

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

WEST ZONAL BENCH

EXCISE APPEAL NO: 87865 OF 2013

[Arising out of Order-in-Appeal No: BPS/50-52/LTU/MUM/2013 dated 16th April 2013 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Mumbai.]

Commissioner of Central Excise & Service Tax

Large Taxpayer Unit

29th Floor, Centre-I, World Trade Centre, Cuffe Parade
Mumbai - 400005

... Appellant

versus

Reliance Industries Ltd

Reliance Corporate Park, Block 5, Wing B, First Floor
5 TTC Industrial Area, Thane-Belapur, Ghansoli
Navi Mumbai - 400701

...Respondent

APPEARANCE:

Shri Bhilegaonkar Deepak, Additional Commissioner (AR) for the appellant

Shri Karthik Dedhia, Advocate for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87023/2023

DATE OF HEARING:

22/06/2023

DATE OF DECISION:

18/10/2023

PER: C J MATHEW

This appeal of Revenue has been caused by in the success of the

appeal of M/s Reliance Industries Ltd before the first appellate authority in relation to the recovery of CENVAT credit, ordered by the original authority for the period from January 2005 to March 2008 while adjudicating five show cause notices for different establishments of the assessee on the charge that CENVAT credit of ₹ 1,56,87,484/-, being tax paid towards utilization of ‘goods transport agency service’, was ineligible. The sole contention in the grounds of appeal is that the conditions prescribed for eligibility to avail such credit, in circular of Central Board of Excise and Customs (CBEC) no. 97/8/2007-ST dated 23rd August 2007, had not been evidenced as having been complied with.

2. Learned Authorised Representative contended that, as per the circular, it was necessary for the assessee to establish that ownership of goods remained with them, that risk of loss of goods devolved on the assessee and that transport charges up to the premise of the customers are integral part of value of the goods on which excise duty had been discharged. He pointed out that the original authority had confirmed the demands in the show cause notices owing to the failure of the assessee to demonstrate compliance with these. Learned Authorised Representative also submits that the said circular had been upheld by the Hon’ble High Court of Punjab & Haryana in *Ambuja Cements Ltd v. Union of India* [2009 (236) ELT 431 (P&H)].

3. Learned Counsel for the appellant placed reliance on the decision of the Larger Bench of the Tribunal in *ABB Ltd v. Commissioner of Central Excise & Service Tax, Bangalore* [2009 (15) STR 23 (Tri.-LB)] which was upheld by the Hon'ble High Court of Karnataka in *Commissioner of Central Excise & Service Tax, LTU, Bangalore v. ABB Limited* [2011 (23) STR 97 (Kar.)] and considered in the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd* [2018 (11) GSTL 3 (SC)] affirming the eligibility of such credit for the period prior to 1st April 2008.

4. The issue arose in the contest of the definition of 'input service' in rule 2(l) of CENVAT Credit Rules, 2004, prior to amendment effected in 2008, wherein the outward transportation from the 'place of removal' was included.

5. The decision of the Larger Bench of the Tribunal in *re ABB Ltd* that was approved thereafter by the Hon'ble High Court of Karnataka in disposing off appeal of Revenue and which also found approval of the Hon'ble Supreme Court in *re Vasavadatta Cements Ltd*, thus

'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 assessee 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’.”

has settled the issue.

6. The entire period of dispute in this appeal pertains to the period of pre-amended rule 2(l) of CENVAT Credit Rules, 2004. It was incumbent upon the central excise authorities to establish that the relevant conditions in the said circular had not been complied with. It

is not open to the show cause notice issuing authority or the adjudicating authority to level allegation without evidence in support of ineligibility for shifting the onus of establishing fulfilment of the conditions on the assessee.

7. In view of the settled law as settled by the Hon'ble Supreme Court, this appeal of Revenue lacks merits and is dismissed.

(Order pronounced in the open court on 18/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*