

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 1022 OF 2012

[Arising out of Order-in-Appeal No: YDB/30 to 36/LTU/MUM/2012 dated 29th March 2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai.]

Reliance Industries Ltd

PO Petrochemicals, Dist: Vadodara – 391 346

... Appellant

versus

Commissioner of Central Excise & Service Tax

LTU

8th Floor, Centre-I World Trade Centre, Cuffe Parade

Mumbai - 400005

...Respondent

APPEARANCE:

Shri Kartik Dedhia with Ms Hema Doshi and Ms Shilpa Balani, Advocates for the appellant

Shri Sydney D'Silva, Additional Commissioner (AR) for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86239 /2022

DATE OF HEARING:

23/06/2022

DATE OF DECISION:

22/12/2022

PER: C J MATHEW

The appellant, M/s Reliance Industries Ltd, manufacturer of excisable goods at their facility in Vadodara, had been issued with show cause notice dated 13th October 2010 for denying CENVAT credit which ultimately was limited to ₹ 13,31,172/- held as ineligible for being premium paid for group insurance to cover employees opting for 'voluntary separation scheme (VSS)' in March 2010. The order-in-original was upheld by Commissioner (Appeals) in order-in-appeal no. YDB/30 to 36/LTU/MUM/2012 dated 29th March 2012 leading to this appeal before us.

2. According to Learned Counsel for the appellant, the dispute stands resolved by response of the Larger Bench of the Tribunal in *Reliance Industries Ltd v. Commissioner of Central Excise & Service Tax (LTU), Mumbai [2022-TIOL-336-CESTAT-MUM-LB]* relating to denial of credit availed in March 2007.

3. Learned Authorised Representative submits that final decision in the appeal connected with the matter referred to the Larger Bench *supra* was yet to be pronounced.

4. On consideration of the facts, we find that an identical issue had been referred to the Larger Bench, as submitted by Learned Counsel for the appellant, and it had been held therein that

'30. The contention of the appellant is that the Scheme was announced to keep the business operations of the

appellant viable and sustainable in the long run because the continued losses incurred by IPCL would have increased and the appellant would not have been in a position to carry the manufacturing operations if the business itself had become unviable. The submission, therefore, is that the premium paid by the appellant for providing mediclaim to such employees who had adopted VSS was aimed at keeping the manufacturing operations viable and running and, therefore, had a direct nexus to the manufacturing operations.

31. This submission of Learned Counsel for the appellant has substance. As noticed above, VSS was for the existing employees and was not an option to be exercised by those employees who had retired. In fact, compensation/benefits under the VSS were to extend only up to the notional age of superannuation of the employees who had opted for VSS. It was in order to avoid continued losses and to bring about a situation that would enable the appellant to run its business and manufacturing activities that the Scheme was floated. Input service, as defined in Rule 2(l) of the 2004 Rules, means any service used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products and includes services used in relation to activities relating to business. The aforesaid service has been used by the appellant directly in relation to activities relating to business. The Scheme, therefore, certainly has a direct nexus to the manufacturing operations.

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52. The interpretation of Rule 2(l) of the 2004 Rules has been conclusively settled by the jurisdictional Bombay High Court in Coca Cola India and Ultratech Cement. It has also been consistently so held in Principal Commissioner v. Essar Oil Ltd. [2016 (41) STR 389 (Guj.)], Commr. of S.T.,

Mumbai-II v. Willis Processing Services (India) Pvt. Ltd. [2017 (7) GSTL 12 (Bom.)] and Commr. of C. Ex. & Service Tax v. Tata Consultancy Services Ltd. [2018 (362) ELT 777 (Bom.)]. It would be pertinent to reproduce the relevant portion of the judgment of the Bombay High Court in Tata Consultancy Services and it is as follows :

“2. The Revenue proposes the questions at page Nos. 6 and 7 as substantial questions of law. However, these very questions have been considered by this Court in the two judgments. One rendered in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. reported in 2010 (260) ELT 369. That judgment and order has been followed by another Bench in deciding Central Excise Appeal No. 168 of 2017 (The Commissioner, Service Tax, Mumbai-II v. M/s. Willis Processing Services (India) Pvt. Ltd. [formerly known as M/s. Tgrinity Computer Processing (India) Pvt. Ltd.] decided on 13th September, 2017. [2017 (7) GSTL 12 (Bom.)].

3. In the light of these two judgments and 3. orders, the questions proposed in the present appeal cannot be treated as substantial questions of law. The appeal is therefore disposed of in terms of the aforesaid two judgments.

53. In view of the aforesaid discussion, it has to be held that credit can be availed on the amount of insurance premium paid by the appellant to the insurance company for availing mediclaim of employees who had opted for the VSS announced by the appellant as the service that was rendered would amount to ‘input service’ in terms of Rule 2(l) of the 2004 Rules, as it stood at the relevant time; it being in relation to activities relating to business.

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60. It needs to be remembered that eligibility of credit under the 2004 Rules is not linked to the manner in which duty is discharged on the finished goods for if this approach is accepted, the appellant would be entitled to avail credit on the input services if the finished goods are only cleared for

captive consumption to another sister unit. Conversely, if the entire production was cleared as sales to independent parties, the appellant would not be entitled to such credit.

61. *This issue has, in fact, been settled by the jurisdictional Bombay High Court in Ultratech Cement. The department had contended that the assessee would not be eligible to avail Cenvat credit on certain input services as duty on cement was payable on tonnage basis and not on ad valorem basis. In that case, reliance had been placed by the assessee on the decision of the Larger Bench of the Tribunal in GTC Industries for contending that it was eligible to avail credit, since services had formed part of the cost of production and, therefore, also formed a part of the assessable value of the finished goods on which duty liability was to be discharged. The decision of the Larger Bench in GTC Industries had, in turn, relied on a press note holding that, “In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value of which excise duty is charged”. The Department, while controverting the submission of the assessee pointed out that the Larger Bench decision in GTC Industries was inapplicable since duty was actually being paid on the finished goods i.e. cement, not on the assessable value or the cost of production, but on tonnage basis. This contention of the Department was rejected by the High Court in Ultratech Cement and the relevant observations are as follows :*

“24. In the present case, the dispute is, whether the assessee is entitled to take credit of service tax reimbursed by the assessee to the outdoor caterer (whose services were engaged for providing canteen facilities to the employees of the assessee) and utilize the said credit in discharging the excise duty/CENVAT payable on the cement manufactured by the assessee?

25. In the present case, the CESTAT following the Larger Bench decision of the Tribunal in the case of GTC

Industries Ltd. (supra) held that the assessee is entitled to the credit of service tax paid on the outdoor catering services. According to the Revenue, the Tribunal was wrong in relying upon Larger Bench decision of the CESTAT in the case of GTC Industries Ltd. (supra) because in that case the CENVAT on the final product was payable on the assessable value, whereas in the present case the CENVAT on cement is payable on tonnage basis. We see no merit in the above contention because, if in law the assessee is entitled to take credit of service tax paid on outdoor catering services then the said credit cannot be denied merely because the duty on cement is levied on tonnage basis. Therefore, the fact that the CENVAT on cement is payable on tonnage basis cannot be a ground to deny the credit of service tax if in law the assessee is entitled to the credit of service tax paid on outdoor catering service.”

62. *The two decisions of the Tribunal in Reliance Industries in the matter concerning the appellant, rely on the judgment of the Karnataka High Court in Millipore India, wherein the Court held that if service tax has been paid in respect of any service, which forms a part of the value of the final product, the assessee would certainly be entitled to Cenvat credit of such service. This judgment of the Karnataka High Court approved the decision of the Larger Bench of the Tribunal in GTC Industries and also referred to the CAS-4 Standards. The referring order does not cite any judgment taking a view contrary to the one taken by the Karnataka High Court in Millipore India.*

63. *The Bombay High Court in Ultratech Cement and Coca Cola India are also in line with the view taken by the Karnataka High Court in Millipore India.*

64. *The judgment of any High Court (not just the jurisdictional High Court) would be binding, unless there is a contrary view taken by a different High Court. In the present case, the judgments of the jurisdictional High Court are consistent with the decision of the Karnataka High Court in Millipore India. This being the position, there is no basis for doubting the correctness of the view expressed by the*

Tribunal in Reliance Industries in the two matters concerning the appellant.

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69. *Since CAS-7 defines the expression ‘employee cost’, in general, all references to employee costs in the Cost Accounting Standards, including in CAS-4, will have to take the same meaning as provided in CAS-7. It is clear from CAS-7, that employee costs include payments made in cash or kind and refers to not only the present costs by way of salaries, wages and employee welfare benefits, but also future benefits such as gratuity, leave encashment, VRS and other employee benefits. It also includes benefits to family members and dependents.*

70. *It is thus clear from CAS-7 that medical benefits pertaining to employees and dependents, even if they are in terms of VRS/retirement/separation schemes, are an integral part of the ‘employee cost’.*

5. In view of the precedent decision in an identical dispute of the very same appellant, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 22/12/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)