CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Excise Appeal No. 86572 of 2019

(Arising out of Order-in-Appeal No. CD/156/BEL/2015 dated 14.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s. Savita Oil Technologies Ltd. **Appellant**
17/17A, TTC Industrial Area,
MIDC, Pawane, Navi Mumbai 400 703.

Vs.

Commissioner of CGST & C.E., Belapur **Respondent**
CGO Complex, 1st floor, Sector 10,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Mehul Jivani, Chartered Accountant, for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 06.04.2022
Date of Decision: 06.04.2022

FINAL ORDER NO. A/85513/2022

This appeal is directed against Order-in-Appeal No. CD/156/BEL/2015 dated 14.01.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai-II, upholding Order-in-Original No. Belapur II/Range II/123/AK/DC/2014-15 dated 17.07.2014 of the Deputy Commissioner, Central Excise, Belapur II Division. By the said order, the Deputy Commissioner has held as follows:-

"ORDER

(a) I order to recover the Cenvat Credit of Rs. 3,87,685/- (Rupees Three Lakh Eighty Seven Thousand Six Hundred Eighty Five only), from M/s Savita Oil Technologies Ltd., Plot No.17-17A. TTC Industrial Area, MIDC, Pawane, Navi Mumbai, under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with the provisions of Section 11A and the proviso to Section

11AA 1(A) (Presently Section 11A(S)) of the Central Excise Act, 1944;

(b) I order to recover interest from M/s Savita Oil Technologies Ltd., Plot No.17-17A, TTC Industrial Area, MIDC, Pawane, Navi Mumbai, under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944 on the amount confirmed at (a) above.

(c) l impose Penalty of Rs. 3,87,685/- (Rupees Three Lakh Eighty Seven Thousand Six Hundred Eighty Five only), upon M/s Savita Oil Technologies Ltd., Plot No.17-17A, TTC Industrial Area, MIDC, Pawane, Navi Mumbai, under the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004, read with Section 11AC (now Section 11AC(1)(A) of the Central Excise Act, 1944,1 also order that, in terms of Section 11AC(c) of the Central Excise Act, 1944, the penalty shall be twenty five percent of penalty amount of Rs.3,87,685/-, if the duty as confirmed at (a) above and interest payable thereon is paid within 30 (thirty) days of the date of communication of this order."

2.1 The issue involved is in respect of cenvat credit taken on (i) Club membership, (ii) Rent a cab, (iii) Tour operator and (iv) Hotel accommodation, for the period both post and amendments made in the definition of 'input service' in 2011.

3.1 I have heard Shri Mehul Jivani, Chartered Accountant for the appellant and Shri Sanjay Hasija, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned C.A. submits that:

- The issue involved in the matter is no longer res integra and in their own case the Tribunal has vide order No. A/90763/17/SMB dated 13.10.2017, set aside similarly worded order of Commissioner (Appeals).
- In respect of services like club membership, Tribunal has allowed the benefit to them vide order No. A/90010/17/SMB dated 22.09.2017.
- He would rely upon the following decisions in his support:

CREDIT OF CLUB MEMBERSHIP SERVICE IS ADMISSIBLE
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CESTAT ORDER NO. A/90010/17/SMB DATED 22.09.2017 ARISING OUT OF ORDER-IN-APPEAL NO: PK/160/Bel/2016 DATED 28.12.2016 PASSED BY COMMISSIONER(A)
ORDER-IN-APPEAL NO: PK/160/Bel/2016 DATED 28.12.2016 PASSED BY COMMISSIONER(A)
M/S. SAVITA OIL TECHNOLOGIES LTD 2018 (4) TMI 1385 - CESTAT MUMBAI
HCL TECHNOLOGIES 2015 (37) S.T.R. 716 (All.)
ZENSAR TECHNOLOGIES LTD. 2016 (42) S.T.R. 570 (Tri-Mumbai)
ROHIT SURFACTANT PVT LTD 2018 (9) TMI 741 - CESTAT NEW DELHI
SAMPLE INVOICE NO. 112/CFO/2012-13 DATED 25.06.2012 ISSUED MY IMA
CREDIT OF HOTEL ACCOMODATION SERVICE IS ADMISSIBLE
-
CESTAT ORDER NO. A/90010/17/SMB DATED 22.09.2017 ARISING OUT OF ORDER-IN-APPEAL NO: PK/160/Bel/2016 DATED 28.12.2016 PASSED BY COMMISSIONER(A)
ORDER-IN-APPEAL NO: PK/160/Bel/2016 DATED 28.12.2016 PASSED BY COMMISSIONER(A)
ORDER-IN-ORDER NO. CCESA-RT(APP)AT-119-201-19 DATED 12.9.2018
ONE ADVERTISING & COMMUNICATION SERVICES LTD. 2012 (27) S.T.R. 344 (Tri. - Ahmd.),
CREDIT OF RENT-A-CAB SERVICE IS ADMISSIBLE
-
MARVEL VINYLS LTD. 2017 (49) STR 424 (Tri-Del)
M/S. SUNDARAM CLAYTON LTD. 2018(7) TMI 688- CESTAT CHENNAI
CREDIT OF TOUR OPERATOR SERVICE (SERVICE OF TRANSPORTATION OF EMPLOYEES TO FACTORY) IS ADMISSIBLE
-
M/S. SAVITA OIL TECHNOLOGIES LTD 2018 (4) TMI 1385 - CESTAT MUMBAI
SAVITA OIL TECHNOLOGIES LTD. 2014-TIOL-114 CESTAT MUMBAI
STANZEN TOYOTETSU INDIA (P) LTD. 2011 (23) S.T.R. 444(Kar)
BELL CERAMICS LTD. 2012 (25) S.T.R. 428(Kar)
FEDERAL MOGUL GOETZE (INDIA) LTD. 2015 (39) S.T.R. 735 (P &H)
SAMPLE INVOICE NO. SAL534 DATED 3101.2013 ISSUED BY D.C.GUPTA &
CREDIT OF SERVICES USED FOR BUSINESS PURPOSE SHOULD BE ALLOWED EVEN AFTER 01.04.2011
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RELIANCE INDUSTRIES LTD. 2016 (45) S.T.R. 383 (Tri - Mumbai)

