IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103 ***2023:PHHC:143925-DB***

CEA-18-2022
Date of Decision: 02.11.2023

Commissioner of Central Excise, Delhi-III .....Appellant(s)

Versus

Maruti Suzuki India Ltd. ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sourabh Goel, Sr. Standing Counsel,
Ms. Shivani Sahani, Advocate,
Ms. Manika Gupta, Advocate,
Ms. Geetika Sharma, Advocate,
for the appellant.

Mr. Amrinder Singh, Advocate,
for the respondent.

G.S.SANDHAWALIA, J.

1. The present appeal filed under Section 35(G) of the Central Excise Act, 1944 (in short 'the Act') is directed against the order dated 21.02.2019 (Annexure A-3) passed by the Customs Excise and Service Tax Appellate Tribunal, Chandigarh (in short 'the Tribunal'). The Tribunal by a common order had allowed the appeal filed by the respondent-assessee (herein) and dismissed the appeal filed by the Revenue. The Tribunal recorded that for the services in question in which credit is denied had been received prior to 01.04.2011 and by placing reliance upon the judgment of

the Bombay High Court in ***Commissioner of Central Excise vs. Ultratech Cement Ltd., 2010 (260) ELT 369,*** it went on to hold that any service availed by an assessee being a manufacturer of excisable goods would be entitled to avail credit in terms of Rule 2(l) of Cenvat Credit Rules, 2004. The services having been availed were for technical assistance for engineering design, development, manufacture, testing, quality control, sale of the goods and after-sale service in accordance with agreement, the benefit was granted to avail credit on the said services and the denial of credit of Rs.96,17,096/- was set aside by allowing the appeal.

2. Similarly while dismissing the revenue appeal, it was noticed that the Commissioner had granted the credit of Rs.16,68,71,949/- for the services received by the assessee at Mundra Port and JNPT Port. The same was for the service availed for export of final product from the said ports in which the assessee had taken land on lease at JNPT Port and also set up a work shop for inspection and minor repairs. A finding was recorded that having remained the owner of the goods till the export of the goods, the entitlement to avail Cenvat credit had been rightly allowed while rejecting the claim that matter was liable to be remanded for getting a finding under each head of service. The port being the

place of removal of goods, it was held that the respondent-assessee is entitled to avail credit on the service received. Similarly, for the services received for ONGC Mumbai, it was held that output service of man power recruitment and supply agency service to ONGC was being done by providing drivers and, therefore, the entitlement was there to avail credit on the said service being output service provider. Similarly, for the I.T. Software services, it was noticed that the assessee had network of dealers all over the country who purchase vehicles and sell them to customers and a software/computerized network date base called the Dealer Management System was in operation. The same was the mode of communication for issuing circulars, instructions to dealers and service was integral part of the assessee and for management of data, maintenance and repair of the vehicles, after sale service in warranty period. Resultantly, the assessee was held entitled to avail benefit of the credit on the said service.

3. The Cargo Handling Services for Export and CHA issue was dealt with that the place of removal was the place of export and, therefore, there could not be any dispute on the said issue to avail credit on the said service. The warehouse and storage service was dealt with by noticing that the same had been availed for storage of vehicles which were meant for export and credit could

not be denied which had been rightly given by the Commissioner. The land survey service (Real Estate Consultant), which was not related directly or indirectly to manufacturing activity, was considered. In the factual background that the company had used the same for setting up regional and zonal offices etc. across India so that they could have a presence in other parts of India and for facilitating more effective and efficient management of their ever expanding business across the country was kept in mind to uphold the benefit. The issue of Hotel Broadway Services was dealt with on the reasoning that a National Road Safety Mission had been launched with an objective to train 5,00,000 people in safe driving out of which, 1,00,000 would be under privileged sections of society. The collaboration was to be done with Institute of Driving Training and Research and various state governments with a goal of promoting road safety and, therefore, the activity in respect of sales promotion and advertisement of their product would also constitute input service and the relief granted by the Commissioner was upheld.

4. The substantial questions of law sought to be raised read thus:-

> *"A) Whether the Ltd. CRSTAT has erred in dismissing the appeal filed by the appellant-*

revenue and in upholding the order passed by the adjudicating officer?

B) Whether the Adjudicating Officer and the Ld. Tribunal have erred in holding that the respondent is entitled to CENVAT credit of the Training and Coaching Service, IT(Software) Services, CHA and Cargo Handling Services for Export, Warehouse and Storage services, land Survey Service and Hotel Broadway Services?

C) Whether the impugned order dated 21.02.2019 passed by the Ld. CESTAT is perverse, illegal and unsustainable in the eyes of law and facts?"

5. The factual aspect is that a show cause notice was issued on 09.08.2011 (Annexure A-1) to the respondent-assessee as to whether the credit taken in 2008-09 for the services discussed above in which the Tribunal has recorded the findings has neither been used in relation to manufacture the goods or for clearance of goods. Thus, on account of the same being used for providing taxable input services and not being covered under the definition of input service under Rule 2(l), the amount of Rs.12,68,80,303/- from the period July, 2006 to 2010-11 was sought to be disallowed and recoverable under Rule 14 of the said Rules alongwith interest and penalty to be levied under Rule 25.

6. The defence as such in the reply given was that Rule 2(l) could be divided into two main parts, the 'mean part' and the 'includes part' and that the service used by a manufacturer in relation to final products would be the commercially expedient aspect which would make a service essential and integral to the manufacturer of the final goods for the primary motive of profit. Reliance was accordingly placed upon the judgment in ***Coca Cola India Pvt. Ltd. vs. Commissioner of Central Excise, 2009 (15) STR 657.*** Similarly, reliance was placed upon *Ultratech Cement Ltd.'s case (supra).*

7. The Commissioner vide its order dated 17.02.2014 came to the conclusion that the noticee was providing the service of man power recruitment and supply agency to ONGC and, therefore, service tax was payable by examining the sample copy of the invoice of the ONGC. It was noticed that the drivers had been provided by M/s. G4S and they had also raised invoices and, therefore, it was held that it was admissible service for claiming input service for the provision of output service of manpower recruitment and supply services and the admissibility was allowed. Similarly, the services provided under Mundra and JNPT Port were also held to be the entitlement by placing reliance upon Rule 2(l) of the Rules that the same would be applicable to the manufacturer of

final products and clearance of final products from the place of removal w.e.f. 01.04.2008 to clarify as admissible input service. The loading port being JNPT Port and Mundra Port from where the goods were being handed over to shipping lines were held to be the place of removal. The recovery of Cenvat credit of Rs.98,34,077/- was directed primarily on the ground that the deputed personnel working at premises taken on rent, the premises known as the Japanese Hostel cum Restaurant Complex were for the accommodation of the Japanese Personnel. The house keeping facility was being provided by M/s. Jukaso IT Suites and the catering of Japanese food was also being carried out. Resultantly, it was held that the services were more of personal consumption and staff welfare nature and the Cenvat credit had been disallowed.

8. Counsel for the appellant has, thus, argued that the Tribunal was not correct in coming to this conclusion by allowing the appeal of the assessee and dismissing that of the revenue.

9. Counsel for the respondent-assessee, on the other hand, submitted that the assessee is one of the biggest car manufactures in India and in collaboration with its Japanese parent company is engaged in the distribution and sale and supply of the said vehicles. It is having a huge dealer network all over the country and is also exporting vehicles and the services rendered would qualify for the

input service being used by the provider of taxable service to submit that the scope of definition of input service has already been examined by the co-ordinate Bench in ***Commissioner of Central Excise, Delhi vs. Maruti Suzuki India Ltd, 2017 (49) STR 261.*** It was noticed that a wide and expansive interpretation had to be given to the word "input service" and the activities being important for the respondents to promote the sale of vehicles and connected to the business of manufacturing, the entitlement to avail Cenvat credit cannot be denied. Reliance is also rightly placed upon the judgment of the Bombay High Court in *Coca Cola's case (supra)* and *Ultra tech case (supra)* wherein the said issue had also been duly considered. Similarly, the judgment in ***Commissioner of Central Excise vs. Bellsonica Auto Components India P. Ltd., 2015 (40) STR 41*** was also stressed upon wherein, it was held that where the service tax paid on the civil work and on lease rentals was admissible once the land which was taken on lease to construct the factory and was being used by the manufacturer even indirectly by the manufacturer of the final products namely metal sheets and the benefit could not be denied. The relevant portion reads thus:-

> *"6. The department contended that the said services were not eligible for Cenvat Credit and accordingly issued show cause notice for recovery of the credit along with interest and for imposition of*

penalty. The Commissioner confirmed the demand along with interest and imposed penalty. The Commissioner held as follows. Though the definition of "input service" is wide, it does not cover services that remotely or in a roundabout way contribute to the manufacture of the final products; that any and every connection however remote and indirect it may be is not contemplated by the definition of "input service" and that a line has to be drawn somewhere to avoid undue extension of the phrases 'directly or indirectly' and 'in or in relation to' by adopting a common sense approach. Immovable property is neither service nor goods and, therefore, input credit cannot be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to central excise duty. Immovable property is neither 'service' nor 'goods'. Input credit is not available to them. Commercial or industrial construction service or works contract service is an input service for immovable property which is neither subjected to central excise duty nor to service tax. In this regard, the Commissioner referred to a CBEC Circular dated 04.01.2008. The Commissioner also held that the service tax paid on lease rentals is not covered under the "input service" as the same is not remotely connected to the manufacturing activity and that the nexus thereof with the manufacture of the final product is far-fetched as the same is not used directly or indirectly in or in relation to the final product i.e. metal-sheet.

