CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86072 OF 2015
WITH
EXCISE CROSS-OBJECTION NO: 91199 OF 2015
(on behalf of respondent)
IN

[Arising out of Order-in-Original No: 108/MAK(108) COMMR/RGD/ 2014-15 dated 11th February 2015 passed by the Principal Commissioner of Central Excise & Customs, Raigad.]

Unichem Laboratories Ltd
99 MDIC Industrial Estate, Dhatav
Tal: Roha, Dist: Raigad – 402 116 ... ***Appellant***

versus

Commissioner of Central Excise
Central Excise Building, Khandeshwar
Navi Mumbai – 410 206 ***...Respondent***

APPEARANCE:

Shri Parth Parekh, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO: 85716/2024

DATE OF HEARING: 24/07/2024
DATE OF DECISION: 25/07/2024

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein, is engaged in the manufacture of Chemical Products, falling under Chapter 29 of the Central Excise Tariff Act, 1985. The appellant avails CENVAT credit of Central Excise duty paid on the inputs/capital goods and service tax on the input services. During the disputed period i.e., March 2009 to May 2013, the appellant had availed CENVAT credit on various services, which were sought to be denied on the ground that those services are not confirming to the definition of 'input service', contained in Rule 2(l) of the CENVAT Credit Rules, 2004. The Show Cause Notice (SCN) dated 31/01/2014 issued by the department had proposed for denial of CENVAT amounting to ₹ 3,77,54,971/- availed by the appellant on the services viz., Foreign Remittances (Banking and Financial Services), Hotel Bills, Hospitality, Tours and Travels (Rent-a-Cab) and Air Travel Services. The matter arising out of the SCN was adjudicated by the Learned Principal Commissioner of Central Excise and Customs, Navi Mumbai vide the impugned order dated 11/02/2015, wherein out of the total demand of ₹ 3,77,54,971/- proposed for recovery in the SCN, an amount of ₹ 1,88,73,609/- was confirmed, on the premise that the disputed services did not qualify as input service inasmuch as such services did not have an integral nexus to the manufacture of the excisable goods. In respect of denial of CENVAT credit of ₹ 1,88,81,362/-, as proposed in the SCN, the learned adjudicating authority has dropped such proposal, holding that Foreign Remittance (Banking and Financial Services) and Hotel Services qualify as 'input service' under Rule 2(l) *ibid*, as applicable up to the period 31/03/2011. The impugned order, to the extent it has denied the CENVAT credit amounting to ₹ 1,88,73,609/- and ordering for recovery of interest along with imposition of penalties, was assailed by the appellant by way of filing this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. The case of the appellant falls under both the un-amended definition of 'input service' (upto 01/04/2011) and the amended definition thereafter. In the un-amended definition, the phrase '*activities relating to business'* was specifically finding place in the inclusive part contained therein, for consideration as 'input service'. We find that the department had not raised any specific objections to the submissions made by the appellant that the disputed services were used by them for accomplishing the purpose of their manufacturing business. Since, the disputed services were used by the appellant for carrying out the business activities and the cost of such services were considered as the cost of production of the final product, it cannot be said that such services are not confirming to the definition of 'input service', prior to the period 01/04/2011. We find that the issue arising out of the present dispute (prior to 2011 amendment) is no more *res integra*, in view of the judgment delivered by the Hon'ble Bombay High Court in the case of *Commissioner of Central Excise, Nagpur vs. Ultratech Cement Ltd. [*2010 (10) TMI

13 – Bombay High Court] and *Oil and Natural Gas Corpn. Vs. CCE, Service Tax and Customs* [2013 (4) TMI 103 – Bombay High Court]. The phrase 'input service' contained in Rule 2(l) *ibid* was analysed by the Hon'ble High Court and it was held that the said phrase is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products, but also includes various other services, which are used in relation to the business of manufacture of the final products. Therefore, we are of the considered view that the appellant should be entitled for CENVAT credit taken by them on the disputed services prior to the period 01/04/2011.

4. The definition of 'input service' was amended with effect from 01/04/2011. The effect of the amendment is that any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, was considered as 'input service', for the purpose of availment of CENVAT credit of service tax paid thereon. However, an exclusion clause was contained in the said definition, providing that certain category of services shall not be considered as input service. In clause (C) of the exclusion list, it has been provided that certain category of services, when used primarily for personal use or consumption of any employee, shall not be considered as input service. We find from the submissions made by the appellant that the disputed services were used and utilized by them, either

directly or indirectly, in or in relation to the manufacture of the final products; and that do not fall under the exclusion clause provided in the definition. Since, the disputed services are not categorized as the excluded category of service(s), provided in the definition clause, we are of the view that the CENVAT benefit on the disputed services should be available to the appellant, by considering the same as 'input service'. The scope and ambit of the definition of 'input service' (w.e.f. 01/04/2011) was interpreted by the Co-ordinate Bench of this Tribunal, in the case of *Pepsico India Holdings (Pvt.) Ltd. vs. Commissioner of Central Tax, Tirupati,* reported in 2021 (7) TMI 1094-CESTAT Hyderabad. The relevant paragraphs in the said order are extracted herein below.

> *"21. For a service to qualify as 'input service' under CENVAT Credit Rules, 2004 post 2011, the service in question need not be covered even by the very wide definition of manufacture under section 2(f) of the Central Excise Act. Any service which is used not only in manufacture but also 'in relation to' manufacture will also qualify as input service. The scope of input service is further enlarged with the expression whether directly or indirectly used in the definition of input service. Thus, there are:*
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> *a) Actual manufacture;*
>
> *b) Processes incidental or ancillary to manufacture which are also manufacture;*
>
> *c) Activities directly in relation to manufacture (i.e., in relation to 'a' and 'b' above);*

> *d) Activities indirectly in relation to manufacture (i.e., in relation to 'a' and 'b' above);*
>
> *22. All four of the above qualify as input service as per Rule 2(l) (ii) as applicable post 1.4.2011. Although setting up the factory is not manufacture in itself, it is an activity directly in relation to manufacture. Without setting up the factory, there cannot be any manufacture. Services used in setting up the factory are, therefore, unambiguously covered as 'input services' under Rule 2 (l) (ii) of the CENVAT Credit Rules, 2004 as they stood during the relevant period (post 1.4.2011). The mere fact that it is again not mentioned in the inclusive part of the definition makes no difference. Once it is covered in the main part of the definition of input service, unless it is specifically excluded under the exclusion part of the definition, the appellant is entitled to CENVAT credit on the input services used. This Bench has already taken this view in Kellogs. Similar views have been taken by the other Benches in the other cases mentioned above."*

5. We find that the disputed services involved in the present appeal were considered as 'input service' by the Tribunal in the case of *C.C.E., Delhi vs. Fiamm Minda Automotive Ltd.* [2016 (3) TMI 64 – CESTAT New Delhi], *Secure Meters Ltd. vs. CE & ST-Udaipur* [2018 (8) TMI 950 – CESTAT New Delhi], *Accenture Services Pvt. Ltd. vs. Commissioner of S.T., Mumbai-II* [2015 (40) S.T.R. 719 (Tri.–Mumbai)], *Hindustan Petroleum Corporation Ltd. vs. C.C.E., Visakhapatnam-I* [2017 (47) S.T.R. (Tri. – Hyd.)], *M/s Reliance Industries Ltd. vs. Commissioner of Central Excise & Service Tax, LTU, Mumbai* [2016 (8) TMI 123 – CESTAT Mumbai] and *RMZ Infotech Pvt. Ltd. vs. Commr. of Central Tax, Bengaluru East* [2022 (64) G.S.T.L. 599 (Tri. –

Bang.)].

