

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

Excise Appeal No. 528 of 2011

(Arising out of Order-in-Original No. 82/2010/C dated
29.12.2010 passed by the Commissioner of Central Excise,
Nagpur)

M/s Raymond UCO Denim Pvt Ltd
Plot no. C1, MIDC, Lohara,
Yavatmal

Appellant

Vs.

Commissioner Of Central Excise,
Office of Customs & Central excise,
Civil Lines, Telangkhedi Road,
Nagpur

Respondent

Appearance:

Shri P.V. Sadavarte, Advocate for the appellant
Shri N.N. Prabhudesai, Supdt. (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER No: A/86345 / 2019

Date of hearing : 08-04-2019

Date of decision : 05-08-2019

PER: C J MATHEW

This is an appeal against order-in-original no. 82/2010/C dated
29th December 2010 of Commissioner Of Central Excise, Nagpur
denying CENVAT credit of ₹94,16,769/-, having been availed on
taxes paid for procurement of 'courier service' between April 2005

and September 2009 and of ₹3,93,971/- on utilising services of ‘job workers’ for the same period. The denial of CENVAT credit on the former was consequent on the finding that the definition of ‘input service’ in rule 2(l) of CENVAT Credit Rules, 2004 specifies various activities that are directly or indirectly connected with the manufacture of goods or rendering of services which does not extend to any activity beyond the place of removal.

2. It is the contention of Learned Counsel for appellant that as manufacturers of denim fabric of various specifications, ‘courier service’ is utilised for despatch of samples to potential customers and that it is the resulting orders that are manufactured. Laying particular emphasis on customised production, Learned Counsel submits that such service is inextricably connected with business and well within the inclusive component of the definition referred *supra* during the relevant period. It is his further submission that the appellate authority had dropped the notices pertaining to subsequent periods and that sustaining of denial for the period in dispute would be patently inconsistent. On the eligibility of taxes discharged on procuring service of job workers as CENVAT credit, it is his contention that the relayering of the rolling machine deployed at the factory arising from wear and tear was entrusted to another entity who had charged them tax as provider of ‘business auxiliary service.’ According to Learned Counsel for appellant, the bar on availment of

credit of taxes which are subject to conditional exemption does not extend to notification no. 8/2005-ST which is one such and that, in any case, section 93 of Finance Act, 1994, being substantially different from section 5A of Central Excise Act, 1944, cannot be placed at par for such treatment. It is also contended that the denial of CENVAT credit amounts to reopening of assessment at the time of availment which is contrary to settled law for which reliance is placed on the decision of the Hon'ble High Court of Karnataka in *Commissioner of Central Excise, Bangalore II v. Federal Mogul TPR India Ltd* [2016 (42) STR 427 (Kar.)]. It is also his contention that the show cause notice dated 29th April 2010 was without jurisdiction as the bar of limitation is an impediment to recovery of taxes for the extended period as the appellant was subject to audit every year.

3. Learned Authorised Representative placed reliance on the definition of 'courier' in section 65(33) of Finance Act, 1994 to demonstrate its substantive connection with transport. It was submitted that, as the samples are removed, on payment of duty by appellant, the place of removal is the factory and not the premises of the consignee; consequently in this dispute which straddles the pre-amended and post amended versions of rule 2(l) of CENVAT Credit Rules, 2004 the expenditure incurred after removal of the goods excludes the claim for availment of CENVAT credit. He also contends the various case laws relied upon by the appellant predate

the decision of the Hon'ble Supreme Court in *Commissioner Of Central Excise & Service Tax v. Ultra Tech Cement Ltd* [2018 (9) GSTL 337 (SC)]. He also contends that the decision of the Tribunal in *Universal Cables Ltd v. Commissioner of Central Excise, Bhopal* [2007 (7) STR 310 (Tri-Del)] has made it abundantly clear that any activity akin to outward transportation is not entitled to avail as CENVAT credit.