ZENSAR TECHNOLOGIES LTD. 2016 (42) S.T.R. 570 (Tri - Mumbai)
XILINX INDIA TECH SERVICES PVT LTD 2016 (44) S.T.R. 635 (Tri-Hyd)
VIRCHOW LABORATORIES LTD. 2017 (51) S.T.R. 443 (Tri - Hyd)
HONDA MOTORCYCLE & SCOOTER (I) PVT. LTD. 2016 (45) S.T.R. 397 (Tri-Chan.)
VODAFONE ESSAR SOUTH LTD. 2017 (51) S.T.R. 77 (Tri - All.)
CENVAT CREDIT CAN BE DEMANDED ONLY WHEN THE SAME HAS BEEN USED PRIMARILY FOR PERSONAL USE OR CONSUMPTION OF AN EMPLOYEE
ACG ASSOCIATED CAPSULESP LTD. 2019 (20) G.S.T.L. 346 (BOM)
GANESAN BUILDERS LTD. 2019 (20) G.S.T.L. 39 (MAD)
NETCRAKER TECHNOLOGIES SOLUTIONS INDIA PVT. LTD. (4) G.S.T.L. 10 (Tri - Hyd.)
HINDUSTAN PETROLEUM CORPORATION LTD. 2017 (47) S.T.R. 33 (Tri - Hyd.)
MERE PAYMENT OF TAX SHALL NOT AMOUNT TO ACCEPTANCE OF LIABILITY
DUNLOP INDIA LTD., 1983 (13) ELT 1566 (SC)
IN CASE OF DISTRIBUTION OF INELIGIBLE CREDIT BY THE ISD THE SHOW CAUSE NOTICE SHOULD BE ISSUED TO THE ISD AND NOT THE FACTORY
GOLDFREY PHILIPS INDIA LTD. 2009 (14) STR 375 (Tri-Ahmd)
UNITED PHOSPHORUS LTD. 2013 (30) S.T.R. 509 (Tri-Ahmd)
CASTROL INDIA LTD. V. CCE, VAPI, 2013 (291) E.L.T. 469 (Tri-Ahmd)
TIME BARRED
CONTINENTAL FOUNDATION JT. VENTURRE 2007 (216) ELT 177 (SC)
LANXESS ABS LTD. 2010 (259) ELT 551 (TRI-AHM)
PENALTY
UNIFLEX CABLES LTD. 2011 (271) E.L.T. 161(SC)

3.3 Learned AR reiterates the findings recorded in the impugned order. For the period post 2011, he would rely upon the decision of Hon’ble Bombay High Court in the case of Solar Industries India Ltd. [2021 (12) TMI 1047 – Bombay High Court], specifically in respect of tour operator service.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 I find that the same Commissioner (Appeals) has vide order-in-appeal No. CD/727/Bel/2015 dated 06.11.2015 has held as follows:-

"4.1. The admissibility of the credit has to be decided under Rule 3 of Cenvat Credit Rules, 2004 which allows credit of Service tax or cess paid on the inputs services received by the manufacture for use in, or in relation to the manufacture of final products. The term 'input service is defined with reference to use i.e. for providing an output service /used by the manufacturer, whether directly or indirectly, in or relation to the manufacture of final products and clearance of final products. Thus the credit was admissible in the instant case, if the services received were for use in or in relation to the manufacture of final product or their clearance. Rule 3(1) of the Cenvat Credit Rules, 2004 allows a manufacturer to avail Cenvat credit on service tax paid on input services.

4.2. Rule 2(1) of the Cenvat Credit Rules, 2004, during the relevant period, defines "input service" as follows:

"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 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 up to 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"

4.3 It is seen that in the instant case the appellant has availed the said services which are relating to business purposes. It is seen that definition of Input services contained the words and phrases "activities relating to business such as during the material period. In view of above, the said services will fall under the definition of Input Services under Rule 21) of Cenvat Credit Rules, 2004.

4.4. In view of the above discussed provisions, I hold that the appellant is eligible for credit of service tax paid for the period upto March, 2011. However, the credit availed for the period from April, 2011 to onwards is not admissible in view of the amended definition of Input services as amended Rule 201) of the Cenvat Credit Rules, 2004 came into force vide Notification No. 3/2011-CE (NT) dated 01.03.2011 with effective from 01.04.2011 more specifically by the exclusion of the word activities related to business from the definition of the input services. The CBEC Circular No. 943/4/2011-CX. dated 29-4-2011 also clarified on the issue related to availment of the cenvat credit under Cenvat Credit Rules, 2004. I find that an amount of Rs.1,31,590/- admittedly, has been availed by the appellants on the said services. In view of the above discussion I hold that the appellant is not eligible for credit of service tax paid on impugned service for the period April, 2011to May, 2013. Accordingly, the impugned order of the lower adjudicating authority is partially modified as per above terms. In the circumstances of the case, the imposition of penalty also has been restricted to the extent of the inadmissible credit."

4.3 These findings have been considered by the Tribunal vide order No. A/90763/17/SMB dated 13.10.2017 which set aside the said order-in-appeal. The relevant para of the Tribunal's order is reproduced below:-

"5. I find that as per the nature of the service there is no dispute that it is used in the overall functioning of the appellant's business. On all these services this tribunal time and again decided that these services are input service and Cenvat credit is admissible. The decisions covered the issue are reproduced below:-

	In case of distribution of ineligible credit by the ISD, the Show cause notice should be issued to the ISD and not the unit.
a)	Godfrey Philips India Lt., 2009 (14) STR 375 (Tri. Ahmd)
b)	United Phosphorus Ltd. 2013 (30) S.T.R. 509 (Tri. - Ahmd.)
c)	Castrol India Limited v. CCE, Vapi, 2013 (291) E.L.T. 469 (Tri. - Ahmd.)
	Definition of input service w.e.f. 01.04.2011
	Credit of Hotel accomodation service and Membership of business association service has been allowed in appellant's own case
a)	CESTAT Order No. A/90010/17/SMB dated 22.09.2017
b)	PH Notice dated 06.09.2017 for Appeal No. E/85253/17-MUM
c)	Order-in-Appeal No. PK/160/Bel/2016 dated 28.12.2016 passed by Comm (A)
	Credit of rent-a-cab service is admissible
a)	Marvel Vinyls Ltd. 2017 (49) STR 424 (Tri Del)

	Credit of Tour operator service (service of transportation of employees to factory) is admissible
a)	Savita Oil Technologies Ltd. 2014-TIOL-114 Cestat Mum
b)	Stanzen Toyotetsu India (P) Ltd. 2011 (23) S.T.R. 444 (Kar.)
c)	Bell Ceramics Ltd. 2012 (25) S.T.R. 428 (Kar.)
d)	Federal Mogul Goetze (India) Ltd. 2015 (39) S.T.R. 735 (P & H)
	Credit of services used for business purpose should be allowed even after 01.04.2011
a)	Reliance Industries Ltd. 2016 (45) S.T.R. 383 (Tri. - Mumbai)
b)	Zensar Technologies Ltd. 2016 (42) S.T.R. 570 (Tri. - Mumbai)
c)	Xilinx India Tech. Services Pvt. Ltd. 2016 (44) S.T.R. 635 (Tri. - Hyd.)
d)	Virchow Laboratories Ltd. 2017 (51) S.T.R. 443 (Tri - Hyd)
e)	Honda Motorcycle & Scooter (I) Pvt. Ltd. 2016 (45) S.T.R. 397 (Tri. - Chan.)
f)	Vodafone Essar South Ltd. 2017 (51) S.T.R. 77 (Tri. - All.)
	Continental Foundation Jt. Venture 2007 (216) ELT 177 (SC)
	Lanxess ABS Ltd. 2010 (259) ELT 551 (Tri - Ahm)

In view of the above settled legal position, I am of the view that in respect of all the services in question credit is admissible. As regard the Cenvat credit in respect of rent a cab service on or after 1-4-2011 as per the amended rule 2(l) of Cenvat credit rules, credit on rent a cab service is not admissible. Accordingly, demand of Cenvat credit on rent a cab service from 1-4-2011 onwards is upheld, remaining demand of Cenvat credit and entire penalty is set aside. Appeal is partly allowed in the above terms."

5.1 Since the issue has been settled by the Tribunal and as per learned C.A., the order or the Tribunal has been accepted by the Revenue, I would respectfully follow the said order.

5.2 Accordingly appeal is allowed in all other cases except for rent a cab service.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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