CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85344 of 2024
&
Excise Miscellaneous Application No. 86365 of 2024

In

Excise Appeal No. 85500 of 2015

(Arising out of Order-in-Original No. 17-27/COMMR/M-III/KCG/2014-15 dated 26.11.2014 passed by the Commissioner of Central Excise, Mumbai-III)

M/s CEAT Ltd. **.... Appellant**
Dr. Annie Besant Road, Worli,
Mumbai - 400 018.

Versus

Commissioner of Central Excise, Mumbai-III .... Respondent
4th Floor, Vardaan Trade Center,
MIDC, Wagle Estate,
Thane (W) – 400 604.

AND

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(Arising out of Order-in-Original No. 17-27/COMMR/M-III/KCG/2014-15 dated 26.11.2014 passed by the Commissioner of Central Excise, Mumbai-III)

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Thane (W) – 400 604.

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri C.S. Vinod, 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/87126/2024

Date of Hearing: 12.11.2024

Date of Decision: 12.11.2024

Per: S.K. Mohanty

Revenue has filed the miscellaneous application, seeking change of name and address of the respondent. The prayer made by the Revenue is considered and accordingly, Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:-

"Commissioner of Central Goods Service Tax & Central Excise,
Navi Mumbai Commissionerate,
16th Floor, Satra Plaza, Sector -19D, Palm Beach Road,
Vashi, Navi Mumbai – 400 705".

2. Briefly stated, the facts of the case are that the appellants herein are engaged, *inter alia*, in the manufacture of tyres and tubes for motor vehicles. The appellants avail CENVAT Credit of central excise duty paid on the inputs and Service Tax paid on the input services, used in or in relation to the manufacture of the said final products. During the period in dispute, the appellant had received various taxable services namely, Air Travel Agent, Architect, Business Support Service, Clearing & Forwarding, Club Membership, Telephone, GTA, Housekeeping, Design & Development, Chartered Accountant Services, Sponsorship services, Outdoor Catering services etc., and availed the CENVAT Credit of Service Tax paid by the service providers and reflected in the invoices issued by them. Taking of CENVAT Credit was disputed by the Department on the ground that the disputed services are not in conformity with the definition of 'input service' as per Rule 2(l) of the CENVAT Credit Rules, 2004. The show-cause proceedings initiated by the Department for different periods, were adjudicated upon by the learned Commissioner of Central Excise, Mumbai-III, vide Order-in-Original No. 17-27/COMMR/M-III/KCG/2014-15 dated 26.11.2014, wherein proposed CENVAT Credit demand of Rs. 9,49,87,048/- was confirmed along with interest and also equal amount of penalty was imposed on the appellant under Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. Feeling aggrieved with the impugned order dated 26.11.2014, the appellants have preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submitted that the definition of input service is very wide in its scope; it covers within its ambit the services used, directly or indirectly, in or in relation to

manufacture of final product, as well as services essential for day to day manufacturing activity. He further submitted that since the disputed services were used in relation of manufacture of final products, the same are covered under the phrase "means" portion used in the definition clause of the 'input service'. With regard to the credit availed for the period prior to 01.04.2011, he has submitted that the phrase "activities relating to business" was specifically finding place in the definition of 'input service', for consideration of availment of CENVAT Credit on the disputed services. Learned Advocate has submitted a table, showing the category of the disputed services, the nature of use of such services by the appellants and the relevant judicial pronouncements, wherein the CENVAT Credit was held to be allowed in favour of the assessee-manufacturer. The table submitted by the learned Advocate for the appellants is extracted herein below: -

Sr. No.	**Category of service**	**Disputed Credit (Rs.) Availed Prior to 1.4.2011**	**Disputed Credit (Rs.) Availed Post 1.4.2011**	**Description**	**Relevant Case laws**
1	C&F Agent	7,03,88,600	-	C&F agents are appointed for receiving goods manufactured by the Appellant, loading/ unloading, documentation, collection of money, storing them and subsequently dispatching them to customers on instructions of the Appellant. (Refer submission in para 9*infra*.)	1. Ambuja Cements Ltd. Vs. CCE (2023) 4 Centax 351 (T) 2. Judgements in sr. no. 11 to 15 of case law compilation
2	Custom House Agent Service (Export)	63,89,756	-	Services received from CHA are in relation to booking of container, transportation of goods from factory to dock, documentation, liaising with customs, port authorities, municipal authorities, sales tax, getting permissions, guidance under various schemes etc. (Refer submission in para 9 *infra*.)	1. CCE Vs. Bhilai Engineering Corporation Ltd. 2016 (41) STR 774 (T) 2. CBEC Circular No. 999/6/2015-CX, dated 28.2.2015 3. Judgments in sr. no. 17 to 21 of case law compilation
3	GTA	60,46,415	-	i) GTA Services used for inward transportation of inputs and capital goods from the port to various manufacturing units (credit amounted to Rs.59,80,742/-) ii) Credit pertains to transportation of finished	1. CBEC Circular No. 1065/4/2018-CX, dated 8.6.2018 2. M/s. CEAT Ltd. Vs. CCE 2022 (10) TMI 1213 - CESTAT MUMBAI

