farmers for yielding good quality tobacco, fit for use in the manufacture of quality cigarettes. Further found that the Appellant has paid for the services which have been included in the cost of production of cigarettes, cannot be held otherwise than to be service received by the Appellant/Assessee. As regards the issue of nexus, this Tribunal in reference to Rule 2(l) observed that input service means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final product. Further observed, it is not in dispute that tobacco of good quality was required for manufacture of cigarettes. Again, it is not in dispute that it was for the production of good quality tobacco that the Appellant supplied tobacco seeds to the farmers free of cost and ensured that farmers received necessary supervisory and advisory services in relation to cultivation of tobacco. Accordingly, the Tribunal held that such services have been used by the Appellant, in cigarettes manufactured, either directly or indirectly in relation to manufacture of cigarettes which are dutiable, and thus held that nexus is established. The Tribunal further held that the Appellant is the service recipient as they have paid for the services in question and did not recover the same from the farmers, and that they have established the nexus between the services and them and the manufacture of their final products – cigarettes. That the services were ultimately utilized for production of good quality tobacco which was essentially for manufacture of their final product being – quality

cigarettes. It is also found that all common input services used such as Fumigation, inward transportation, godown rent, security services, etc are towards getting quality tobacco for manufacture of Cigarettes. Accordingly, this Tribunal holds that aforementioned services in question are eligible input services for the Appellant.

8. Learned Counsel further draws our attention that the aforementioned ruling of this Tribunal in ITC Ltd, was appealed against before the Hon'ble Andhra Pradesh High Court and the Hon'ble High Court have agreed with the findings of the Tribunal, dismissing the Appeal of the Revenue [2013 (32) STR 288 (AP)].

9. Learned Counsel further urges that vide Notification No. 13/2016-CE (NT) dated 01.03.2016, it has been further clarified that with respect to provisions of Rule 6(3A), the total credit to be considered for proportionate disallowance is the total Cenvat credit of common input services, and cannot include the Cenvat credit on input services exclusively used for manufacture of dutiable goods.

10. E/30020/2015 by Revenue with C.O by Assessee:

Learned Counsel further points out that so far the services in the nature of (i) Fumigation service, (ii) Security service, (iii) Leaf godown rent, (iv) Inward freight service, (v) Stock Insurance – Leaf, (vi) General Insurance (Stock & Machinery), (vii) Information service and SAP Support are concerned, the total credit involved is Rs.88,28,166/-, out of which the Court below have allowed credit of Rs.61,08,434/- against which Revenue is in Appeal. So far the balance amount disallowed i.e., Rs.24,03,001/- (+) Rs.3,16,731/- is concerned, learned Counsel mentions that majority of the amount is towards export turnover. Under Rule 6(5) of Cenvat Credit Rules, 2004, no reversal of credit is required for export turnover. However, Appellant have already reversed the proportionate credit on this account. She further urges that out of the amount reversed, an amount of Rs.22,32,973/- for the period 01.05.2008 to 31.03.2011 is attributable for export turnover, for which they are in Appeal, as the reversal was under protest, and that the same would be refundable along with interest. We hold that the Assessee is entitled to refund of the said amount of Rs.22,32,976/-, as no reversal is required under Rule 6 for export(s) as per Rule 6(5) of CCR.

11. So far Catering Service, Group General Insurance-Mediclaim and Rent-a-Cab service, disallowance, it is pointed out that the same are for the period before 31.03.2011, prior to deletion of word "business" from the definition of

Rule 2(l) and has been allowed in plethora of cases, are eligible credits and allowable. Catering services and 'Group General Insurance - Mediclaim', provided as mandated by Statute are for period before 31.03.2011 only, and no credits taken on these services subsequent to the said period.

12. In view of our aforementioned findings and observations, we hold that the Appellant is entitled to Cenvat credit under dispute i.e., Rs.45,83,700/- as mentioned herein above in Para 5. We also hold, the credit is allowable under Rule 2(l) for the services mentioned in Para 11 above.

13. Learned Counsel further points out with reference to the Certificate of Chartered Accountant dated 27.08.2015, wherein, the periodical turnover of dutiable and exempt goods is given, and accordingly, the ratio required for reversal with respect to exempt turnover has been worked out, and as per the said Certificate for the period April 2008 to March 2011, the total Cenvat credit required to be reversed for trading activity has been calculated at Rs.24,03,001/- and for period April 2011 to September 2011, an amount of Rs.3,16,731/- reversal calculated as per Rule 6(3A). According to the Appellant, this amount already stands reversed, and they have also paid interest, wherever applicable.

14. The Revenue is in appeal against the quantification of reversal of cenvat credit attributable to trading activity based on quantitative proportion, as against turnover, which is unfounded and hence their appeal stands rejected. Moreover, the Learned AR for Revenue accepted that if the Respondent/ Assessee has reversed the proportionate credit based on the order passed by the Deputy Commissioner in the aforementioned OIO Nos.9 & 10 / 2019 supra, it is acceptable by the Revenue and sought for verification of the calculations of proportionate reversal.

15. Thus, the Appeal and C.O by Assessee are allowed and Appeal by Revenue is dismissed.

16. So far as the other Appeals are concerned, the details are as follows:

S.No.	Appeal No. & Period involved	Amount disputed in Rs.	Services
1	ST/20563/2015 Oct 2012 to Sep 2013 (By Assessee)	67,37,898/-	Security Services, Godown Rent, Inward Freight, Fumigation Services, Information Service, Insurance Service, Subscription Service Consultancy Service – Management Production related.

2	E/30026/2016 Oct 2013 to Sep 2014 (By Department)	76,55,492/-	Travel Ticket Service, Consultancy Service (Management and Production related), Fumigation Service, Leaf Godown Rent, Information Service and SAP Support, Insurance Service, Inward freight service, security service, subscription service, Manpower hire service, works contract service, directors fee and supply of Tangible goods service
3	E/31124/2018 Aug 2015 to Mar 2016 (By Assessee)	60,49,463/-	Fumigation Services, Information Services & SAP Support Maintenance or Repair Service, Consultancy Service – Management Production related, Inward Freight Services, Leaf Godown Rent, Manpower Hire Services Security Service, Business Subscription Service, Subscription Service, Travel Ticket Business, C&F Service, Crane Hire Service, Insurance Service
4	E/30300/2019 Apr 2016 to Mar 2017 (By Assessee)	76,22,946/-	C&F Service – Duty paid godowns, Consultancy Service – Management Production related, Crane Hire Service, Information Service & SAP Support, Fumigation Service, Inward Freight Services, Manpower Hire Services, Maintenance or Repair Service, Security Service, Leaf Godown Rent, Travel Ticket Business, Insurance Service, Renting of Tangible Goods, Marketing Godown rent.

17. In view of our aforementioned findings, with respect to Appeal Nos. E/22293/2015 & E/30020/2015, we hold that all the aforementioned services in dispute for other years also are held to be eligible for Cenvat credit, under Rule 2(l) of CCR, 2004. However, we make it clear that Appellant is required to reverse proportionately under Rule 6(3) read with Rule 6(3A), with respect to their trading turnover (goods cleared in DTA as such) only for all the above-mentioned period in dispute. We further hold that Appellant is entitled to Cenvat credit on their export turnover, in view of Rule 6(5) of CCR, 2004.

18. Accordingly, we allow the Appeals by the Assessee and dismiss the Appeals by the Revenue. Cross Objections are also disposed of.

19. We further direct the Appellant/Assessee to file calculation of amount of reversal on trading turnover under Rule 6(3A), before the respective Original Adjudicating Authorities, who shall verify the same and if any discrepancy is found, the Appellant shall reverse the balance amount along with applicable interest, if any (with respect to goods cleared to DTA).With respect to clearances for export, the Appellant shall be entitled to refund of the credit already reversed, with interest, as per Rules.

20. In view of our aforementioned findings and observations, all penalties are set aside. Appellant shall be entitled to consequential benefits, in accordance with law, if any.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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