CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO. 1

EXCISE APPEAL NO. 477 OF 2012

(Arising out of Order-in-Original No. 14/COMMR/(KAP)/LTU/Cx/2011 dated 29.12.2011 passed by Commissioner of Central Excise & Service Tax, Large Tax Payer Unit, 29th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai:400 005)

M/s. Reliance Industries Ltd., Vadodra .... Appellant

Versus

Commissioner Central Excise & Service Tax (LTU), Mumbai .... Respondent

APPEARANCE:

Shri Vipin Jain with Shri Vishal Agarwal, Ms. Shilpa Balani and Shri A. Sheerazi and Mr. Purushartha Satish, Advocates for the Appellant
Ms. Anuradha Parab, Authorised Representative of the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

DATE OF HEARING: 09.03.2022
DATE OF DECISION: 18.04.2022

INTERIM ORDER NO. 5/2022

JUSTICE DILIP GUPTA:

The issue that arises for consideration before this Larger Bench of the Tribunal is 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'[1] announced for regular employees of the Vadodara Complex who had attained 40 years of age or had

1. VSS

completed 10 years of service as regular employees with the Indian Petrochemicals Corporation Limited[2], which had been taken over by the appellant. CENVAT credit of Rs. 1,33,37,699/-, thus availed by the appellant, was disallowed by the Commissioner of Customs, Excise and Service Tax, Mumbai[3] by an order dated 29.12.2011 and its recovery was directed under rule 14 of the CENVAT Credit Rules, 2004[4] read with the proviso to section 11A (1) of the Central Excise Act, 1944[5].

2. At the time of hearing of the appeal, the Division Bench of the Tribunal noticed that conflicting views had been expressed by benches of the Tribunal while interpreting 'input service' defined in rule 2(l) of the 2004 Rules, as it stood prior to its amendment on 01.04.2011 and, therefore, referred the matter to the President of the Tribunal for constituting a Larger Bench of the Tribunal to decide the following two issues:-

i. Interpretation of rule 2 (l) of the 2004 Rules for the period prior to the amendment made in the year 2011.

ii. Applicability of Cost Accounting Standard-4[6] for determination of eligibility to CENVAT credit in cases other than where the goods are captively consumed and valued in terms of rule 4 of Central Excise Rules, 2000.

3. The appellant has a manufacturing unit at Vadodara, wherein it manufactures petrochemical products such as LDPE, HDPE and

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2. IPCL
3. the Commissioner
4. the 2004 Rules
5. the Excise Act
6. CAS-4

related products, which are cleared on payment of duty of central excise. The appellant avails insurance cover for the medical expenses of its employees working at Vadodara. The appellant also takes a group health insurance for employees at the time of their retirement.

4. On March 06, 2007, the appellant also announced a VSS for certain category of employees working at its Vadodara Complex and the Introduction to the Scheme, as contained in the Circular, is as follows:-

> "Benchmarking human capital productivity in the globalised competitive milieu is a major challenge. Ever changing business environment and processes lay more emphasis on meaningful employment at optimum cost. Besides building capabilities through continuous improvement of skills, it calls for adaptability to change as well as readiness to move with the business requirements both physically and mentally. Redeployments/transfers across locations and businesses, reorientation of mindsets, skills upgradation, and education enhancement are same of the options to optimise human productivity. While management has tremendous faith in human potentialities, it appreciates the fact that interplay of situational aspects may make it difficult for many to join the journey to the new era where only knowledge & skills will sustain.
>
> **Keeping such human aspects in view, it has been decided to provide opportunity of voluntary separation to the employees.**
>
> Currently the scope of the scheme is being limited to regular non-supervisory employees of Baroda Complex (including offices located in the Regions) and appropriate scheme will be framed and announced shortly for supervisory employees keeping in view certain decisions by Board of Directors and their implementation."
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> **(emphasis supplied)**

5. The compensation/ benefits to be provided to such employees who opted for VSS was indicated in this Scheme, which was to remain open up to March 20, 2007. The Scheme provides that an employee whose application for voluntary separation is accepted by the Department, would be entitled to the following compensation/benefits:

> **"2.1 Compensation**
>
> a) Lump sum payment will be calculated by one of the following methods;
>
> A. 2 months (Two months) of salary for each completed year of service subject to minimum of Rs. 10 Lakhs (Ten lakhs) PLUS 2 months (Two months) of salary for each year of service remaining before attaining the age of superannuation.
>
> B. 1.5 months (One and half months) of salary for each completed year of service subject to minimum of Rs. 10 Lakhs (Ten lakhs) PLUS 2.5 months (Two and half months) of salary for each year of service remaining before attaining the age of superannuation.
>
> Between the amounts arrived at from methods A & B, more beneficial ones for an optee will be considered, but subject to overall ceiling of Rs. 16 Lakhs (Sixteen Lakhs) OR the salary for the remaining months in service till the age of superannuation, <u>whichever is less.</u>
>
> [Note: Salary means Basic Pay plus IDA per month]
>
> The company would facilitate purchase of annuities with monthly payment facility for part/full lump sum payment at optee's request.
>
> b) The company will bear the premium for the following insurance coverage.

i. Medi-claim for self and spouse for a total sum assured Rs 5 lakhs (Rupees Five Lakhs Only) till the notional age of superannuation or death of the optee, whichever is earlier. The salient features of this medi-claim scheme are given in Annexure-1.

ii. Group Term Assurance for an amount of Rs. 5 Lakhs (Rupees Five Lakhs only) payable to the nominee in the unfortunate event of death of the optee before attaining the notional age of superannuation.

2.2 Cash equivalent to accumulated Privilege Leave.

2.3 Cash equivalent to accumulated Sick Leave subject to maximum of 100 days.

2.4 Encashment of unavailed Leave Travel Concession (up to the block year 2007-08) for Non-supervisory employees and their dependents.

2.5 Transfer benefits for self and dependents as admissible under the Travelling Allowance Rules on superannuation.

2.6 The balance in Provident Fund Account payable as per the PF Rules.

2.7 Payment of Gratuity as per the Gratuity Scheme.

2.8 One month Notice Pay (Basic pay plus IDA) in lieu of notice period."

6. In terms of the aforesaid Scheme, the appellant took insurance coverage in the month of March, 2008, for such employees who had opted for VSS under the "Special Contingency Insurance Nivrutti Raksha Policy[7]" issued by the Oriental Insurance Company Limited and availed CENVAT credit of the service tax paid on the insurance premium.

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7. Insurance policy

7. A show cause notice dated 25.06.2010 was, however, issued to the appellant inter alia alleging that:

a. The premium paid by the appellant towards medi-claim policies for IPCL employees who had opted for VSS was paid on behalf of employees who were no more employees of the company and would, therefore, be not be covered under the definition of "input service" in rule 2(l) of the 2004 Rules.;

b. The CENVAT credit of service tax availed in the month of March 2008, against the above payment, is inadmissible since CENVAT credit is admissible only in respect of "input services" which are directly or indirectly used in relation to the manufacture, clearance, sale or storage of final products and not on welfare measures offered by the appellant to its former employees; and

c. The appellant knowingly suppressed the fact of availment of the above credit with an intent to wrongly avail ineligible CENVAT credit in contravention of various provisions.

8. The Commissioner, by order dated 29.12.2011, confirmed the demand made in the show cause notice observing that from a perusal of the definition of 'input service' in rule 2(l) of the 2004 Rules it transpired that it was necessary for an assessee to establish that the premium paid to the insurance company for the medical insurance of its retired employees under VSS had some connection or nexus with the manufacturing activities of the assessee in order to avail CENVAT credit of the service tax paid on the insurance premium. The

Commissioner further observed that the welfare measures offered by the appellant can at best be considered as an activity related to the welfare of ex-employees and the incentives/ compensation that was offered to the employees was for the purpose of saving unwanted expenses by weeding them out, but such employees had no connection with the activity of manufacture of the finished products.

9. At the time of hearing of the appeal before the Division Bench, learned counsel for the appellant placed reliance upon the decision of the Tribunal rendered by a learned Member of the Tribunal in its own matter in **Reliance Industries Ltd.** v/s **Commissioner of Central Excise & Service Tax (LTU), Mumbai**[8] as also upon the Division Bench decision of the Tribunal rendered in its own matter in **Reliance Industries Ltd.** v/s **Commissioner of Central Excise & Service Tax (LTU), Mumbai**[9]. The learned counsel also placed reliance upon the judgment of the Bombay High Court in **Coca Cola India Pvt. Ltd.** v/s **Commissioner of Central Excise, Pune-III**[10] as also of the Karnataka High Court in **Commissioner of Central Excise, Bangalore-II** v/s **Millipore India Pvt. Ltd.**[11]**,** which decisions were followed by a learned member of the Tribunal in **Essel Propack Ltd**. v/s **Commissioner of CGST, Bhiwandi**[12]

10. The Division Bench, while hearing the appeal, noted that the issue involved was not in respect of serving employees of the appellant but was in respect of employees who had opted to avail VSS. The Bench observed that the observation of the Commissioner that it was necessary to establish that the premium paid to the insurance companies for medical insurance of retired employees had

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8. 2015 (38) S.T.R. 217 (Tri-Mumbai)
9. 2016 (42) STR 384 (Tri.- Mumbai)
10. 2009 (15) S.T.R. 657 (Bom.)
11. 2012 (26) S.T.R. 514 (Kar.)
12. 2018 (362) E.L.T. 833 (Tri.Mumbai)

some connection or nexus with the manufacturing activities was in line with the decisions of the Tribunal in **Telco Construction Equipment Co. Ltd.** v/s **C.C.E. & CUS., Belgaum**[13] and **Sundaram Brake Linings** v/s **Commissioner of Central Excise., Chennai-II**[14]**.** However, the Division Bench felt it necessary to also observe that credit would not be admissible for that part of service tax that was paid for insurance premium of the family members of such employees. The decisions of the Tribunal that were referred to by the Division Bench on this aspect are:

1. **Oudh Sugar Mills Ltd.** v/s **Commissioner of C. Ex., Lucknow**[15]
2. **Emerson Export Engineering Centre** v/s **Commissioner of C. Ex., Pune-III**[16]
3. **Titan Industries Ltd.** v/s **Commissioner of C.Ex., Chennai-III**[17]
4. **Maruti Suzuki India Ltd.** v/s **Commissioner of C.Ex., Delhi-III**[18]
5. **Mercedes Benz India Pvt. Ltd.** v/s **Commissioner of C.Ex. Pune-II**[19]

11. And the relevant observations of the Division Bench in this context are as follows:

> "4.10. Undisputedly in the case of the serving employees, the law has been settled by the various decisions of the tribunal and High Courts that the service tax paid on the premium paid for the medical insurance, group insurance, workman insurance policies will be admissible to CENVAT Credit. **However it is worth noting that the view that emerges in all these decisions is that CENVAT Credit would not be admissible in respect of that part of service tax which is paid on the insurance premium for the**

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13. 2013 (32) S.T.R. 482 (Tri.- Bang.)
14. 2014 (34) S.T.R. 583 (Tri.-Chennai)
15. 2014 (34) STR 309 (Tri.-Del.)
16. 2017 (49) S.T.R. 423 (Tri.-Mumbai)
17. 2018 (15) G.S.T.L. 75 (Tri.- Chennai)
18. 2017 (47) S.T.R. 273 (Tri.- Chan.)
19. 2018 (364) E.L.T. 1019 (Tri.- Mumbai)

> **medical insurance cover provided to the family members.**"
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> **(emphasis supplied)**

12. The Division Bench hearing the appeal also noticed that the Division Bench of the Tribunal in **Deloitte Support Services India Pvt. Ltd.** v/s **CCE, Hyderabad-IV**[20] had rejected the contention of the Department that group insurance premium for retired employees did not directly or indirectly relate to the output services rendered. The Division Bench also noticed that the aforesaid decision of the Tribunal was upheld by the Andhra Pradesh High Court, but the Appeal filed by the Department against the judgment of the Andhra Pradesh High Court was pending in the Supreme Court.

13. The decisions rendered by the Tribunal in the two matters of the appellant in **Reliance Industries** would, according to the Division Bench, require reconsideration for the following reason:

> "4.20. In both of the above decisions the CENVAT credit has been allowed just by referring to the decisions of Hon'ble Karnataka High Court and CAS-4, however the same has been done even without determining whether the assessable value of the goods captively consumed was determined under Rule 8. Such a theoretical application of the principles laid down in CAS-4, without even determining the applicability of the same to the appellant assessee may not be what has been stated by the Hon'ble Karnataka High Court. In para 4.16 we have already stated that all such decisions need reconsideration."

14. The Division Bench also observed that the decision of the Tribunal in **Essel Propack** would also require reconsideration for following reason:

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20. 2017 (5) GSTL 393- Bang-Tri

> "4.22 Though the above decision has been rendered by a coordinate bench, we are not in position to agree with the same. The settled position in law is that the services, which are considered as input services should qualify as per the test laid down by the Rule 2 (0) of the CENVAT Credit Rule, 2004. Even without any reference to the said definition and the test laid down thèrein as held in various decisions referred earlier by us, the bench have 'proceeded to hold the admissibility to CENVAT Credit on the basis of beneficial aspects of the CSR activities Undertaken by the Companies as per the provisions of Companies Act. What was the nexus direct or indirect between the manufactured goods and the activities undertaken has not been established. In our view this decision also needs a re-consideration in view of the earlier decisions referred to by us."

15. The Division Bench, therefore, directed that the matter may be referred to the President of the Tribunal for constituting a Larger Bench of the Tribunal for reconsideration of the interpretation of rule 2(l) of the 2004 Rules, as it stood prior to its amendment on 01.04.2011, and the reference is as follows:-

> "5.0 In view of the discussions as above we refer this matter to Hon'ble President to resolve the difference in the view expressed by coordinate benches on the issue of
>
> - Interpretation of Rule 2(1) of the CENVAT Credit Rules, 2004 for the period prior to amendments made in the said Rule in the year 2011.
>
> - Applicability of CAS-4 for determination of eligibility to CENVAT Credit in cases other than where the goods are captively consumed and valued in terms of Rule 4 of Central Excise Rules, 2000."

16. To appreciate the submissions advanced by Shri Vipin Jain, learned counsel for the appellant assisted by Shri Vishal Agarwal, Ms. Shilpa Balani, Shri A. Sheerazi and Shri Purushartha Satish, as also Ms. Anuradha Parab, learned authorized representative of the

Department, it would be useful to reproduce the definition of 'input service'. 'Input service', as it stood at the relevant time prior to 01.04.2011, has been defined in rule 2(l) of the 2004 Rules as:

> "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;"

17. Shri Vipin Jain, learned counsel for the appellant made the following submissions:

(i) The issue has been settled in favour of the appellant in the two decisions of the Tribunal rendered in its own matter in **Reliance Industries**, following the decision of the Karnataka High Court in **Millipore India**;

(ii) The amount paid as premium is not a gratuitous payment made on behalf of the employees, but is towards the contractual obligations which the appellant was required to fulfil under the VSS announced by it, aimed at keeping the operations of the company viable and sustainable in the long run;

(iii) There is otherwise also no justification for disallowing CENVAT credit on input services incurred for staff welfare, merely because they are incurred voluntarily;

(iv) The premium paid to the insurance company towards medical insurance for the VSS optees was a "single premium" or "one-time premium" paid to the Oriental Insurance Company. The said fact is recorded in the "Schedule" of the policy;

(v) All premiums were paid prior to the employees being relieved from service. In other words, premiums were paid at a time when the VSS optees were still in the employment of the appellant and had not been relieved from service in terms of the VSS; and

(vi) The premium amount paid forms part of the cost of production as per CAS-4.

18. Ms. Anuradha Parab, learned authorized representative appearing for the Department made the following submissions:

(i) The appellant is not justified in claiming that the insurance of VSS optees falls under 'input service' definition as the activity does not fall under any of the five categories indicated by the Bombay High Court in **Coca Cola India**;

(ii) Inclusion of expenses of a certain service in the cost of goods cannot be the sole criteria to determine whether the service is falling under the definition of 'input service' under rule 2(l) of the 2004 Rules and in this connection the judgment of the Supreme Court in **Maruti Suzuki Ltd**

v/s **Commissioner of Central Excise, Delhi-III**[21] has been relied upon;

(iii) Services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would alone qualify to be 'input service';

(iv) The expression 'relating to business' in rule 2(l) of the 2004 would mean activities integrally related to business activity and the activity of insurance of VSS optees cannot be considered as an activity integrally related with the business of manufacture. In this connection reliance has been placed on the decision of the Bombay High Court in **Commissioner of Central Excise, Nagpur** v/s **Manikgarh Cement.**[22]**;** and

(v) The element of insurance service of VSS optees, who are not employees, neither enriches the value of the excisable goods nor is included in the cost of the product. Therefore, credit of this service is not available.

19. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

20. A bare perusal of the definition of 'input service' reproduced above shows that it would mean any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and includes services used in relation to activities relating to business or capital goods.

21. To appreciate the issue involved in this appeal, it would be appropriate to first examine the VSS Scheme that was introduced on

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21. 2009 (240) ELT 641 (S.C.)
22. 2010 (20) S.T.R. 456 (Bom.)

March 06, 2007 for regular employees of IPCL (which had been taken over by the appellant) at the Vadodara Complex who had attained 40 years of age or had completed 10 years of service. It was realized that the changing business environment and processes laid more emphasis on meaningful employment at optimum cost which called for adaptability to change as well as readiness to move with the business requirement and though the management had faith in human potentialities, it appreciated that interplay of situational aspects makes it difficult for many employees to join the journey to the new era where only knowledge and skills will sustain. It is for this reason and keeping such human aspects in view that the management decided to provide opportunity for voluntary separation to the employees. As such, employees whose application for voluntary separation was accepted by the management would be entitled to certain compensation/ benefits enumerated in paragraph 2 to the Scheme. Basically, the said employees would be entitled to payment of two months salary for each completed year of service, subject to a minimum of Rs. 10 lakhs plus 2 months of salary for each year of service remaining **before attaining the age of superannuation** OR 1.5 months of salary for each completed year of service subject to minimum of Rs. 10 years plus 2.5 months of salary for each year of service remaining **before attaining the age of superannuation.** The Company would also bear the premium for the following insurance coverage:

> "i Medi-claim for self and spouse for a total sum assured Rs 5 lakhs (Rupees Five Lakhs Only) till the notional age of superannuation or death of the optee, whichever is earlier. The salient features of this medi-claim scheme are given in Annexure-1.

ii. Group Term Assurance for an amount of Rs. 5 Lakhs (Rupees Five Lakhs only) payable to the nominee in the unfortunate event of death of the optee before attaining the notional age of superannuation."

22. A number of other benefits in the form of compensation were enumerated in paragraphs 2.2.to 2.8 of the Scheme.

23. It would be seen from the aforesaid that VSS was for existing employees who had put in certain number of years of service as regular employees of IPCL and such employees whose application for voluntary separation was accepted by the management would not only be entitled to two months of salary for each completed year of service but also to two months of salary for each year of service remaining before attaining the age of superannuation. It needs to be noted that if these employees had not submitted application for voluntary separation or if the application seeking VSS was not accepted by the appellant, they would have continued to be in the employment of the appellant up to the age of superannuation. VSS only gives an option to such employees to cut short their service tenure for which they would receive certain benefits/compensation. It is for this reason that the lump sum paid as compensation includes two months of salary for each year of service remaining before attaining the age of superannuation and the medi-claim insurance was to continue only upto the notional age of superannuation.