				goods upto the premises of C&F Agent - Rs. 65,673/- (Detailed bifurcation provided at page 567 and 568 of the appeal memo) (Refer submission in para 9 *infra*.)	3. Judgments in sr. no. 24 to 26 of case law compilation
4	Club or association membership	52,57,194	4,90,751	Appellant is a member of Automotive Tyre Manufacturers Association (ATMA), All India Rubber Industries Association (AIRIA), Confederation of Indian Industry (Cll). The said associations assist their members by providing technical data i.e. prices of natural rubber and other raw materials, market conditions etc.	1. ITC Ltd. Vs. CCE 2018 (12) GSTL 182 (T) 2. CCE Vs. Nash Industries 2016 (45) STR 233 (T)
5	Cargo Handling services	17,73,493	-	Appellant availed cargo handling services such as loading, unloading, booking of space for container, port charges, documentation etc. for the purpose of export of final products manufactured by them.	CCE Vs. Inductotherm India P. Ltd. 2014 (36) STR 994 (Guj.)
6	Business support services	13,05,564	-	Appellant has received business support services from overseas service provider for procurement of orders for sale of finished goods manufactured by them. Appellant also availed said service from local service providers in relation to management and maintenance of IT software, Octroi agent service, which is used for inward transportation of inputs, etc. which are an integral part of the business operations of the Appellant company. The Appellant in their Annexure to letter dated 9.7.2014 (which provides the list of services on which the Appellant had discharged service tax on reverse charge basis) have clearly mentioned payment towards "Business Support Services".	Robert Bosch Engg. & Business solutions Ltd. Vs. CCE - 2017 (51) STR 329 (T)

7	Air Travel Agent	4,28,677	2,77,359	Air Travel Agent service availed by the Appellant is used for business travel of employees. It is an activity directly or indirectly related to a manufacturing activity of the Appellant.	1. M/s. Finolex Industries Final Order No. A/85899-85900/2023 dated 11.5.2023 2. Judgments in sr. no. 32 to 34 of case law compilation
8	Steamer Agent services	4,14,915	-	Services availed in respect of export of goods at the port.	Semco Electrical Pvt. Ltd. Vs. CCE 2010 (18) STR 177 (T)
9	Housekeeping	3,48,700	-	Appellant availed housing keeping services for the upkeep and maintenance of Sales office and Head office.	1. Ambuja Cements Ltd. Vs. CCE (2023) 4 Centax 351 (T) 2. Balkrishna Industries Ltd. Vs. CCE 2010 (254) ELT 301 (T)
10	Stock Exchange Services	1,59,036	21,219	Appellant paid processing fees and annual listing fees to National Stock Exchange and Bombay Stock Exchange for listing/issue of shares, bonds, mutual funds etc.. The said service helps Appellant company to raise funds for undertaking its manufacturing activity.	Hinduja Foundries Ltd. Vs. CCE 2017 (3) GSTL 294 (T)
11	Sponsorship Services	1,57,590	-	Appellant has sponsored for advertisement of its manufactured final products. Appellant has sponsored various events at various locations all over the country for promotion and marketing of business of Appellant company. The expenses incurred by the Appellant are in nature of advertisement.	Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE&ST - 2018 (363) ELT 1087 (T)
12	Design & Development of moulds required for manufacture	1,51,138	-	Appellant has availed services of designing tyre mould which is used in manufacture of tyres. Without use of said service, manufacturing of finished goods is not possible. Therefore, it has direct nexus with manufacture of finished goods.	
13	Architect services	82,400	-	Appellant availed architect service in relation to repair and maintenance of office of Appellant situated at Worli, Mumbai.	Maruti Suzuki India Ltd. Vs. CCE 2017 (47) STR 273 (T)

