CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 42394 of 2018

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-175/2018 dated 20.07.2018 passed by the Commissioner of GST and Central Excise (Appeals), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

Principle Commissioner of GST and Central Excise **...Appellant**
Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

Versus

M/s. Lux Industries Limited **...Respondent**
JM Hosiery Division,
No. 11/5, Shastri Nagar,
Angeripalayam Main Road,
Tirupur – 641 602.

APPEARANCE:

For the Appellant : Mr. M. Selvakumar, Authorised Representative
For the Respondent : Mr. M. Karthikeyan, Advocate

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41177 / 2026

DATE OF HEARING : 22.09.2026
DATE OF DECISION : 11.11.2026

Per Mr. VASA SESHAGIRI RAO

The Revenue is in appeal against Order-in-Appeal No. CMB-CEX-000-APP-175-18 dated 20.07.2018, by which the Commissioner (Appeals) set aside Order-in-Original No. 04/2018-C.Ex.(JC) dated 16.03.2018 and allowed CENVAT

credit of Rs. 1,58,15,615/- taken by the Respondent for the period March 2011 to February 2013 on Service Tax paid on broadcasting services.

2. Brief facts of the case are that the Respondent manufactures hosiery garments under the brand "LUX". For television advertisement of its products it engaged M/s. Prachar Communications Ltd., Mumbai ("Prachar"), which booked air time with M/s. Zee Entertainment Enterprises Ltd., M/s. Sony Entertainment Television and other channels. The channels billed Prachar and paid Service Tax on the broadcasting charges. Prachar in turn raised invoices on the Respondent showing (i) the broadcasting charges and the Service Tax thereon as reimbursement, and (ii) its own agency commission with Service Tax thereon. The Respondent took credit of the Service Tax on both components.

3. On audit, the Department took the view that the Respondent could take credit only of the Service Tax on Prachar's commission and not of the Service Tax on broadcasting charges, since the channels had billed Prachar and not the Respondent. Show Cause Notice No. 06/2016-COMMR dated 15.03.2016 proposed denial of Cenvat credit of Rs.1,58,15,615/- invoking the extended period, with

interest and penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004 ("CCR"). The adjudicating authority confirmed the proposals.

4. The Commissioner (Appeals) allowed the Respondent's appeal. The findings are that (i) Prachar's consolidated invoices disclose the Service Tax paid by the channels and by Prachar, with the other requisite particulars; (ii) the channels' invoices name the Respondent as the advertiser and Prachar acted only as a pure agent; (iii) payment of Service Tax, receipt of the service, its use in relation to the manufacture of the Respondent's goods, and ownership of the brand "LUX" are all undisputed; and (iv) any deficiency in the documents is covered by Rule 9(2) of the CCR. Reliance was placed on *Indian Oil Corporation Ltd. v. CCE, Mumbai-II, 2014 (36) S.T.R. 833 (Tri.-Mum.) and Zapak Digital Entertainment Ltd. v. CST, Mumbai-II, 2017 (49) S.T.R. 455 (Tri.-Mum.).*

5. Aggrieved by the order of the first appellate authority, the revenue filed the subject appeal. The Ld. Authorized Representative Mr. M. Selvakumar for the Revenue has argued reiterating the grounds of appeal filed. He has contended that the broadcasting service was received

by Prachar and not by the Respondent, since the channels invoiced Prachar alone, that it was therefore an input service of Prachar, on which only Prachar could take credit, and that Prachar paid Service Tax only on its commission and not on a value inclusive of the broadcasting charges. On that footing it is contended that the broadcasting service is not an input service in the hands of the Respondent under Rule 2(1) of the CCR; that there is a contravention of Rules 3 and 9 of the CCR and Rule 4A of the Service Tax Rules, 1994; and that Rule 9(2) cannot be invoked to condone credit taken on invoices not issued by the service provider. It is further contended that the order of the Commissioner (Appeals) is not legal and proper since the Department had appealed against the decision in Zapak Digital Entertainment before the Hon'ble High Court of Bombay, relying on *Union of India v. West Coast Paper Mills Ltd., 2004 (164) E.L.T. 375 (S.C.).*

6. The Ld. Advocate Shri M. Karthikeyan for the Respondent submitted that the appeal does not survive on its own record. The Committee of Commissioners accepted the Order-in-Appeal on merits; the appeal was authorized only because the Department had appealed against Zapak Digital Entertainment; that appeal has since been dismissed by the Hon'ble High Court of Bombay; the other decision relied on by the Commissioner (Appeals), Indian Oil

Corporation, was never challenged; and both decisions have since been followed by this Tribunal, including by this Bench. On merits, he submitted that the Department allowed credit of the Service Tax on Prachar's commission, which is the consideration for procuring the broadcasting service for the Respondent, and cannot therefore contend that the Respondent did not receive the very service so procured. Referring to paragraph 3.0 of the written synopsis, he submitted that the engagement of Prachar, the broadcast of the Respondent's products, the payment by the Respondent of the broadcasting charges with the tax thereon through Prachar, and the receipt and use of the service are all undisputed; the Department's objection rests only on the channels' invoices being addressed to Prachar. He relied on Shivraj Cable Network v. CCE, Raigad, and on Power Soap Ltd., in which the Revenue's appeal on the identical issue was dismissed by the Hon'ble High Court of Madras.

7. We have heard both sides and perused the appeal records.

8. The review order, C. No. IV/16/765/2018-CZO-CE-REVIEW, passed by the Principal Chief Commissioner of GST & Central Excise, Chennai Zone (page 11 of the appeal paper book), is an order on a reference under the proviso to

Section 35B(2) of the Central Excise Act, 1944. The Committee of Commissioners comprised the Principal Commissioner, Coimbatore and the Commissioner, Madurai. The point of difference referred, as recorded in paragraph 1 of the review order, reads: -

> *"On merits of the issue, it was proposed for acceptance. But it is opined by Commissioner, Madurai that an appeal has to be preferred as an appeal was preferred by the Department in one of the relied upon cases, to keep the issue alive and as a matter of judicial discipline."*

9. The record is therefore clear. Both members of the Committee were agreed that, on merits, the Order-in-Appeal deserved acceptance. The only difference was whether an appeal should nonetheless be filed because the Department had appealed against one of the two decisions relied upon by the Commissioner (Appeals). That is also the only reason which the review order adds to the grounds already set out in the show cause notice and the Order-in-Original (paragraph 5.1.5 of the review order, reproduced as ground 5 of the appeal). The appeal was thus authorised to "keep the issue alive" pending the decision of the Hon'ble High Court of Bombay, and not because the Committee doubted the correctness of the order on merits. We do not consider it necessary to examine the extent of the power of the Principal Chief Commissioner on such a reference. It is enough that the foundation on which the appeal was authorised no longer exists.

10. The Department's appeal against Zapak Digital Entertainment Ltd. before the Hon'ble High Court of Bombay has since been dismissed as reported in *2018 (18) GSTL 583 (Bom).* The decision of the Tribunal in Zapak Digital Entertainment has therefore attained finality, and the reliance on West Coast Paper Mills, which turns on a lis being kept alive in a pending appeal, is no longer available to the Revenue.

11. Secondly, the Commissioner (Appeals) relied independently on Indian Oil Corporation Ltd. The review order is silent on that decision, and it is not the Revenue's case that it was challenged. In that case the Tribunal allowed credit of Service Tax on broadcasting charges where the advertisement was broadcast on behalf of the assessee, the bills named the assessee as advertiser, and the assessee bore the incidence of tax. The Order-in-Appeal records the same facts here, and the review order does not dispute them. That decision, standing unchallenged, is by itself sufficient to sustain the Order-in-Appeal.

12. Thirdly, both decisions have since been followed by this Tribunal. In *Kellogg India Pvt Ltd v. Commissioner, 2022 (9) TMI 1280-CESTAT Mumbai*, the Tribunal,

considering broadcasting services procured through an advertising agency, followed Zapak Digital Entertainment and Indian Oil Corporation and allowed the credit. This Bench, in Power Soap Ltd. as reported in *2018 (7) TMI 254 CESTAT Chennai*, following Indian Oil Corporation among other decisions, allowed credit of Service Tax on broadcasting services where the invoices carried the name of the advertising agency as well as that of the assessee and its product, the tax had been paid and the service availed. It held that the advertising agency being only an intermediary was no ground to deny credit, and that any discrepancy in the documents was a matter for verification under the proviso to Rule 9(2). The Revenue appealed to the Hon'ble High Court of Madras on two questions: whether credit was admissible on broadcasting services routed through an advertising agency acting as an intermediary, and whether the Tribunal had ignored Rule 9 of the CCR. Those are the very contentions urged before us. The Hon'ble High Court held that no substantial question of law arose and dismissed the appeal: *Commissioner of GST and Central Excise v. Power Soap Ltd., C.M.A. No. 3137 of 2018, judgment dated 03.01.2019*. The jurisdictional High Court has thus declined to interfere on the identical question.

13. Though the appeal fails for the reasons above, we have also examined the Revenue's contention on merits, since it is the only contention urged throughout these proceedings: that the broadcasting service was an input service of Prachar and not of the Respondent, because the channels invoiced Prachar.

14. The contention does not survive the facts on which the Revenue itself relies. It is the Revenue's own case that Prachar paid Service Tax only on its commission and not on a value inclusive of the broadcasting charges, and Prachar did not take credit of the Service Tax charged by the channels. Prachar thus neither used the broadcasting service in providing any taxable output service of its own nor claimed it as an input service. The broadcasting charges and the tax thereon passed through Prachar to the Respondent as a reimbursement. That is not a device of the parties. Under the Board's Circular F.No. 341/43/96-TRU dated 31.10.1996, extracted in Indian Oil Corporation, the amount paid by an advertising agency for space and time in the electronic media, excluding its own commission, is not includible in the value of its taxable service. Prachar could not, therefore, have paid tax on the broadcasting charges as part of its own output. The only way the tax charged by the channels could reach the advertiser was as a reimbursement

shown in the agency's invoice. That is what Prachar's invoices did, and it is the prevalent practice in the trade. A service on which the intermediary neither paid tax as part of its output nor took credit as an input cannot be treated as the intermediary's input service merely because the channel's invoice was addressed to it.

15. The advertisements were of the Respondent's "LUX" products. The Respondent commissioned them, paid for their broadcast including the Service Tax charged by the channels, and used the service in relation to the manufacture and clearance of its goods. The Service Tax charged by the channels was collected from the Respondent through Prachar and borne by it. None of this is disputed; the Revenue's objection rests solely on the addressee of the channels' invoices. The service was received by the manufacturer within the meaning of Rule 3 of the CCR, and advertisement falls expressly within the inclusive limb of "input service" under Rule 2(1).

16. The Revenue's position is also internally inconsistent. It has allowed credit of the Service Tax on Prachar's commission on the very same invoices. That commission is the consideration for procuring air time from the channels for the Respondent; it has no content apart

from the broadcasting it procures. Having accepted that the Respondent received the agency service of procuring the broadcast, the Revenue cannot contend that the Respondent did not receive the broadcast so procured. Both components arise from a single transaction. One cannot be accepted as an input service of the Respondent while the other is treated as an input service of Prachar.

17. Prachar's invoices disclose the Service Tax paid by the channels, the description and value of the service and the particulars of the parties, which is what Rule 9(2) requires, and the Commissioner (Appeals) was right in applying it. Credit cannot be denied for a deficiency in the document when payment of tax, receipt of the service and its use are not in dispute: In the case of *Shivraj Cable Network v. CCE, Raigad, 2015 (39) S.T.R. 670 (Tri.-Mum.)* credit was allowed under the proviso to Rule 9(2) on invoices that named a different person, because the records established that the service was received, paid for and accounted for by the assessee. The present case is stronger: the channels' invoices name the Respondent as the advertiser, and Prachar's invoices are raised on the Respondent. Nor is there any risk of the same credit being taken twice, since Prachar has not taken it.

18. In view of the above, the appeal of the Revenue fails both on its own record and on merits: the Committee of Commissioners accepted the order on merits; the only reason for filing the appeal ceased to exist with the dismissal of the Department's appeal in Zapak Digital Entertainment; the independent basis of Indian Oil Corporation was never challenged; both decisions have been consistently followed; the identical contentions were rejected by this Bench in Power Soap, and the Revenue's appeal against that order was dismissed by the jurisdictional High Court; and the broadcasting service was received and used by the Respondent, as the Revenue's own acceptance of credit on the commission confirms. Having so held, we do not find it necessary to examine the Respondent's plea on limitation

19. The appeal filed by the Revenue is dismissed and the Order-in-Appeal No. CMB- CEX-000-APP-175-18 dated 20.07.2018 is upheld. The Respondent is entitled to consequential relief, if any, in accordance with law.

(Order pronounced in open court on 11.11.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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