IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40227 of 2021

(Arising out of Order in Appeal No.91/2020 (CTA-I) dated 10.12.2020 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai)

Ashok Leyland Ltd. **Appellant**
Foundry Division
(Formerly Hinduja Foundries Ltd.)
No. 1, Kathivakkam High Road
Ennore, Chennai – 600 057.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri M. Kannan, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41259/2024

Date of Hearing : 25.09.2024
Date of Decision: 01.10.2024

The present appeal is filed against Order in Appeal No. 91/2020 (CTA-I) dated 10.12.2020 passed by the Commissioner of GST & Central Excise (Appeals – I), Chennai.

2. Brief facts are that the appellant is a manufacturer of cast articles of iron and aluminium, principally for use in motor vehicles falling under Chapter Headings 73 and 76 of the CETA, 1985. During the period from 2007 – 08 to 2010 – 11 (upto February 2011) they have availed CENVAT credit on various input services. It appeared to revenue that the services were not covered in the inclusive definition

of input services and were ineligible in terms of Rule 2(l) of CENVAT Credit Rules, 2004. After due process of law, the Adjudicating Authority confirmed recovery of an amount of Rs.22,11,324/- wrongly vailed as credit of service tax and cess on GTA, Mediclaim premium and fuel charges and dropped the other demands made in the Show Cause Notice dated 8.3.2012. Aggrieved by the portion of order confirming demand on the GTA (outward freight charges), fuel charges and Mediclaim premium, the appellant preferred an appeal before Commissioner (Appeals), who vide the impugned order herein upheld the order passed by the Adjudicating Authority in toto. Hence, the appellant is before this Tribunal in appeal. They are however not contesting the demand on fuel charges. Hence the present appeal is confined only to GTA service and Mediclaim insurance.

3. I have heard learned Counsel Shri M. Kannan for the appellant and learned Authorized Representative Shri N. Satyanarayanan for the respondent.

3.1 The learned Counsel for the appellant submitted that as regards GTA service, the sale took place at customer's place as the contract of sale were on FOR destination basis; no freight charges are separately included in the invoice and the property in the excisable goods remains with the appellant till it is transferred to their customers at their (customers) premises. They are hence entitled to credit on GTA services for outward transportation. He referred to Board's **Circular 1065/4/2018-CX, dated 08/06/2018** and the decision of the Larger Bench of the Tribunal in the case of **The Ramco Cements Ltd. Vs. CCE, Puducherry** reported in **2023 (12) TMI 1332 -CESTAT Chennai LB** wherein it has held that where clearances of goods are

against FOR contract basis, the authority needs to ascertain the place of removal by applying the judgments of the Hon'ble Supreme Court in the cases of Emco Ltd. - 2015 (322) ELT 394 (SC) and Roofit Industries – 2015 (319) ELT 221 (SC).

3.2 As regards Mediclaim Insurance Service, he relied on the decision of the Larger Bench of the Tribunal in the case of **Reliance Industries Ltd. Vs. CCE, Mumbai reported in 2022 (38) ELT 457 (Tri. LB)** wherein credit has been allowed as input service.

3.3 He thus prayed that the impugned order may be set aside.

3.4 The learned Authorized Representative for the respondent supported the findings in the impugned order.

4. I have heard both sides and perused the records. I find that the dispute relates to the availment of credit on inputs namely GTA and on Mediclaim premium (personal insurance) during the period from 2007-08 to 2010-11 (upto Feb/2011).

5. The relevant definition of "input service" under Rule 2(l) of CENVAT Credit Rules, 2002, as it existed at the material time, is extracted below:

> "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, and includes services used in relation to setting up, modernization, 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, **activities relating to business**, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and

> security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"
>
> (emphasis applied)

As per exclusion (BA) to the said provision only services of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle was excluded. The said definition also permitted credit of outward transportation upto the 'place of removal' when it related to activities relating to business. Further it was only from 01/04/2011, that the definition of the term 'Input service' given under Rule 2(l) of the CENVAT Credit Rules was substituted vide Notification No. 3/2011-CE(NT) dated March 1, 2011, *inter alia*, deleting the phrase 'activities relating to business', thus, limiting the wide scope of the term 'Input services'.