6. Learned AR appearing for Revenue has placed reliance on the judgment of Hon’ble Supreme Court in the case of *Maruti Suzuki Ltd. vs. Commissioner of Central Excise, Delhi-III* [2009 (8) TMI 14 – Supreme Court] and Hon’ble Bombay High Court in the case of *Commissioner of C. Ex., Nagpur vs. Manikgarh Cement* [2010 (20) S.T.R. 456 (Bom.), to submit that the disputed services would not be considered as ‘input service’. We find that the co-ordinate Bench of this Tribunal, in the case of *Commissioner of Central Excise, Trichy vs. Madras Cement Ltd.* [2019 (370) E.L.T. 568 (Tri.-Chennai) has dealt with the judgments relied upon by the learned AR. The relevant paragraph in the said order is extracted below:-

> *“9. The definition as seen above has a ‘means’ part and an ‘includes’ part. In the mean part, it says that any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of the final products and clearance of final products upto the place of removal would be an input service. The ‘includes’ part is worded in such a way that it takes in a large number of services which includes services used not only directly or indirectly, in or in relation to manufacture of final products and their clearance. The meaning of the word ‘includes’ was considered by the Hon’ble Apex Court while deciding the interpretation of the said word in the definition of ‘inputs’ in Cenvat Credit Rules, 2004. In the decision of Ramala Sahkari Chinni Mills Ltd. v. Commissioner of Central Excise, Meerut-I - 2010 (260) E.L.T. 321 (S.C.), the Larger Bench of the Hon’ble Supreme Court observed that the word ‘includes’ cannot*

be given a restrictive interpretation. As seen from the definition of 'input service' for the period prior to 1-4-2011, input service included the services used in relation to setting up of factory and also office in relation to factory. The staff colony is situated within the factory premises. The intention of providing such residential facility to the employees is to ensure availability of sufficient number of employees to attend the work in the factory at required time. The Hon'ble High Court of Andhra Pradesh in the case cited supra, had analysed the said issue and observed that such services for construction of residential complex is intrinsically connected to the activity of manufacture. When the residential colony is provided to ensure the availability of workers round the clock, it would fall within the category of activities relating to business of manufacture. We do take note of the fact that the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise v. Manikgarh Cement - 2010 (20) S.T.R. 456 (Bom.) has held that Cenvat credit is not eligible on construction service used in constructing residential colony as such activity is not intimately connected with the business of assessee. The High Court observed that it is merely a welfare activity and not covered by the expression 'activities relating to business'. In the said case, the need for such residential facility inside the factory was not stressed. The Ld. Consultant has submitted that the residential colony was constructed to ensure availability of workers at all times, in the mines as well as the factory. Thus, the said activity cannot be considered as a mere welfare activity. Further, the decision of Hon'ble High Court of Bombay in Manikgarh Cement (supra) was rendered relying upon the case of Maruti Suzuki Ltd. v. Commissioner of Central Excise - 2009 (240) E.L.T. 641 (S.C.). The said decision was rendered in a case of interpretation of 'inputs' and not 'input services'. Moreover, the decision rendered in Maruti Suzuki Ltd. (supra) was doubted and referred to a Larger

> *Bench and differed as reported in 2010 (260) E.L.T. 321 (S.C.). The decision in the case of Maruti Suzuki Ltd. - 2009 (240) E.L.T. 641 (S.C.) being no longer good law, the judgment rendered in the case of Manikgarh Cement relying upon the decision in the case of Maruti Suzuki Ltd. (supra), in our opinion would not be applicable."*

7. During the course of the arguments, the Learned Advocate for the appellant submitted fairly that post 01/04/2011, they would not be entitled for CENVAT credit on 'Rent-a-Cab' service and accordingly, he would not press for the same. The appellant would pay up that part of the demand, as it relates to Rent-a-Cab service post 01/04/2011. We accept the contention of the appellant in view of the exceptions provided under the definition of 'input service' w.e.f. 01/04/2011.

8. In view of the above, the impugned order is modified to the extent of confirming the demand of CENVAT credit availed on Rent-a-Cab service w.e.f. 01/04/2011 along with interest. Rest of the demands are however set aside.

9. The appeal is partly allowed in the above terms.

(Order pronounced in the open court on 25/07/2024)

(S.K. MOHANTY)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)

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