14	Outdoor Catering	16,252	-	Services were availed for the period prior to 1.4.2011. Therefore, services were covered under the inclusive portion of definition of input service.	Toyota Kirloskar Motor Pvt. Ltd. Vs. CCT 2021 (50) GSTL 286 (Kar.) Affirmed by the Supreme Court in 2021 (55) GSTL 129 (SC)
15	Interior Designer	10,503	-	Services are indirectly used in manufacture of final products.	Bharat Fritz Werner Ltd. Vs. CCE 2011 (22) STR 429 (T)
16	Cable Operator	2,065	3,294	Credit reversed vide Debit entry no. 4323 dated 20.2.2015	
17	Rent-a-cab	-	65,415	Credit reversed vide Entry No. 1168 dated 1.7.214 and 4324 dated 20.2.2015	
18	No specific category provided for this amount in the notice	11,96,712		Refer para 12.1 and 12.2 infra.	
	Total	**9,41,29,010**	**8,58,038**		

4. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. The period of dispute involved in the present case is from January, 2005 to January, 2014. The case of the appellants is covered under both the un-amended as well amended definition of 'input service'. Such definition clause, effective upto 31.03.2011, has specifically provided the phrase "activities relating to business", for consideration of certain taxable services as 'input service', for the purpose of availment of CENVAT Credit of Service Tax paid thereon. Since the appellants are a corporate entity and maintained adequate records to demonstrate that the expenses incurred were in context with the services used by them for their business activities, in our considered view, the disputed services received prior to 01.04.2011 should be considered as input service for the purpose of taking of CENVAT Credit of Service Tax paid thereon. We find that the issue arising out of the dispute for availment of CENVAT Credit prior to the period 01.04.2011 is no more *res integra,* in view of the judgments delivered by the Hon'ble Bombay High Court in the case of *Coca Cola India Pvt. Ltd. Vs. CCE – 2009 (15) STR 657 (Bom.)* and *UltraTech Cement Ltd. Vs. CCE – 2010 (20) STR 577 (Bom).*

7. The definition of 'input service' was substituted by Notification No. 03/2011-C.E. (N.T.) dated 01.03.2011 w.e.f. 01.04.2011. The effect of the substituted definition is that the phrase "means" was enumerated in the said definition clause, which covers any services used directly or indirectly, in or in relation to manufacture of the final products and clearance of the finished products upto the place of removal for consideration as 'input service'. Since such definition clause is very wide and cover various services for consideration as input service, narrow interpretation cannot be placed to deny the benefit of CENVAT Credit availed by the appellants on the disputed services. Further, the said definition clause also used the term "includes", which expanded the scope of definition, in order to consider not only the services mentioned therein, but also the other services, which are used for accomplishing the purpose of manufacturing business. Since the appellants, as per table drawn in paragraph 3 above had used the disputed services for manufacture of the final product, whether directly or indirectly, the same should be considered as input service for the purpose of availment of CENVAT Credit of Service Tax paid on those services. It is not a case of Revenue that the disputed services are categorized in the exclusion clause provided in the definition of 'input service'. We find that the judgments relied upon by the learned Advocate in the table above squarely support their case for consideration of the disputed services as 'input service'. Therefore, we are in agreement with the contention of the appellants that the CENVAT Credit availed by them on the disputed services are in fact, input services and denial of the benefit of such credit in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, shall not stand the scrutiny of law. However, considering the submissions of the appellant that they are not contesting the credit of Service Tax paid by them on cable operator service and rent-a-cab service, we hold that the appellants are liable to reverse the CENVAT Credit amounting to Rs.68,709/- availed on such services. Learned Advocate fairly concedes that the said amount of Rs.68,709/- has already been reversed by the appellants. Since such aspect of reversal is required to be examined at the original stage, we direct the original authority to examine such reversal of CENVAT Credit.

8. In view of the foregoing discussions, the impugned order to the extent it has denied the CENVAT Credit benefit amounting to Rs.

9,49,18,339/- is set aside and appeal to such extent is allowed in favour of the appellants.

9. The original authority should examine the records to ascertain whether, the CENVAT Credit amounting to Rs.68,709/- has already been reversed by the appellant and if such amount had already been reversed, no proceedings shall be initiated by the Department for recovery of the same from the appellants.

10. The appeal is disposed of in the above terms.

11. The miscellaneous applications are also stand disposed of.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha