

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
CHENNAI**

REGIONAL BENCH - COURT No. I

Excise Appeal No. 41315 of 2016

(Arising out of Order in Appeal No. 125/2016 (CXA-II), dated 31.03.2016 passed by the Commissioner of Central Excise (Appeals II), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Hindustan Unilever Ltd.

Skin Care Unit
NH 45A, Vadamangalam
Puducherry 605 102

...Appellant

Versus

Commissioner of Central Excise and Service Tax

...Respondent

Puducherry Commissionerate
No.1, Goubert Avenue, Puducherry 605 001

APPEARANCE:

For the Appellant : Ms. Mathangi, Advocate for the Appellant
For the Respondent: Mr. R. Govindan, Authorised Representative

CORAM :

HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.41113/2026

DATE OF HEARING :13.10.2026
DATE OF DECISION: 22.10.2026

Per AJAYAN T.V.

M/s. Hindustan Unilever Ltd., the appellant herein, assails Order in Appeal No. 125/2016 (CXA-II) dated 31.03.2016 of the Commissioner of Central Excise (Appeals II), Chennai. By that order the Commissioner (Appeals) rejected the appeal preferred against Order in Original No. 03/2015 dated 20.03.2015, whereby the Adjudicating Authority disallowed CENVAT credit of Rs. 3,91,207/- availed on input services, ordered its recovery with interest under Rule 14 of the CENVAT Credit Rules, 2004 (the CCR)

read with Section 11A(1) of the Central Excise Act, 1944 (the Act), and imposed a penalty of Rs. 40,000/- under Rule 15(1) of the CCR.

2. The appellant manufactures Ponds moisturising cold cream, Vaseline pure petroleum jelly, shampoo and talcum powder, classifiable under Chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985. It takes CENVAT credit of the duty paid on inputs and capital goods and of the service tax paid on input services, and utilises that credit towards the duty payable on its final products. On a verification of the ER 1 returns and the credit records for the period from December 2012 to February 2013, the Department found that the appellant had taken credit of Rs.3,91,207/-, inclusive of cesses, of the service tax charged by several job workers on the job work charges paid to them.

3. In the view of the Department, Notification No. 25/2012-ST dated 20.06.2012 exempts from the whole of the service tax an intermediate production process undertaken as job work in relation to goods on which appropriate duty is payable by the principal manufacturer. The job work being exempt, the service so received could not, the Department reasoned, be an input service within the meaning of Rule 2(I)(ii) of the CCR. Show Cause Notice No. 3/2014 dated 08.01.2014 accordingly alleged that the credit had been taken in contravention of Rule 3 read with Rule 2(I)(ii) of the CCR. It proposed recovery of the credit with interest under Rule 14 of the CCR read with Section 11A(1) of the Act, and a penalty under Rule 15(1) of the CCR.

4. The appellant contested the notice. After a personal hearing, the Adjudicating Authority nonetheless confirmed the demand with interest and imposed the penalty noticed above. The Commissioner (Appeals) affirmed that order. Hence the present appeal.

Submissions on behalf of the appellant

5. Ms. Mathangi, learned Advocate for the appellant, contended that no provision of law prevents a job worker from paying service tax on a service which Notification No. 25/2012-ST would otherwise exempt. Section 5A(1A) of the Act forbids a manufacturer to pay duty on goods exempted absolutely. However, Ld. Counsel argued, neither the Finance Act, 1994 nor the Service Tax Rules, 1994 contains any corresponding bar. Even on the assumption that Section 5A(1A) applied, the notification is conditional and the bar would not be attracted. Once the job workers had paid the tax and the Department had accepted it without demur, the denial of credit to the recipient of the service was, she would argue, legally unsustainable.

6. Learned Counsel further urged that the job work bore a direct nexus with the manufacture of the final products, so that the credit was lawfully taken. The issue, she maintained, is no longer res integra. Reliance was placed on *Gandhi Special Tubes Limited v. CCE and ST, Vadodara II, 2023 (10) TMI 673 (CESTAT Ahmedabad)*, *Balaji Multiflex Pvt. Ltd. v. CCE and ST, Rajkot, 2018 (10) TMI 620 (CESTAT Ahmedabad)* and *MRF Ltd. v. Commissioner of Central Excise and ST (LTU), Chennai, 2014 (1) TMI 822 (CESTAT Chennai)*.

