

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

S.T.Appeal No.70325-70327/13

Arising out of O/A Nos.14-16/JSR/2013 dated 16.01.2013 passed by
Commr. (Appeals) of Central Excise & Service Tax, Ranchi

M/s Rohit Surfactants Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise & Service Tax, Jsr.

RESPONDENT (S)

APPEARANCE

Shri Arijit Chakraborty, Adv. for the Appellant (s)
Shri S. S.Chattopadhyay, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 21. 05. 2017

ORDER NO.FO/76568-76570/2018

Per Shri P. K. Choudhary :

These appeals are filed by the appellants against the impugned
Orders-in-Appeal Nos.14-16/JSR/2013 dated 16.01.2013 passed by
Commr. (Appeals) of Central Excise & Service Tax, Ranchi.

2. Briefly stated the facts of the case are that the show-cause
notices were issued to the appellants for the alleged irregular
availment of credit of service tax paid on outward freight for the
purpose of transportation of their finished goods from their factory to
customers as well as from depots to customers. The Adjudicating
Authority confirmed the demand for the respective period along with

interest and also imposed equal amount of penalty under Rule 15(3) of the Cenvat Credit Rules, 2004. The details of the demands are as under :

Sl.No.	Appeal No.	Period	Demand (Rs.)	Penalty (Rs.)
1.	ST/70325/13	March, 2010 to July, 2010	4,66,861/-	4,66,861/-
2.	ST/70326/13	February, 2011 to July, 2011	404626.42	404626.42
3.	ST/70327/13	August, 2010 to January, 2011	3,71,986/-	3,71,986/-

On appeal, the Id.Commissioner (Appeals) by common Orders-in-Appeal, upheld the adjudication order. Hence, the present appeals before the Tribunal.

3. The Id. Advocate appearing on behalf of the appellants, reiterated the grounds of appeals and relied upon various decisions.

4. The Id.D.R. appearing on behalf of the Revenue, reiterated the findings of the lower authorities.

5. Heard both sides and perused the appeal records.

6. I find that the issue is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in the case of CCEx., Belgaum Vs. Vasavadatta Cements Ltd. reported in 2018 (11) GSTL (3) (S.C.).

The relevant paras of the above judgement are reproduced below :

“2. The entire issue hinges upon the interpretation that has to be given to input service which is defined in Rule 2(l) of the Cenvat Credit Rules, 2004. It may be stated at this stage itself

that all these appeals relate to a period prior to 1-4-2008. The aforesaid Rule was amended w.e.f. 1-4-2008 as would be noticed hereafter. However, since we are concerned with the unamended Rule, we reproduce the same hereunder :

“(I) “input service” means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales, promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;”

3. *The Full Bench of CESTAT in M/s. ABB Limited case, which has been upheld by the Karnataka High Court as mentioned above, has interpreted the aforesaid Rule observing that it is in two parts. In the first part, input service is defined with the expression “means” and in that context input service is defined as any service used by a provider of a taxable service or providing an output service or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products “from the place of removal”. It is further held that second part of the definition*

starts from “includes” where some of the services are mentioned, which are included as “input services”.

4. We may make it clear that in the instant appeals, we are concerned with the first part of the definition. Insofar as second part is concerned, certain contentions, which have been raised by some of the assesseees, have been rejected and that aspect is decided in favour of the Department. Since these appeals are filed by the Department questioning the interpretation that is given by the CESTAT as well as the High Court in respect of first part, we are not making any comments insofar as judgment of the CESTAT pertaining to second part is concerned.

5. Coming back to the first part of the definition as to what input service means, the Full Bench of the CESTAT held that all input services which are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products from the place of removal are concerned, they are treated as input services and Cenvat credit in respect of expenditure incurred in relation to such services would be admissible. The expression with which the CESTAT was concerned, and which was the subject matter of discussion, was as to what would be the meaning of “from the place of removal”. Obviously, any input service given for clearance of the final products “from the place of removal” and tax paid thereon the Cenvat credit has to be given. The question is from the place of removal up to what place. The assesseees had claimed the tax paid on the transportation of final products from the place of removal (i.e. the place of manufacture) to either the place to their respective depots or transport upto the place of the customers, if from the place of removal the goods were directly delivered at customers place. It is made clear that only first set of transportation from the place of removal was claimed. To put it otherwise, in those cases where the tax paid on transportation on the goods from the place of removal upto

the place of depot only that was claimed and if there was any such tax again paid from the place of depot to the place of customers, the Cenvat credit thereof was not claimed and there is no dispute about it.

6. *The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the High Court.*

“30. The definition of ‘input service’ contains both the word ‘means’ and ‘includes’, but not ‘means and includes’. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of ‘input service’ deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase ‘clearance of final products from the place of removal’ is used, it includes the transportation charges. Because, after the final products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer’s/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures

proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of 'input service'. However, as the legislature has chosen to use the word 'means' in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the 'input service' used by the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word 'includes'. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in that portion of the definition. Thereafter, the words 'activities relating to business' - an omni-bus phrase is used to expand the meaning of the word 'input service'. However, after using the omni-bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words 'inputs' or 'capital goods'. But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the customer. Therefore, 'input service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.

7. *As mentioned above, the expression used in the aforesaid Rule is "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, tax paid on the*

transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.

8. *Our view gets support from the amendment which has been carried out by the rule making authority w.e.f. 1-4-2008 vide Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 whereby the aforesaid expression “from the place of removal” is substituted by “upto the place of removal”. Thus from 1-4-2008, with the aforesaid amendment, the Cenvat credit is available only upto the place of removal whereas as per the amended Rule from the place of removal which has to be upto either the place of depot or the place of customer, as the case may be. This aspect has also been noted by the High Court in the impugned judgment in the following manner :*

“However, the interpretation placed by us on the words ‘clearance of final products from the place of removal’ and the subsequent amendment by Notification 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word ‘from’ in the said phrase in place of ‘upto’ makes it clear that transportation charges were included in the phrase ‘clearance from the place of removal’ upto the date of the said substitution and it cannot be included within the phrase ‘activities relating to business’.”

5. By respectfully following the ratio as laid down by the Hon’ble Supreme Court in the case of Vasavadatta Cements Ltd. (supra), the demand is upheld. However, I find that there were divergent views of different High Courts on the eligibility of cenvat credit on outward transport of goods from the place of removal upto the customer’s premises or the depots as the case may be. The present issue has been finally settled by the judgement of the Hon’ble Supreme Court in the case of Vasavadatta Cements Ltd.(supra) and decided on 17.01.2018. I find

that the Hon'ble Supreme Court in the case of Jaiprakash Industries Ltd. Vs. CCE : 2002 (146) ELT 481 (S.C.), held that extended period of five years was not invocable as Revenue had no evidence of any fraud, collusion, wilful mis-statement or suppression of facts by the assessee. In view of the divergent views of the High Court on the issue, the Apex Court found that the appellants had entertained a bonafide belief and had availed cenvat credit accordingly. As the Tribunal, the Hon'ble High Courts and the Hon'ble Supreme Court expressed different views at different stages on this issue, which was critical to decide the issue involved therein, the Apex Court decided that the extended period of limitation could not be invoked. There was scope for the assessee to entertain the bonafide belief that the cenvat credit on the service tax paid on outward transportation up to the place of removal was available to them. Accordingly, it is my considered view that the penalties imposed under Rule 15(3) of the Cenvat Credit Rules, 2004, are not warranted.

6. In view of the above discussions, I set aside the penalties imposed on the appellants. Accordingly, the appeals filed by the appellants are partly allowed.

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

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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