4. In so far as the tax levied on conversion fee charged by the job worker, as provider of 'business auxiliary service', we find that the activity for which service tax has been levied pertains to rendering capital goods workable at regular intervals of usage. The input services pertain to tax discharged on goods used in the manufacture or services utilised for such activity. The repair of machinery is undoubtedly entitled to be considered as a service that has a connection with the manufacturing process. However, it is the tax paid as recipient of 'business auxiliary service' that is claimed to be eligible. We find no evidence on record that the service on which tax was incurred pertained to relayering of machinery used in production. Such evidence is required as, *prima facie*, relayering does not readily lend itself to conformity with definition in Section 65(19) of Finance Act, 1994. We find no reason to consider the tax paid on 'business auxiliary service' to be one that conforms the definition of 'input service' in rule 2(1) of CENVAT Credit Rules, 2004.

5. 'Courier service' was undisputedly, utilised for shipment of samples. Admittedly, the samples themselves are not the finished product and the availment of 'courier service,' even if for dispatch of samples is an expenditure that goes into the value of the final product. Though 'courier services' are utilised for despatch of samples, 'transportation' is an entirely different taxable entry, and the transportation that is referred to in the said definition pertain to tax on transportation of goods by road. There is also no doubt that the disputed CENVAT credit is related to manufacture of the finished goods. Hence, on a plain reading of the provisions of rule 2(l) of CENVAT Credit Rules, 2004 and the facts and circumstances of the present dispute, along with superfluity, of one to one correlation between 'input services' and 'output,' it would appear that the availment is not incorrect in law. The dispute *re Ultra Tech Cement Ltd* pertained to availment of 'goods transport agency service' for the period after 23rd August 2007 which is germane to the exclusion of finished goods. Here the dispute is limited to samples which, though dutiable as goods, is not at par with the output of manufacturing process. In *re Universal Cables Ltd* too, the issue pertains to clearance of finished goods which could not be considered, by any stretch, as 'input service' for manufacture of goods. Furthermore, in *Commissioner of Customs, Jaipur –I v. Sakata Inx (India) Ltd [2018 (16) GSTL 416 (Raj.)* the deployment of courier agency has been linked to business activities which are covered by the inclusive

portion of rule 2(l) of CENVAT Credit Rules, 2004. In *Alkraft Thermo Technologies Pvt Ltd v. Commissioner of GST and Central excise, Chennai North Commissionerate* [2018-TIOL-3443-CESTAT-MAD], it was held by the Tribunal that ‘courier services’ find use in relation to manufacturing activity. In *Commissioner of Central Excise, Customs and Service tax, Surat II v. Unique Pharmaceuticals Laboratories* [2017-TIOL-3856-CESTAT-AHM], the absence of any challenge on the admissibility of CENVAT credit in courier services prior to 1st April 2011 was recorded thus

‘Therefore, the contention of the Revenue that unless the activity has a direct nexus with the manufacturing of goods in the factory premises, post deletion of the expression activities relating to business, could not entitle the assessee to avail credit on the service tax paid on services, including ‘Courier Services’ which are not directly connected with the manufacturing activity. It cannot be denied that ‘Courier Services’ involves a host of uses relating to the activity of manufacture and sale of goods. For example, the documents relating to technical expert’s opinion, sample testing report, sending of samples, machine catalogue etc., are received and dispatched by utilising the services of ‘Courier’ and it cannot be said that these are de hors of the activities of manufacturing business. This Tribunal in the cases of Long Meditech Ltd and Sunbeam generators Pvt Ltd (supra) opined that credit avail on Service Tax paid on ‘Courier Serves’ is eligible to Cenvat Credit.’

6. In view of our findings above, the denial of CENVAT credit on availment of services of courier is not in accordance with law and must be set aside. However, in relation to the activity on which tax was discharged by the supplier of business auxiliary service, we find that the coverage of business auxiliary service cannot be held to extend to such activity for the purpose of availment of CENVAT credit. Appellant has raised the plea of bar of limitation as the show cause notice has invoked the extended period. The fact that there had been regular audits does not anywhere hide the suppression of relevant information which could have been laid to crystallisation of tax liability. Audit can only unearth which is declared and which is on record. The activity of business auxiliary service not being entitled to CENVAT credit in the given circumstances, would not be on record. Hence the plea of limitation does not merit acceptance.

7. In the light of the above, we allow the appeal to the extent indicated above.

(Order pronounced in open court on 05/08/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)