Submissions on behalf of the respondent

7. Shri R. Govindan, learned Authorised Representative for the Revenue, reiterated the findings of the impugned order.

Analysis

8. This Tribunal has heard both sides and perused the material on record. The question which arises for determination is whether the appellant can be denied CENVAT credit of the service tax paid by its job workers, on the ground that the job work was exempt under Notification No. 25/2012-ST and that the tax ought never to have

been paid. The demand for interest and the penalty would survive and fail in accordance with the answer to that question.

9. The case of the Revenue rests on a single premise. It assumes that the provider of an exempt service cannot pay tax on it, and that tax so paid is not available as credit to the recipient. That premise holds only if the law compels the provider to avail the exemption. Under the Central Act, 1944 such a compulsion exists in relation to goods, for Section 5A(1A) declares that where an exemption from the whole of the duty of excise has been granted absolutely, the manufacturer shall not pay the duty. The real question therefore is whether that provision travels into the Finance Act, 1994 so as to apply to the field of service tax.

10. This Tribunal is clear that it does not. Section 83 of the Finance Act, 1994 enumerates the provisions of the Act which apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. Of Section 5A, the enumeration takes in only sub section (2A), which empowers the Central Government to insert a clarificatory explanation in an exemption notification within one year of its issue. Sub section (1A) finds no place in it. Where Parliament has specified with such precision which provisions of one enactment shall govern another, the omission of sub section (1A) must be taken to be deliberate. It cannot be supplied by construction. A provider of a taxable service is accordingly under no obligation to avail an exemption, and tax paid by it in preference to the exemption is not tax paid without the authority of law.

11. That is precisely what a Division Bench of this Tribunal held in *Gandhi Special Tubes Limited v. CCE and ST, Vadodara II*, reported in 2023 (10) TMI 673 (CESTAT Ahmedabad). Credit of the service tax paid by job workers had been denied there on the basis that the job work was exempt under Notification No. 08/2005-ST and Notification No.

25/2012-ST. Having reproduced Section 83 of the Finance Act, 1994 and Section 5A of the Act, the Bench held as follows.

"4.2 In terms of subsection (1A) of Section 5A for the purpose of central excise if an exemption is granted absolutely the manufacturer of excisable goods shall not have option to pay excise duty whereas the Notification necessarily to be availed by the assessee. Unlike sub section (1A) of Section 5A, there is no provision in the Finance Act, 1994 to compulsorily avail the exemption granted absolutely. Therefore, Notification No. 08/2005-ST and 25/2012-ST even though they grant absolute exemption but in absence of provision such as Sub section (1A) of Section 5A of Finance Act, 1994 the assessee has option either to pay service tax or to avail the exemption. Therefore, when the job worker has paid the tax without availing the exemption Notification (Supra) there is no illegality in payment of such service tax. If this be so, then the service recipient, in the present case, the appellant are legally entitled to avail the cenvat credit as there is no dispute that the input services is directly used in or in relation to manufacture of their final product.

4.3 Without prejudice, we also find that even though the service provider paid the service tax which was otherwise not payable but the payment of service tax and its assessment was not questioned by the jurisdictional officer of service provider then also the credit avaiement by the service recipient cannot be questioned. Therefore, we do not find anything illegal or wrong on the part of the appellant in availing the cenvat credit on the input services provided by the job worker to the appellant. Hence, the impugned order is not sustainable."

12. The decision thus rests on two independent grounds. The first is that Section 5A(1A) has not been made applicable to service tax, so that the job worker had the option to pay the tax and the recipient was entitled to credit of the tax so paid on a service used in or in relation to the manufacture of its final product. The second is that where neither the payment of the tax nor its assessment has been questioned by the jurisdictional officer of the service provider, the credit taken by the recipient cannot be questioned either. The

decision construes the very notification invoked against the appellant, and both its grounds apply with full force to the facts of this case.

13. *Balaji Multiflex Pvt. Ltd. v. CCE and ST, Rajkot, 2018 (10) TMI 620 -CESTAT Ahmedabad*, is to the same effect, though it arose under a different notification and was decided by a learned Single Member. The job worker there had paid tax on the gross value including the cost of material, without availing the abatement under Notification No. 12/2003-ST. The credit attributable to the cost of material was denied to the recipient. The Tribunal held that the recipient was entitled to credit of the tax paid by the provider irrespective of whether it was payable. It further held that, unlike Section 5A of the Act, the service tax law contains no provision compelling the availment of an exemption notification, and that the provider was at liberty to pay tax on the entire value.

14. *MRF Ltd. v. Commissioner of Central Excise and ST (LTU), Chennai, 2014 (1) TMI 822 (CESTAT Chennai)* addressed the question whether credit was admissible on security services availed by the manufacturer to guard inputs sent to the premises of its job workers, and on security services at its guest houses. The Tribunal allowed the former and denied the latter. It had no occasion to consider whether credit is admissible on tax paid by a provider who could have availed an exemption, and it does not decide the question before this Tribunal. Its assistance is confined to its holding that the definition of input service, which takes in services used directly or indirectly in or in relation to the manufacture of final products, does not require that the service be received or used within the factory.

15. Tested on the anvil of these principles, the demand does not survive. The show cause notice did not doubt that the job work was used in or in relation to the manufacture of the appellant's final products. Its only objection was that the service, being exempt, could not be an

input service Rule 2(I)(ii) of the CCR, however, defines input service by reference to its use by the manufacturer in or in relation to the manufacture of final products. Nothing in it makes the character of a service as an input service depend on whether the service is taxable in the hands of its provider. The objection thus reads into the definition a condition which the definition does not contain. The job workers paid the tax, there was no legal bar to their doing so, and the appellant took credit of the tax actually paid. There is nothing illicit about it.

16. The second ground noticed in *Gandhi Special Tubes* applies with equal force. The submission of learned Counsel that the tax paid by the job workers was accepted by the Department without demur was not controverted before this Tribunal. Nothing on record suggests that the assessments of the job workers were reopened or that the tax collected from them was refunded. The Revenue cannot retain that tax as validly paid at the end of the provider and at the same time treat it as tax which ought not to have been paid when the recipient claims credit of it. To permit that would be to allow the Revenue to approbate and reprobate.
17. Learned Counsel also urged that Notification No. 25/2012-ST is a conditional notification, so that Section 5A(1A) would not be attracted even if it applied. Since it has been held that Section 5A(1A) does not apply to service tax at all, the question whether the notification grants the exemption absolutely or subject to conditions does not arise. This Tribunal expresses no opinion upon it.
18. It is noticed that *Balaji Multiflex* and *Gandhi Special Tubes* were rendered after the impugned order was passed. That circumstance however, does not save the order. The answer lay in the text of Section 83 of the Finance Act, 1994, which was as available to the authorities below, as it is to this Tribunal.

19. The credit having been rightly availed, the demand for its recovery fails. Interest, being accessory to the demand, cannot survive it. The penalty under Rule 15(1) of the CCR presupposes that credit has been wrongly taken or utilised, and its imposition becomes wholly untenable given the aforesaid finding that the credit was lawfully taken.
20. The sole ground on which the credit was denied is unsustainable in law. This Tribunal finds no reason to differ from the view taken by the Division Bench in *Gandhi Special Tubes*, which is directly on the notification in question and which accords with the earlier view in *Balaji Multiflex*. Respectfully following those decisions, this Tribunal holds that the appellant was entitled to the credit of Rs. 3,91,207/- and that the impugned order cannot be sustained.
21. In view of the aforesaid discussions, the impugned Order in Appeal No. 125/2016 (CXA-II) dated 31.03.2016 is set aside.

The appeal is allowed with consequential reliefs in law, if any.

(Order pronounced in the open court on 22.10.2026)

(AJAYAN T.V.)
Member (Judicial)