7. We are entirely in agreement with Mr. Amrinder Singh's submission on behalf of the

respondents, that the Cenvat Credit taken of the tax paid in respect of the said input services can be utilized by the respondents in accordance with the Cenvat Credit Rules. Mr. Amrinder Singh rightly analysed Section 2(l) by dividing it into two parts terming them the 'mean' part and the 'includes' part and that the present case would fall under both the parts of the definition as the phraseology is wide enough to cover the said services, the same being directly or indirectly or in any event in relation to the manufacture of the respondents' final product.

8. The land was taken on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(l) aptly referred to by Mr. Amrinder Singh as the "means part".

9. The respondents' case also falls within the second part of Rule 2(l) i.e. the "inclusive" part. The definition of the words "input service" also specifically includes the services used in relation to setting up of a factory. Mr. Amrinder Singh rightly contended that it was not the appellant's case that the services were not used for the setting up of the factory. The doubt in this regard is set at rest by the second

> *part of Section 2(l)(ii) which includes within the ambit of the words 'input service' the setting up of a factory and the premises of the provider of the output service. The inclusive definition, therefore, puts the matter, at least so far as the payment for services rendered by the civil contractor for setting up the factory is concerned, beyond doubt. As the plain language of Section 2(l)(ii) indicates, the services mentioned therein are only illustrative. The words "includes services" establish the same. It can hardly be suggested that the lease rental is not for the use of the land in relation to the manufacture of the final product."*

Resultantly, the findings of the Tribunal as such denying the benefit had been set aisde.

The co-ordinate Bench in *Maruti Suzuki's case (supra)* also has taken the same view wherein, the service tax was being paid on the Mandap Keeper services and Rent-a-Cab services and resultantly, it was held that it is part of the business expenditure incurred by the assessee to promote the sales and for efficiently running of the business and the appeals of the Revenue were dismissed. The relevant portion reads thus:-

> *"23. In view of the aforesaid wide and expansive interpretation of the term 'input service' we find the Mandap Keeper Services used to organize meetings and events for promotion of their products such as a new vehicle launch, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. which activities being important for the respondent to promote the sale of vehicles are*

connected to the business of manufacture of the respondent for which they are entitled to avail CENVAT credit, especially when the expense so mentioned is part of cost on which excise duty is paid.

24. Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conferences etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the sales and for efficient running of the business for which they are entitled to avail CENVAT credit.

25. Further, as argued by the Ld. Counsel for the respondent, as the cost of services of Rent-a-Cab and Mandap Keeper received, were included in the assessable value of the final product, on which excise duty is paid, which fact has not been disputed by the appellants, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services on the ratio of the decision in Coca Cola India(supra).”

Resultantly, considering the fact that the co-ordinate Benches have already examined the aspect of the expansive view which has to be taken and the fact that the service is required as it is not only used in relation to manufacturing but also regarding the advertisement, sales promotion and storage, place of removal including recruitment, quality control coaching and training and computer network. The transportation of inputs or capital goods

and outward transportation upto the place of removal are, thus, provided under Section 2(l). Section 2(l) reads thus:-

> *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],*

The aspect of removal has also been clarified by the circular dated 28.02.2015 issued by the Ministry of Finance that it is to be given from the Port/ICD/CFS and only when the shipping bill is filed by the manufacturer or exporter or goods are handed over to the shipping line, the exporter would have no control over the goods. The relevant clause 6 reads thus:-

> *"Clause 6:- In the case of clearance of goods for export by manufacturer, exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer*

exporter and place of removal would be this Port/ICD/FCS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

Keeping in view the above, we are of the considered opinion that the Cenvat Credit has been rightly granted to large extent by the Commissioner and the benefit which had been declined has been rightly allowed by the Tribunal by modifying the order of the Commissioner.

In such circumstances, we do not find any question of law arising for consideration as projected by counsel for the appellant-revenue and the appeal accordingly stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

02.11.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes