CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 268 of 2011

(Arising out of Order-in-Appeal No. RT/71-72/LTU/MUM/2010 dated 24.11.2010 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit, Mumbai)

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Appellant**
8th Floor Centre-I World Trade Centre Cuffe Parade Mumbai-400005

VERSUS

M/s Reliance Industries Ltd. **.....Respondent**
Reliance Corporate Park, Block-5, Wing-B, TTC Industrial Area, Thane Belapur Road, Ghansoli, Navi Mumbai-400710

<u>Appearance:</u>

Shri Xavier Mascarenhas, Authorized Representative for the Revenue
Shri Vipin Jain, Advocate for the Respondent

WITH

Excise Appeal No. 416 of 2011

(Arising out of Order-in-Appeal No. RT/71-72/LTU/MUM/2010 dated 24.11.2010 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit, Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Village Mora PO: Bhatha, Hazria, Dist-Surat Gujarat-394510.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre
Cuffe Parade Mumbai-400005.

WITH

Excise Appeal No. 417 of 2011

(Arising out of Order-in-Appeal No. RT/71-72/LTU/MUM/2010 dated 24.11.2010 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit , Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Reliance Corporate Park, Block-5, Wing-B, Village
Mora PO: Bhatha, Hazria, Dist-Surat,
Gujrat-394510.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre
Cuffe Parade, Mumbai-400005.

WITH

Excise Appeal No. 418 of 2011

(Arising out of Order-in-Appeal No. RT/71-72/LTU/MUM/2010 dated 24.11.2010 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit , Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Village Mora PO: Bhatha, Hazria, Dist-Surat
Gujrat-394510.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre
Cuffe Parade, Mumbai-400005.

WITH

Excise Appeal No. 778 of 2012

(Arising out of Order-in-Appeal No. YDB/10/LTU/MUM/2012 dated 30.01.2012 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit , Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Village Mora Post Bhatha Surat-Hazria Road
Surat, Gujarat -394510.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre
Cuffe Parade, Mumbai-400005.

WITH

Excise Appeal No. 779 of 2012

(Arising out of Order-in-Appeal No. YDB/10/LTU/MUM/2012 dated 30.01.2012 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit , Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Village Mora Post Bhatha Surat-Hazria Road
Surat, Gujarat -394510.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre,
Cuffe Parade, Mumbai-400005

WITH

Excise Appeal No. 1315 of 2012

(Arising out of Order-in-Appeal No. YDB/63/LTU/MUM/2012 dated 31.05.2012 passed by Commissioner (Appeals) Central Excise and Service Tax, Large Taxpayer Unit , Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
B1-B5 and A3, MIDC Indl. Area
Patalganga,
Raigad-410220

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre,
Cuffe Parade, Mumbai-400005

Excise Appeal No. 454 of 2012

(Arising out of Order-in-Original No 13/COMMR(KAP)/LTU/Ex/2011 dated 28.12.2011 passed by Commissioner of C,EX,& S. TAX LTU Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Refinery & Petrochemical Division.
Village Meghpar/Padana, Motikhavdi,
Tal-lalpur, District-Jamnagar-361142.

VERSUS

Commissioner of Central Excise & Service Tax (LTU), Mumbai **.....Respondent**
8th Floor Centre-I World Trade Centre,
Cuffe Parade, Mumbai-400005.

WITH

Excise Appeal No. 455 of 2012

(Arising out of Order-in-Original No 12/COMMR(KAP)/LTU/Ex/2011 dated 28.12.2011 passed by Commissioner of C,EX,& S. TAX LTU Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Refinery & Petrochemical Division.
Village Meghpar/Padana, Motikhavdi,
Tal-lalpur, District-Jamnagar-361142

VERSUS

Commissioner of Central Excise **.....Respondent**
& Service Tax (LTU), Mumbai
8th Floor Centre-I World Trade Centre,
Cuffe Parade, Mumbai-400005

WITH

Excise Appeal No. 1119 of 2012

(Arising out of Order-in-Original No 23/COMMR (KAP)/LTU/Ex/2011 dated 23.04.2012 passed by Commissioner of C,EX,& S. TAX LTU Mumbai)

M/s Reliance Industries Ltd. **.....Appellant**
Refinery & Petrochemical Division.
Village Meghpar/Padana, Motikhavdi,
Tal-lalpur, District-Jamnagar-361142

VERSUS

Commissioner of Central Excise **.....Respondent**
& Service Tax (LTU), Mumbai
8th Floor Centre-I World Trade Centre,
Cuffe Parade, Mumbai-400005.

Appearance:

Shri Vipin Jain, Advocate for the Appellant
Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86218-86227/2023

Date of Hearing: 01.08.2023
Date of Decision: 01.08.2023

PER : S.K. MOHANTY

These appeals are directed against the Order-in-Appeal Nos. RT/ 71-72/LTU/MUM/2010 dated 24.11.2010, YDB/10/LTU/MUM/2012 dated 30.01.2012 and YDB/63/LTU/MUM/2012 dated 31.05.2012 passed by Commissioner (Appeals), Central Excise and Service Tax, Large Taxpayer Unit, Mumbai, and Order-in-Original Nos. 13/COMMR (KAP)/LTU/Ex/2011 dated 28.12.2011, 12/COMMR(KAP)/LTU/Ex/2011 dated 28.12.2011 and 23/COMMR(KAP)/LTU/Ex/2011 dated 23.04.2012 passed by Commissioner of C.EX. & S. Tax, LTU, Mumbai.

2. Brief facts of the case are that the appellants are engaged *inter alia,* in the business of manufacture and sale of petroleum and chemical products, falling under Chapters 27 and 29 of the Central Excise Tariff Act, 1985 in various factories located at Jamnagar, Surat and Raigad. To ensure uninterrupted production and also for reasons of safety, the appellants had set up townships nearer to their manufacturing facilities with the objective of having smooth and efficient functioning of their manufacturing activities. The appellants avail Cenvat credit of central excise duty paid on the inputs and capital goods as well as service tax paid on the input services. During the disputed period i.e., April, 2005 to December, 2010, the appellants had availed Cenvat credit on various input services used for construction, maintenance and operation of the said townships. Taking of cenvat credit was disputed by the department on the ground that the disputed services do not qualify to be "input service" as defined under Rule 2(l) of the Cenvat Credit Rules, 2004. The department had contended that the disputed services viz., Construction, Erection, Commissioning or Installation services, Works

Contract service, Maintenance and Repair services, Security service, Architect's service, Consulting Engineer's service and Insurance (of residential township) service, are not conforming to the definition of input service either in the main part or in the inclusive part contained therein. The show cause notices issued by the department were adjudicated upon by the authorities below in confirming the Cenvat demands of Rs.15,67,28,535/- in all the cases referred above.

3. Revenue has assailed the impugned order dated 24.11.2010 passed by the Learned Commissioner (Appeals) on the ground that the cost of catering recovered by the appellants from their employees should not be considered as input service for the purpose of availment of Cenvat benefit. The appellants-assessee have assailed the impugned orders passed by both the Commissioner of Central Excise & Service tax and the Commissioner (Appeals) of Central Excise & Service Tax on the ground that the service tax paid on the disputed services were utilized by the appellants for accomplishing the business purpose and thus, should be considered as "input service" as per the definition provided in Rule 2(l) *ibid*. The appellants-assessee have specifically contented that the inclusive part of the definition of 'input service' has categorically taken within its ambit the phrase "*activities relating to business*", for consideration as input service for the purpose of availment of Cenvat Credit of service tax paid on the various services.

4. Learned Advocate appearing for the appellants-assessee submitted that the issue arising out of the present dispute is no more *res integra*, in view of the Final Order No. A/3412-3419/2015/WZB/STB dated 15.10.2015 passed by this Tribunal, in the case of the appellants

themselves, reported in 2016 (42) STR 457 (Tri. Mum.). He further submitted that the service element and the service tax paid on the disputed services were considered as a constituent of the cost of production of the final products, on which Central Excise duty has been paid on removal of the said goods outside the factory premises. In this context, he has placed reliance on the certificate dated 28.11.2009 issued by M/s. Bavadekar & Co., Cost Accountants. Thus, Learned Advocate submitted that since the disputed services were considered as relevant for use in or in relation to manufacture of the final products and specifically included in the inclusive part of the definition of input service *ibid*, the disputed services should be considered as input service, for the purpose of the availment of Cenvat Credit thereon. He further submitted that the main part of the definition of input service also included within its ambit all the disputed service for consideration of input service inasmuch as those services were used directly or indirectly in the manufacture of the final product, on which the appellants have discharged the Central Excise duty liability.

5. On the other hand, Learned Authorized Representative appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that with regard to Cenvat Credit taken on outdoor catering service by the appellants, the same is not permissible inasmuch as those services were not used by the appellants for manufacturing their final product and also cannot be considered as the business-related expenses, since the same were recovered from the employees. In this context, Learned Authorized Representative has relied upon the Judgment of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nagpur Vs. Ultratech Cement Ltd.

reported in 2010 (260) ELT 369 (Bom.). With regard to availment of Cenvat Credit by the appellants in respect of various services used in the residential township, Learned Authorized Representative has stated that since those services have no connection whatsoever in the manufacture of the final products, the same cannot be considered as input service and the service tax paid on those disputed services shall not be eligible for Cenvat Credit to the appellants. In this context, learned A.R. has relied upon the judgment of Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nagpur Vs. Manikgarh Cement - 2010 (20) STR 456 (BOM.).

6. Heard learned Advocate for the appellants and learned A.R. for Revenue and examined the case records, including the written note of submissions filed by both sides.

7. With regard to the appeal filed by the Revenue, we find that the cost incurred by the appellants-assessee towards the outdoor catering services were subsequently recovered from the employees. In this context, the Hon'ble Bombay High Court in the case of Ultratech Cement Ltd. (supra) have held that Cenvat Credit shall not be eligible to the manufacturer, where the cost of the food is borne or recovered from the workers. Learned Advocate for the appellants also fairly concedes that the appellants had not contested such demands dropped by the original authority. Thus, we are of the view that there is merit in the appeal filed by the Revenue in respect of the impugned order No. RT/71-72/LTU/MUM/2010 dated 24.11.2010. Therefore, by setting aside the impugned order to the extent, it has allowed the Cenvat

Credit on the outdoor catering service, the appeal is allowed in favour of Revenue.

8. The period of dispute involved in this case is from April 2005 to December 2010. The relevant definition of "input service" under Rule 2(l) ibid, existed at the material time, is extracted herein below:

> *"2(l) "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 upto 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;"*

9. On perusal of the above definition clause, it transpires that a manufacturer of final product(s) is permitted to avail Cenvat credit of service tax paid on various services, considering the same as input service, in the eventuality, when those services are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products up to the place of removal. The said definition has also provided the inclusive part, which *inter alia,* has considered the phrase "*activities relating to*

business", for consideration as input service for the purpose of availing the Cenvat benefit provided under the statute. On examination of the case records, more particularly the certificate dated 28.11.2009 issued by the cost accountants, we find that the disputed services were utilized by the appellants for accomplishing their business activities and the service tax paid on those disputed services were considered as the part and parcel of the cost of production of the final products. It is not the case of Revenue that the appellants-assessee had not discharged the Central Excise duty on manufacture and clearance of the final products from their factory. Since, the cost of production was arrived at as per the Cost Accounting Standard-4 (CAS-4), such determination of costing cannot be questioned by Revenue on the ground that the disputed services were not used/utilized by the appellants-assesse for manufacture of the final products. Thus, we are of the considered view that denial of Cenvat Credit on various disputed services should not stand for judicial scrutiny and those services should be considered as "input service" as per the definition contained in Rule 2(l) *ibid*. We find that for the earlier period, this Tribunal in the case of the appellants-assessee themselves, reported in 2016 (42) S.T.R. 457 (Tri.-Mumbai) has allowed Cenvat Credit on the disputed services, by holding that the services which form part of assessable value on which Central Excise duty is discharged on finished goods, are input services for allowing the Cenvat benefit. The relevant paragraphs in the said order are extracted herein below:

> "***8.*** *We find that the learned Counsel was correct in bringing to our notice that the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. (supra) in Paragraphs Nos. 34, 38 and 43 held as under: -*

"34. It is therefore, clear that the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. manufacturer or service provider. In order to avoid the cascading effect, the benefit of Cenvat credit on input stage goods and services must be ordinarily allowed as long as a connection between the input stage goods and services is established. Conceptually as well as a matter of policy, any input service that forms a part of the value of the final product should be eligible for the benefit of Cenvat credit.

Revenue's contention, if accepted as in the present case, would go against the very core and genesis of Cenvat credit scheme. In our opinion, such an interpretation would be plainly unacceptable.

38. Service tax therefore, paid on expenditure incurred by the assessee on advertisements, sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. In other words, credit of input service must be allowed on expenditure incurred by the assessee which form a part of the assessable value of the final product. If the above is not done, as sought to be done by the department in the present case, it will defeat the very basis and genesis Cenvat i.e. value added tax.

43. What follows from the above discussion is that the credit is availed on the tax paid on the input service, which is advertisement and not on the contents of the advertisement. Thus it is not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. The manufacturer thereby can avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion."

8.1 *It can be seen from the above reproduced relevant paragraphs from the judgment of the Hon'ble High Court the ratio is very clear inasmuch as the Cenvat credit* *has to be allowed in respect of the service tax which has been paid and which forms a part of the value of the finished goods on which excise duty is charged.*

8.2 *The reliance placed by the learned D.R. in the case of Manikgarh Cement (supra) needs to be addressed by us as the lower authorities have also relied upon the very same judgment to hold against the appellant herein. On perusal of the judgment of the Hon'ble High Court of Bombay in the case of Manikgarh Cement (supra) we find that the judgment of the Hon'ble High Court in the case of Coca Cola India Pvt. Ltd. (supra) was not cited before them. Be that as it may, we also find that in the narration of the facts as recorded by the Hon'ble High Court there is nothing which indicates that the assessee's Counsel had urged an argument that the cost of setting up of residential township/colony and subsequent maintenance was included in the cost of the final product and considered for arriving at assessable value. In the absence of any such proposition from the Counsel, their Lordships had taken a view which is correct in the facts and circumstances of that case, while the case in hand before us, the issue seems to be now squarely covered by the judgment of the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. We find strong force in the contentions raised by the learned Counsel that the Hon'ble High Court in the case of Manikgarh Cement (supra) had not decided the issue, as it was never raised before them i.e. cost of setting up of the township/colony and the maintenance cost thereof is included in the cost of production for arriving at assessable value of the final products. It is settled law that a decision is an authority only on the proposition that it decides and not what was not urged or considered therein or what can be said to be logically flowing these from {see Mittal Engineering Works (P) Ltd. (supra), Fiat India Pvt. Ltd. - 2012 (283) E.L.T. 161 (S.C.).} In view of this we hold that the ratio as laid down by the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. (supra) is specifically on the point raised by the appellant before the lower authorities as well as before us."*

10. In view of the foregoing discussions, we are of the considered opinion that the impugned orders passed by the Ld. Adjudicating authority and the Ld. Commissioner (Appeals), in denying the Cenvat benefit on the afore mentioned services cannot be sustained.

Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

11. In the result, the appeals filed by both the assessee-appellants and Revenue are allowed.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

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