6. In **Commissioner of Central Excise, Nagpur Vs Ultratech Cement Ltd.** [2010 (20) STR 577 (Bom) / 2010 (260) E.L.T. 369 (Bom.)], the Hon'ble Bombay High Court, examined availing credit of service tax in the context of a manufacturing unit and had held:

> "38. In the case of Coca Cola India Pvt. Ltd. (supra) a Division Bench of this Court has considered scope of the expression "input service" as defined in Rule 2(1) of 2004 Rules. . . . . Considering the Finance Minister's Budget Speech for 2004-05, press note issued by the Ministry of finance along with the Draft 2004 Rules and various decisions of the Apex Court, this Court held that the expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that the said definition is not restricted to the services enumerated in the definition of input service itself. The Court rejected the contention of the revenue that a service to qualify as an input service must be used in or in relation to the manufacture of the final products and held that any service used in relation to the business of manufacturing the final product would be an eligible input service."
>
> (emphasis added)

The judgment held that the definition of 'input service' is not restricted to services used in or in relation to manufacture of final products, but

extends to all services used in relation to the business of manufacturing the final product, during that relevant time.

7. I hence find that even post the amendment to the definition of the term 'Input service' given under Rule 2(l) of the CENVAT Credit Rules, a Larger Bench of this Tribunal in the case of **The Ramco Cements Ltd.** examined whether CENVAT credit on GTA services for outward transportation of goods from the factory to the buyer's premises be denied in cases where the goods are sold on FOR (buyer's premises) basis. The order held that the 'place of removal' whether at the factory premises or at the buyers premises has to be ascertained by applying the judgments of the Supreme Court in Emco and Roofit Industries. In other words the 'place of removal' cannot in all circumstance be held to be at the manufacturers premises and is a mixed question of fact and law to be determined as per the cited Supreme Court judgments. Boards **Circular 1065/4/2018-CX, dated 08/06/2018** has recognised that the 'place of removal' is required to be determined with reference to 'point of sale'. Further para 4(i) of the Circular states that FOR contracts where the ownership, risk in transit, remained with the seller till the goods are accepted by buyer on delivery and till such time of delivery seller alone remains the owner of goods retaining right of disposal, benefit of credit has to be extended.

7.1 As per the facts in this case, it is seen that the invoice is on FOR destination basis and no separate freight charges are included in the invoice. In the circumstances stated the GTA services form a part of the cost of the goods and are activities relating to business which in terms of the **Ultratech Cement Ltd.** 2010 judgment (supra) would

make it an eligible input under the definition of 'input services' during the relevant time.

8. Similarly, Service Tax paid on insurance premium for personal insurance services was not excluded from the definition of 'input service' till 01/04/2011, from which date it was specifically excluded as per Notification No. 3/2011-CE(NT), when used primarily for personal use or consumption of any employee. I find that a Larger Bench of the Tribunal in the case of **Reliance Industries Ltd.** (supra) had examine the issue whether CENVAT credit could have been availed by the appellant on the Service Tax paid on insurance premium for availing medi-claim facility for employees who had opted for voluntary separation scheme, prior to 01/04/2011. It held that the scheme was an integral part of the 'employee cost' and forms a part of the final product and would certainly be entitled to CENVAT credit of such service.

9. Hence I find that the appellant was eligible for input credit on Service Tax paid for GTA and on insurance premium for personal insurance services, during the relevant time and the credit disallowed and demanded on the said services in the impugned order needs to be set aside along with the interest involved on the same and the penalty imposed and is so ordered. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 01.10.2024)

(**M. AJIT KUMAR**)
Member (Technical)

Rex