CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10310 of 2021-SM

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-APP-211-2020-21 dated 25.02.2021 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Gujarat Chemical Port Limited **.... Appellant**
Formerly Known As Gujarat Chemical Port Company
Ltd P O Lakhigam Taluka Vagra
Bharuch, Gujarat-392130

VERSUS

Commissioner of Central Excise & ST, Vadodara-II **.... Respondent**
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE :

Ms. Dimple Gohil, Advocate for the Appellant
Shri Vijay G Iyengar, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING : 02.02.2023
DATE OF DECISION: 06.02.2023

FINAL ORDER NO. A/10199 / 2023

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is entitled for Cenvat credit in respect Management & Business Consultant service and Technical Inspection and certification service availed for the purpose of proposed additional Jetty to be constructed adjacent to the existing Jetty. The department has denied Cenvat credit on the ground that said services were used in connection with construction of a new Jetty which fall under the 'setting up' of the project which is excluded as per the exclusion clause in the definition of Input Services under Rule 2(l) of Cenvat Credit Rules, 2004.

2. Ms. Dimple Gohil, learned Counsel appearing on behalf of the appellant submits that the services in question were used by the appellant for expansion of existing Jetty and not for setting up of a new Jetty. Therefore, even though setting up of a new building or construction is excluded from the definition of Input Service, still the appellant is entitled for Cenvat credit. She placed reliance on the judgments:-

(a) Piramal Glass Limited vs. CCE & ST, Vadodara – 2019 (10) TMI 1032 – CESTAT Ahmedabad

(b) Manaksia Coated Metals & Industries Limited vs. CCE, Kutch (Gandhidham) – 2018 (1) TMI 821-CESTAT Ahmedabad

(c) Unique Chemicals vs. CCE & ST., Vadodara-II – 2019 (8) TMI 200 – CESTAT Ahmedabad

(d) Nuvoco Vistas Corporation Limited – 2019 (2) TMI 1292-CESTAT Chandigarh

(d) BASF vs. CCE & ST, Vadodara – Final Order No. A/12234-12235/2022

3. Shri Vijay G Iyengar, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the record. Revenue has denied Cenvat credit on Management & Business Consultant service and Technical Inspection and certification service only on the ground that these services were used in respect of 'setting up' of a new Jetty. From the facts it is undisputed that the appellant already had Jetty in operation and they proposed to construct one more Jetty adjacent to the existing Jetty. In this case it cannot be said that the appellant are setting up altogether a new Jetty. The additional Jetty is nothing but expansion of the existing Jetty. Therefore, the expansion, renovation or modernization of existing jetty, construction is still covered in inclusion clause of definition of Input Service under Rule 2(l) of Cenvat

Credit Rules, 2004. On this issue, this tribunal has decided the matter in following judgments:-

(a) In the case of Piramal Glass Limited (supra), this Tribunal passed the following order:

"4. I have heard both the sides and perused the record, I find that there is no dispute that the appellant have an existing manufacturing factory wherein many other plants and machinery and two furnace were already setup and with the said existing facility, the appellant are manufacturing excisable goods for last many years. For enhancing their production, the appellant sot up a new furnace, it cannot be said that they have setup a new factory it is merely an expansion of the existing factory and therefore, even if the term "setting up' of factory is removed from the inclusion clause of definition of input service, it does not adversely affect the appellant to avail Cenvat credit on various services. Moreover, as per the amendment in Rule 2(l) of Cenvat Credit Rules, 2004 certain services were excluded from the definition of Input Service and only those services were not be eligible for Cenvat credit. On careful perusal of the exclusion clause, do not find the services in question in the present case, fall under the exclusion clause. For this reason, the appellant's claim for availment of Cenvat credit cannot be rejected.

5. The very same issue has been considered by the Tribunal in the case of Shiruguppi Sugar Works Limited (supra) wherein in identical facts, the Tribunal has allowed Cenvat credit. The relevant portion of the order is reproduced:-

"6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant have availed the credit on of machinery, which is used for manufacture of sugar. Further, I find that these impugned services fall in the definition of input service even after 1.4.2011. Further, I find that in the case of Uni Abex Alloy Products (supra), this Tribunal has held that it is a settled low that CENVAT credit is available if the impugned services are used in or in relation to the manufacture of final products and if the nexus of such services with the manufacture is established Further, I find that it has consistently been held by the Hon'ble Supreme Court that the words in relation to manufacture have been used to widen and explain the scope, meaning and content of the definition and applying the same ratio, CENVAT credit of service tax paid on input services is admissible so far as input services have been used directly or in directly, in or in relation to the manufacture of final product even if the term selling up has been deleted from the inclusive portion of the definition Similarly, in the case of Birla Corporation Limited vs. Commissioner-2014 (34) STR 589, CENVAT credit on erection, commissioning and installation services have been allowed Therefore, by following the ratio of the decisions cited supra, I am of the considered view that denial of CENVAT credit on erection, commissioning and installation of machinery is not sustainable in law. Therefore, I set aside the impugned order by allowing the appeal of the appellant. Once I am allowing the appeal of the appellant on merit, I am not required to go into the question of limitation."

6. In the above decision of the Tribunal, it was correctly interpreted that even if the term "setting up of factory" is removed, eligibility of Cenvat credit has to be ascertained in view of the main clause of the definition according to which all the services used in or in relation to the manufacture of final product, directly or indirectly are input service. In the present case, installation of new furnace is directly used in relation to manufacture

of final product. Therefore, even as per the main clause of the definition of the input service, these services are input services and credit is rightly availed by the appellant.

7. As regards the decision relied on by the Id. AR, find that firstly, this judgment is for the period prior to 01.04.2011 and secondly, all the services were used for setting up of a new factory. Therefore, the facts of Liugong Indian Pvt. Limited (supra) case are different from the facts of the present case.

8. As per my above discussion, the impugned order is set-aside and the appeal is allowed.**"**

(b) In the case of Manaksia Coated Metals & Industries Limited (Supra), it was held:

"5. On careful consideration of the submissions made by the Ld DR and on perusal of records, I find that the issue is regarding eligibility of Cenvat Credit of the Service Tax paid by the service providers under professional services as regard charges for expansion of production capacity. It is noticed from the OIO that the appellant herein has been taking a stand that these services were in regard to the expansion/renovation work being carried out by the appellants at Kutchh plant. On such categorical assertion made before the Adjudication Authority, I find that the Adjudicating Authority has gone in tangent and recorded that the said services which are rendered are not for the upcoming Galvanized Plant which is of expansion plant. The same views has been expressed First Appellate Authority in the impugned order. In my considered view the definition of the input services as enshrined in Rule 2(l) of the Cenvat Credit Rules, 2004 needs to be read.

> *"(l) input service means any service, -*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by a 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 modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-*
>
> *(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-*
>
> *(a) construction of a building or a civil structure or a part thereof; or*

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;?;

6. It can be seen from the above definition, the services which are used in modernization, renovation, repairs of the factory Service Tax credit can be availed. It is not clear from the records as to how both the authorities have come to a conclusion that the said expansion/renovation is not covered under the definition of the input service and especially under modernization/ renovation or repair of the factory It can not disputed that the services rendered by the service provider in the factory premises of the appellant and the services hired were used for the reasons mentioned for.

7. In view of the fore going, I find that both the lower authorities were in error in rejecting the claim of the appellant as to eligibility to avail cenvat credit.

8. In view of the foregoing, I hold the impugned order is unsustainable and liable to set aside and I do so.

9. The impugned order is set aside and the appeal is allowed.**"**

(c) In the case of Unique Chemicals (Supra) this Tribunal observed as under:

"4. I have carefully considered the submissions made by both the sides and perused the records. I find that the ground for denial of the cenvat credit by the lower authority is that since "setting up" has been removed from the inclusion clause of definition, the credit in respect of setting up of the factory is not admissible. As per the facts of the present case, the factory is already existing and running its production, it is only expansion of existing production capacity, therefore, it cannot be said that there is setting up of the new factory. Moreover, the services were not excluded in the exclusion category as brought in definition of input service w.e.f. 01.04.2011. Therefore, all the services were used in or relation to the manufacture of final product as the expanded production capacity is only for manufacture of final product. The judgment cited by the

appellant supporting their case, accordingly, I do not agree with the lower authority, hence, the impugned order is set aside. Appeal is allowed."

5. In view of the above judgments, a consistent view was taken by this Tribunal that even though setting up of a new factory, construction of building of service provider is not excluded from the definition of Input service. In this case the construction of Jetty is clearly in the nature of expansion of existing Jetty therefore, credit is clearly admissible. Accordingly the impugned order is set-aside and the appeal is allowed.

(Pronounced in the open court on 06.02.2023*)*

(Ramesh Nair)
Member (Judicial)

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