24. The issue involved in this appeal is with regard to the insurance premium which the appellant would bear for the medi-claim of the serving employees whose VSS application had been accepted. The appellant availed CENVAT credit of the service tax paid on the insurance premium for such employees who had opted for VSS and it is this CENVAT credit that has been questioned on the ground that

the insurance premium on which CENVAT credit was availed pertained to employees who would no longer be providing any service to the appellant on acceptance of the VSS application.

25. This precise issue had come up for consideration first before a learned Member of the Tribunal at Mumbai in a matter concerning the appellant and thereafter before a Division Bench of the Tribunal at Mumbai again in a matter pertaining to the appellant.

26. In the first decision rendered on 02.01.2015, which decision is reported in 2015 (38) STR 217 (Tri-Mum), the appellant had availed CENVAT credit of duty paid on inputs, capital goods and input services but this was sought to be disallowed on the ground that the premium paid by the appellant in respect of the group insurance/ insurance of employees, including retired employees/ medi-claim is not covered under the definition of 'input service' as it had no direct nexus with the manufacture of the final products. The learned Member of the Tribunal did not accept this contention in view of the observations made by the Karnataka High Court in **Millipore India** and the observations are as follows:-

> "3. Having considered the rival submissions, **I agree with the ruling of the Hon'ble Karnataka High Court in the case of Millipore India Ltd. (supra), wherein, after examining the CAS-4 Standards, the Hon'ble High Court accepted that all factors have to be taken into consideration while fixing the cost of final products.** The Hon'ble High Court further observed the definition of 'input services' is too broad. Further it is not disputed in the facts of the case that the premium so paid in the present appeal has formed part of the cost of excisable goods on which Excise Duty has been paid on removal. **Therefore, the appellant is entitled to avail, CENVAT credit for the insurance premium paid in respect of group insurance/insurance of employees including retired employees/medi-claim which are covered**

> **under the definition of 'input services' and have a nexus."**
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> **(emphasis supplied)**

27. Subsequently, a Division Bench of the Tribunal on 26.08.2015, in a matter again concerning the appellant and which decision is reported in 2016(42) STR 384 (TRI-Mum), placed reliance upon the aforesaid decision rendered by the learned Member of the Tribunal and held that the appellant was eligible to avail the CENVAT credit of service tax paid on the insurance cover premium extended to the retired employees. The relevant portion of the decision is reproduced below:

> "3. **The issue involved in these cases is whether the appellant is eligible to avail CENVAT credit of the service tax paid on insurance premium to the Insurance Company for Group Insurance and medi-claim policies taken for existing employees as well as for the retired employees;** xxxxxxxxxxxxx Adjudicating authority as well as the first appellate authority have come to a conclusion that the service tax paid on the life insurance/medi-claim policy for the existing employees is eligible for CENVAT credit but the service tax paid on the insurance premium for the retired employees is ineligible as they are not covered under the definition of Rule 2(l) of the Cenvat Credit Rules, 2004.xxxxxxxxxx
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> 5. **We find that in respect of the service tax paid on the premium of the life insurance/medi-claim taken for the existing employees as well as the retired employees or the employees who had taken voluntary retirement is now eligible to avail CENVAT credit as this Bench in the appellant's own case in** Appeal No. E/1283/2012-Mum as reported at 2015 (38) STR 217 (Tri. - Mum) has held that such credit is available relying on the judgement of the Hon'ble High Court of Karnataka in the case of **Millipore India Ltd.** - 2012 (26) STR 514 (Kar.). On an identical issue for the earlier period, this Bench having taken a view that the appellant is eligible to avail CENVAT credit, following the same, **we hold that the appellant is eligible to avail CENVAT credit of the service tax paid on the premium of the insurance cover extended to their employees who are retired."**
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> **(emphasis supplied)**

28. As the aforesaid decisions of the Tribunal place reliance upon the judgment of the Karnataka High Court in **Millipore India**, it would be useful to refer to this judgment. The appellant therein had availed credit on service tax paid on certain services. The Assessing Authority disallowed the credit and the Commissioner (Appeals) upheld the order of the Assessing Authority, except in respect of transportation charges. Feeling aggrieved by the said order of the Commissioner (Appeals), the appellant filed an appeal before the Tribunal. The Tribunal referred to CAS-4 and observed as follows:

> "6. Therefore, it is clear that those factors have to be taken into consideration while fixing the costs of the final products. If services tax is paid in respect of any of those services which forms part of the costs of the final products centainly the assessee would be entitled to the cenvat credit of the tax so paid."

29. The Tribunal thereafter examined the definition of 'input service' and observed as follows:

> "7. That apart, the definition of input services is too broad. It is an inclusive definition. What is contained in the definition is only illustrative in nature. Activities relating to business and any services rendered in connection there- with, would form part of the input services. **The medical benefit extended to the employees, insurance policy to cover the risk of accidents to the vehicle as well as the person, certainly would be a part of the salary paid to the employees.** Landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises. The Environmental law expects the employer to keep the factory without contravening any of those laws. **That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the**

> **employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products. In those circumstances, the Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof."**
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> **(emphasis supplied)**

30. The contention of the appellant is that the Scheme was announced to keep the business operations of the appellant viable and sustainable in the long run because the continued losses incurred by IPCL would have increased and the appellant would not have been in a position to carry the manufacturing operations if the business itself had became unviable. The submission, therefore, is that the premium paid by the appellant for providing medi-claim to such employees who had adopted VSS was aimed at keeping the manufacturing operations viable and running and, therefore, had a direct nexus to the manufacturing operations.

31. This submission of learned counsel for the appellant has substance. As noticed above, VSS was for the existing employees and was not an option to be exercised by those employees who had retired. In fact, compensation/benefits under the VSS were to extend only up to the notional age of superannuation of the employees who had opted for VSS. It was in order to avoid continued losses and to bring about a situation that would enable the appellant to run its business and manufacturing activities that the Scheme was floated. Input service, as defined in rule 2(l) of the 2004 Rules, means any service used by the manufacturer directly or indirectly, in or in relation to the manufacture of final products and includes services

used in relation to activities relating to business. The aforesaid service has been used by the appellant directly in relation to activities relating to business. The Scheme, therefore, certainly has a direct nexus to the manufacturing operations.

32. In this connection, it would be appropriate to refer to the decision of the Bombay High Court in **Coca Cola India,** wherein the definition of 'input service' under rule 2(l) of the 2004 Rules, as stood prior to its amendment made on 01.04.2011, came up for interpretation. The issue was as to whether the appellant, a manufacturer of non-alcoholic beverage bases, was eligible to avail credit of the service tax paid on advertising services, sales promotion, market research and the like service availed by the appellant. The High Court held that the expression 'means and includes' is exhaustive and that the expression 'business' is an integrated/continued activity and is not confined or restricted to mere manufacture of the product and, therefore, activities in relation to business can cover all activities that are related to the functioning of a business. The definition of 'input service' was divided into five limbs/categories, and it was held that if an assessee could satisfy any one of the five limbs, then credit of the input service would be available, even if the assessee did not satisfy other limbs of the above definition. The Bombay High Court ultimately observed:

> "34. It is therefore, clear that the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. manufacturer or service provider. In order to avoid the cascading effect, the benefit of cenvat credit on input stage goods and services must be ordinarily allowed as long as a connection between the input stage goods and services is established. **Conceptually as well as a matter of policy, any input service that forms a part of the value of the**

final product should be eligible for the benefit of Cenvat Credit. ***

38. Service tax therefore, paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. **In other words, credit of input service must be allowed on expenditure incurred by the assessee which form a part of the assessable value of the final product. If the above is not done, as sought to be done by the department in the present case, it will defeat the very basis and genesis Cenvat i.e. value added tax.**

39. **The definition of input service which has been reproduced earlier, can be effectively divided into the following five categories, in so far as a manufacturer is concerned:**

(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products

(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal

(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal.

Each limb of the definition of input service can be considered as an independent benefit or concession exemption. If an assessee can satisfy any one of the limbs of the above benefit, exemption or concession, then credit of the input service would be available. This would be so even if the assessee does not satisfy other limb/limbs of the above definition. To illustrate, input services used in

> relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal. xxxxxxxxx
>
> 43. What follows from the above discussion is that the credit is availed on the tax paid on the input service, which is advertisement and not on the contents of the advertisement. Thus it is not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. The manufacturer thereby can avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion."

33. The Bombay High Court in **Commissioner of C. Ex., Nagpur** vs. **Ultratech Cement Ltd.**[23], after considering the earlier judgment of the Bombay High Court in **Coca Cola India**, took the view that the definition of 'input service' in rule 2 (l) of the 2004 Rules consists of three categories of services, and CENVAT credit of service tax paid on all such services would be available to an assessee. The relevant portion of the judgment of the Bombay High Court is reproduced below:

> "27. **The definition of "input service" as per rule 2(l) of 2004 Rules (insofar as it relates to the manufacture of final product is concerned), consists of three categories of services.** The **first category**,

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23. 2010 (20) S.T.R. 577 (Bom.)

covers services which are directly or indirectly used in or in relation to the manufacture of final products. The **second category**, covers the services which are used for clearance of the final products up to the place of removal. The **third category**, includes services namely:

(a) Services used in relation to setting up, modernization, renovation or repairs of a factory,

(b) Services used in an office relating to such factory,

(c) Services like advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(d) Activities relating to business such as, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit relating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Thus, the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition."

(emphasis supplied)

34. It needs be noted here that though the Bombay High Court in **Ultratech Cement** categorised 'input service' into three categories, as against five categories by the Bombay High Court in **Coca Cola India**, there is actually no difference between the two judgments as the third category in **Ultratech Cement** covers the last three of the five categories mentioned in **Coca Cola India**.

35. The following two principles from the aforesaid two judgments of the Bombay High Court would be of relevance to the present dispute:

a) The definition of "input service" is of wide import and covers not only input services which have a nexus with the

manufacture of the final product (covered by the first limb), but also other input services, which do not have such a nexus, and are covered by the other limbs of the definition. Each limb of the definition is independent and, therefore, if an assessee can satisfy any one of the limbs, the benefit of CENVAT credit would be available, even if the assessee does not satisfy the other limbs of the definition; and

b) Insofar as the first limb is concerned, the requirement of establishing a nexus between the input service and the process of manufacture is to be regarded as 'satisfied' if the expenditure incurred for the input service forms part of the cost of production/value of the final product, on which duty of excise is levied.

36. Learned departmental representative or the referring Bench have not relied upon any judgment of a Court or decision of the Tribunal to dispute the correctness of the said two principles but learned authorised representative for the department relied on the judgment of the Supreme Court in **Maruti Suzuki** to submit that unless there is a clear nexus between the input service and the manufacturing activity, CENVAT credit of the same cannot be available.

37. The judgment of the Supreme Court in **Maruti Suzuki** was in the context of 'input' defined under rule 2 (k)and not 'input service' under rule 2 (l) of the 2004 Rules and, therefore, would not be applicable to the present dispute. This is for the reason that the said judgment was considered by the Bombay High Court in **Ultratech Cement** wherein it was held that the definition of 'input service' in rule 2(l) is wider than the definition of 'input' in rule 2(k) and that it

not only covered input services having nexus with the manufacturing of the final product but also covered services used prior to/during the course of/after the manufacture of the final products. The High Court further held that unlike in the case of 'input', where nexus was required to be established with the manufacture of the finished goods, the nexus insofar as 'input service' is concerned has to be established with the manufacture of the final product **OR** the business of manufacture. Paragraph 33 of the judgment rendered in **Ultratech Cement** by the Bombay High Court clarified as under:

> "... In other words, by applying the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra), it cannot be said that the definition of 'input service' is restricted to the services used in relation to the manufacture of final products, because the definition of 'input service' is wider than the definition of 'input'."

38. What, therefore, follows is that contrary views have not been expressed by any Court or Tribunal on the aforesaid two principles culled out from the decisions of the Supreme Court in **Coca Cola India** and **Ultratech Cement**.

39. It also needs to be noted that the one time amount paid by the appellant as premium towards the medical insurance policy is borne out of a contractual obligation in the regular course of its business and cannot be termed as a gratuitous payment, which would depend on the free will of a person. The premium amount paid by the appellant effectuates a Scheme of early retirement, a part of the "golden handshake" between the appellant and its employees who agree to take premature termination of the employment contract, aimed at keeping the business operations of the appellant cost effective and viable.

40. It would also be useful to refer to a decision of a learned Member of the Tribunal in **Essel Propack.** CENVAT credit had been denied to the appellant in regard to the service tax paid to a Charitable Trust for imparting training to the under privileged students in discharge of the Corporate Social Responsibility such as canteen services, supervision of students and consultation and overall development of students, all of which the department disputed as being inadmissible for the reason that Corporate Social Responsibility was a charity which was unrelated to production and was outside the scope of 'input service' defined in rule 2(l) of the 2004 Rules. The observations of the Tribunal are as follows:

> "11. **To pin point the dispute, it is now to be looked into as to if CSR can be considered as input service and be included within the definition of "activities relating to business" and if in so doing, a company's image before corporate world is enhanced so as to increase its credit rating as found from the handbook of CSR activities discussed above.** The answer is in the affirmative since to win the confidence of the stakeholders and shareholders including the people affected by the supply of raw material from their locality, say natural resources like mines and minerals etc., the hazardous emission that may result in production activities.
>
> 11.1 XXXXXXXX. Therefore sustainability is dependent on CSR without which companies cannot operate smoothly for a long period as they are dependent on various stakeholders to conduct business in an economically, socially and environmentally sustainable manner i.e. transparent and ethical. **Hence in my considered view, CSR** which was a mandatory requirement for the public sector undertakings, **has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake. The relied upon**

> **case laws, which have equated CSR only with charity and not covered the other aspects of CSR** namely triple bottom-line approach (discussed above), corporate citizenship, philanthropy, (charity just being a part only), strategic philanthropy, share value, corporate sustainability and business responsibility **are of no application to the case on hand."**

41. The aforesaid decision of the Tribunal emphasises that the 'Corporate Social Responsibilities' that a Company has to discharge have to be treated as 'input services' relating to business, production and sustainability of the company. It was for this reason that it was held that the decisions which equated the said responsibility as charity alone would be of no avail. The Tribunal not only took note of the statutory definition of 'input service' in rule 2 (l), but also gave reasons for holding that the "nexus" between the activities undertaken and the business of manufacture had been clearly established. The view taken by Division Bench referring the matter to the Larger Bench that **Essel Propack** did not refer to the definition of 'input service' in rule 2 (l) and the 'test of nexus' contemplated therein was not examined is, therefore, factually incorrect.

42. The Division Bench, while referring the matter for constitution of a Larger Bench also observed in paragraph 4.4 that 'the issue under consideration is not in respect of the serving employees of the appellant but is in respect of the insurance premium paid by the appellant towards medical insurance cover for the employee and spouse, who opt for the VSS'.

43. As noticed above, VSS could be opted only by the serving employees of the appellant and the insurance cover was also only up to the notional age superannuation.

44. In regard to the finding that service tax paid on premium paid for medical insurance will be admissible as CENVAT credit, the Division Bench relied upon the two judgments of the Karnataka High Court in **Commissioner of C. Ex., Bangalore-III** vs. **Stanzen Toyotetsu India (P) Ltd.**[24] and **Millipore India**.

45. The Division Bench thereafter agreed with the finding recorded by the Commissioner that it was necessary for an asseesse to establish that the premium paid to the insurance companies for medical insurance of employees under VSS should have some connection or nexus with the manufacturing activities, but the Division Bench also observed that under the 2004 Rules credit can be taken only on service tax paid for services utilized directly or indirectly in or in relation to the final product. The Division Bench thereafter took note of the observation made by the Commissioner that 'it remains unexplained as to how the well being of the ex-employees who are no more part of the work force will have any effect 'directly' or 'indirectly' on the manufacture of final product' and in this connection the Division Bench observed:-

> "4.10 Undisputedly in the case of the serving employees, the law has been settled by the various decisions of the tribunal and High Courts that the Service Tax paid on the premium paid for the medical insurance, group insurance, workman insurance policies will be admissible to CENVAT Credit. However it is worth noting that the view that emerges in all these decisions is that CENVAT Credit would not be admissible in respect of that part of Service Tax which is paid on the insurance premium for the medical insurance cover provided to the family members."

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24. 2011 (23) S.T.R. 444 (Kar.)

46. Thereafter, the Division Bench referred to the decision of the Tribunal in **Oudh Sugar Mills** which had disallowed credit on service tax paid on insurance premium in respect of medi-claim insurance if it was not pursuant to a statutory requirement. The Division Bench also referred to the decision of the Tribunal in **Emerson Export Engineering Centre,** wherein the refund claim for service tax paid on medi-claim for the relatives and family members of the staff was denied. The Division Bench also referred to the decision of the Tribunal in **Titan Industries** wherein service tax paid on premium pertaining to dependents/family members of employees was considered not to be an activity directly or indirectly in relation to the manufacture and also to the decision of the Tribunal in **Maruti Suzuki** wherein though CENVAT credit on service tax paid on insurance covered for employees was found to be validly availed in terms of the contractual arrangements but it was denied for family members. The Division Bench also placed reliance upon the decision of the Tribunal in **Mercedes Benz India,** wherein the credit on service tax paid for insurance of family members of the employee was denied.

47. Except for the decision in **Oudh Sugar Mills**, four of the aforesaid five decisions do not even refer to or take note of the judgments of the Bombay High Court in **Coca Cola India** and **Ultratech Cement**.

48. **Oudh Sugar Mills** relies upon a judgment of the Bombay High Court in **Manikgarh Cement**. The view taken in **Manikgarh Cement**, is seemingly at odds with the view taken in **Coca Cola India** and **Ultratech Cement.** Even though the judgment in **Coca Cola India** was pronounced earlier in point of time, the same was

not brought to the notice of the High Court in **Manikgarh Cement.** This apart, the reasoning and the arguments, which found acceptance of the Bombay High Court in **Coca Cola India,** do not seem to have been pleaded before the Bombay High Court in **Manikgarh Cement**.

49. The Tribunal in **Reliance Industries** took note of the seemingly contrary views expressed by the Bombay High Court in the aforementioned judgments in **Coca Cola India** and **Ultratech Cement** on the one hand, and **Manikgarh Cement** on the other hand and made the following observations:

> "**8.2The reliance placed by the learned D.R. in the case of Manikgarh Cement (supra) needs to be addressed by us** as the lower authorities have also relied upon the very same judgment to hold against the appellant herein. **On perusal of the judgment of the Hon'ble High Court of Bombay in the case of Manik-garh Cement (supra) we find that the judgment of the Hon'ble High Court in the case of Coca Cola India Pvt. Ltd. (supra) was not cited before them. Be that as it may, we also find that in the narration of the facts as recorded by the Hon'ble High Court there is nothing which indicates that the assessee's Counsel had urged an argument that the cost of setting up of residential township/colony and subsequent maintenance was included in the cost of the final product and considered for arriving at assessable value.** In the absence of any such proposition from the Counsel, their Lordships had taken a view which is correct in the facts and circumstances of that case, while the case in hand before us, the issue seems to be now squarely covered by the judgment of the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. **We find strong force in the contentions raised by the learned Counsel that the Hon'ble High Court in the case of Manik-garh Cement (supra) had not decided the issue, as it was never raised before them i.e. cost of setting up of the township/colony and the maintenance cost**

> **thereof is included in the cost of production for arriving at assessable value of the final products.** It is settled law that a decision is an authority only on the proposition that it decides and not what was not urged or considered therein or what can be said to be logically flowing these from {see Mittal Engineering Works (P) Ltd. (supra), Fiat India Pvt. Ltd. - 2012 (283) E.L.T. 161 (S.C.).} In view of this we hold that the ratio as laid down by the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt. Ltd. (supra) is specifically on the point raised by the appellant before the lower authorities as well as before us."
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> **(emphasis supplied)**

50. This apart, the issue as to whether credit could also be availed in respect of that part of service tax paid on insurance premium relating to members of the family of the employee who had sought VSS was not an issue raised in the show cause notice and, therefore, was not required to be considered. What was actually required to be examined was whether credit of the service tax paid could be availed on the insurance premium paid in respect of existing employees who opted for and were granted voluntary separation under the contractual VSS.

51. The Division Bench also noticed that in **Deloitte Support Services India,** the Tribunal did not accept the contention of the department that group insurance premium did not directly or indirectly relate to output services. The Division Bench also considered the decision of a learned member of the Tribunal in **Essel Propack** wherein Corporate Social Responsibility was considered to be an 'input service' since it was in connection with 'activities relating to business'. Incidentally, the same learned Member who decided **Essel Propack** was also a Member of the Division Bench that referred the matter to the Larger Bench holding that the said decision

had been rendered without taking into consideration the provisions of rule 2(l) of the 2004 Rules or the test laid down in various decisions that there should be a direct or indirect nexus between the manufacture of goods and the activities undertaken.

52. The interpretation of rule 2 (l) of the 2004 Rules has been conclusively settled by the jurisdictional Bombay High Court in **Coca Cola India** and **Ultratech Cement.** It has also been consistently so held in **Principal Commissioner** vs. **Essar Oil Ltd.[25], Commr. of S.T., Mumbai-II** vs. **Willis Processing Services (India) Pvt. Ltd.[26]** and **Commr. of C. Ex. & Service Tax** vs. **Tata Consultancy Services Ltd.[27]**. It would be pertinent to reproduce the relevant portion of the judgment of the Bombay High Court in **Tata Consultancy Services** and it is as follows:

> "2. The Revenue proposes the questions at page Nos. 6 and 7 as substantial questions of law. However, these very questions have been considered by this Court in the two judgments. One rendered in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. reported in 2010 (260) E.L.T. 369. That judgment and order has been followed by another Bench in deciding Central Excise Appeal No. 168 of 2017 (The Commissioner, Service Tax, Mumbai -II v. M/s. Willis Processing Services (India) Pvt. Ltd. (formerly known as M/s. Tgrinity Computer Processing (India) Pvt. Ltd.) decided on 13th September, 2017. [2017 (7) G.S.T.L. 12 (Bom.)].
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> 3. In the light of these two judgments and orders, the questions proposed in the present appeal cannot be treated as substantial questions of law. The appeal is therefore disposed of in terms of the aforesaid two judgments.

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25. 2016 (41) S.T.R. 389 (Guj.)
26. 2017 (7) GSTL 12 (Bom.)
27. 2018 (362) E.L.T. 777 (Bom.)

53. In view of the aforesaid discussion, it has to be held that credit can be availed on the amount of insurance premium paid by the appellant to the insurance company for availing medi-claim of employees who had opted for the VSS announced by the appellant as the service that was rendered would amount to 'input service' in terms of rule 2(l) of the 2004 Rules, as it stood at the relevant time; it being in relation to activities relating to business.

54. The next issue that would arise for the consideration is whether the amount paid towards premium would form part of the cost of production in terms of CAS-4.

55. This issue was examined by the Commissioner who held that inclusion of cost of production was not a criteria for considering a service as input service. The Division Bench, after reproducing paragraphs 4.1 and 5.2 of CAS-4 issued by the Council of the Institute of Cost and Works Accountants of India as also to the judgment of the Karnataka High Court in **Milipore India,** observed as follows:

> "4.15 From the above also it is quite evident that the benefits as enumerated are with reference to the employees directly engaged in the manufacturing activity. The employees who opt for the VRS and are provided medical insurance benefit for themselves and the spouse cannot be said to be covered by the phrase "employees directly engaged in the manufacturing activities." Further before any reference is made to CAS-4, it is quite relevant to note what was the purpose of CAS-4, and is it applicable to the case of determination of eligibility to CENVAT Credit."

56. The Division Bench thereafter referred to the **Introduction to CAS-4** and observed as follows:

> 4.15 From the above it is quite evident that CAS-4 has limited applicability for determination of the assessable value of the goods as per Rule 8 of Central Excise Valuation Rules, 2000 in case of Captively Consumed Goods. So before the provisions of the CAS-4 are applied it has to be shown that the goods in respect of which the same is applied are captively consumed goods in respect of which the valuation has been determined in terms of the Rule 8 of Central Excise Valuation Rules, 2008. Is it the case of the Appellant that goods manufactured by them were for captive consumption on which the value has been determined in terms of Rule 8 of the Central Excise Valuation Rules, 2000. In case the assessable value of the goods is not determined as per Rule 8, the said standard cannot be pressed into service for determining the eligibility to CENVAT Credit. In the decisions referred above Hon'ble Karnataka High Court has specifically stated that "If services tax is paid in respect of any of those services which forms part of the costs of the final products certainly the assessee would be entitled to the cenvat credit of the tax so paid."
>
> "4.17 **In our view the submission of the appellant by relying on the para 4.1 & 4.2 of CAS-4 can be sustained if the appellant was determining the value of the goods as per CAS-4 in normal course of business but was not determining the same on the basis of transaction value as per Section 4 of the Central Excise Act, 1944. In our view all the decisions of the tribunal wherein the provision of CAS-4 have been applied need re-consideration."**
>
> **(emphasis supplied)**

57. It is for this reason that the Division Bench also referred the applicability of CAS-4 for determination of eligibility to CENVAT credit to the Larger Bench of the Tribunal.

58. It would, therefore, be necessary to refer to the relevant portions of CAS-4, which are as follows:-

> **1. Introduction**

The Cost Accounting principle for determination of cost of production is well established. Similarly, rules for levy of excise duty on goods used for captive consumption are also well defined. Captive Consumption means the consumption of goods manufactured by one division and consumed by another division(s) of the same organization or related undertaking for manufacturing another product(s). Liability of excise duty arises as soon as the goods covered under excise duty are manufactured but excise duty is collected at the time of removal or clearance from the place of manufacture even if such removal does not amount to sale. Assessable value of goods used for captive consumption is based on cost of production. According to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000, the assessable value of goods used for captive consumption is 115% (110% w.e.f. 05-08-2003) of cost of production of such goods, and as may be prescribed by the Government from time to time.

2. Objective

2.1 The purpose of this standard is to bring uniformity in the principles and methods used for determining the cost of production of excisable goods used for captive consumption.

2.2 The cost statement prepared based on standard will be used for determination of assessable value of excisable goods used for captive consumption.

2.3 The standard and its disclosure requirement will provide better transparency in the valuation of excisable goods used for captive consumption.

3. Scope

3.1 The standard is to be followed for determining the cost of production to arrive at an assessable value of excisable goods used for captive consumption.

3.2 Cost of production will include various cost components. They are already defined in Cost Accounting Standard-1 (Classification of Cost – CAS-1). Thus, this standard has to be read in conjunction with CAS-1.

4. Definitions

4.1 Cost of Production: Cost of production shall consist of Material Consumed, Direct Wages and Salaries, Direct Expenses, Works Overheads, Quality Control cost, Research and Development Cost, Packing cost, Administrative Overheads relating to production.

To arrive at cost of production of goods dispatched for captive consumption, adjustment for Stock of work-in-Process, finished goods, recoveries for sales of scrap, wastage etc shall be made.

4.2 Captive Consumption: Captive Consumption means the consumption of goods manufactured by one division or unit and consumed by another division or unit of the same organization or related undertaking for manufacturing another product(s).

4.3 Normal Capacity is the production achieved or achievable on an average over a period or season under normal circumstances taking into account the loss of capacity resulting from planned maintenance. (CAS-2)

5. Determination of Cost of Production for Captive Consumption

To determine the cost of production for captive consumption, calculations of different cost components and adjustments are explained below:

5.1 Material Consumed

Material Consumed shall include materials directly identified for production of goods such as:

(a) indigenous materials

(b) imported materials

(c) bought out items

(d) self manufactured items

(e) process materials and other items

Cost of material consumed shall consist of cost of material, duties and taxes, freight inwards, insurance and other expenditure directly attributable to procurement. Trade discount, rebates and other similar items will be deducted for determining the cost of materials. Cenvat credit, credit for countervailing customs duty, Sales Tax set off, VAT, duty draw back

and other similar duties subsequently recovered/ recoverable by the enterprise shall also be deducted.

5.2 Direct wages and salaries

Direct wages and salaries shall include house rent allowance, overtime and incentive payments made to employees directly engaged in the manufacturing activities.

Direct wages and salaries include fringe benefits such as:

(i) Contribution to provident fund and ESIS

(ii) Bonus/ ex-gratia payment to employees

(iii) Provision for retirement benefits such as gratuity and superannuation

(iv) Medical benefits

(v) Subsidised food

(vi) Leave with pay and holiday payment

(vii) Leave encashment

(viii) Other allowances such as children's education allowance, conveyance allowance which are payable to employees in the normal course of business etc.

59. According to the referring Division Bench, reference to CAS-4 for the purposes of determining eligibility to CENVAT credit on input services under rule 2(l) of the 2004 Rules is dependent upon whether the cost of the input services on which CENVAT credit is availed, actually forms part of the assessable value in terms of rule 8 of the Central Excise Valuation Rules, 2000. In other words, cost of production of finished goods is relevant for the purpose of valuation of the finished goods only under rule 8 and not otherwise. Thus, if duty on the finished goods is discharged with reference to transaction value under section 4 of the Central Excise Act, 1944 or under some other rule, then the concept of cost of production becomes irrelevant, not only for the purpose of valuation, but also for the purpose of determining eligibility to CENVAT credit in terms of rule 2 (l). The

view of the Division Bench, therefore, is that the question of eligibility of CENVAT credit on input services would be dependent upon the manner in which duty is discharged by the manufacturer on the finished products.

60. It needs to be remembered that eligibility of credit under the 2004 Rules is not linked to the manner in which duty is discharged on the finished goods for if this approach is accepted, the appellant would be entitled to avail credit on the input services if the finished goods are only cleared for captive consumption to another sister unit. Conversely, if the entire production was cleared as sales to independent parties, the appellant would not be entitled to such credit.

61. This issue has, in fact, been settled by the jurisdictional Bombay High Court in **Ultratech Cement.** The department had contended that the assessee would not be eligible to avail CENVAT credit on certain input services as duty on cement was payable on tonnage basis and not on ad valorem basis. In that case, reliance had been placed by the assessee on the decision of the Larger Bench of the Tribunal in **GTC Industries** for contending that it was eligible to avail credit, since services had formed part of the cost of production and, therefore, also formed a part of the assessable value of the finished goods on which duty liability was to be discharged. The decision of the Larger Bench in **GTC Industries** had, in turn, relied on a press note holding that, "In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value of which excise duty is charged". The Department, while controverting the submission of the assessee pointed out that the Larger Bench decision in **GTC Industries** was inapplicable since

duty was **actually** being paid on the finished goods i.e. cement, not on the assessable value or the cost of production, but on tonnage basis. This contention of the Department was rejected by the High Court in **Ultratech Cement** and the relevant observations are as follows:

> "24. In the present case, the dispute is, whether the assessee is entitled to take credit of service tax reimbursed by the assessee to the outdoor caterer (whose services were engaged for providing canteen facilities to the employees of the assessee) and utilize the said credit in discharging the excise duty/CENVAT payable on the cement manufactured by the assessee?
>
> 25. In the present case, the CESTAT following the Larger Bench decision of the Tribunal in the case of GTC Industries Ltd. (supra) held that the assessee is entitled to the credit of service tax paid on the outdoor catering services. According to the Revenue, the Tribunal was wrong in relying upon Larger Bench decision of the CESTAT in the case of GTC Industries Ltd. (supra) because in that case the CENVAT on the final product was payable on the assessable value, whereas in the present case the CENVAT on cement is payable on tonnage basis. We see no merit in the above contention because, if in law the assessee is entitled to take credit of service tax paid on outdoor catering services then the said credit cannot be denied merely because the duty on cement is levied on tonnage basis. Therefore, the fact that the CENVAT on cement is payable on tonnage basis cannot be a ground to deny the credit of service tax if in law the assessee is entitled to the credit of service tax paid on outdoor catering service."

62. The two decisions of the Tribunal in **Reliance Industries** in the matter concerning the appellant, rely on the judgment of the Karnataka High Court in **Millipore India**, wherein the Court held that **if** service tax has been paid in respect of any service, which forms a part of the value of the final product, the assessee would **certainly** be entitled to CENVAT credit of such service. This judgment of the

Karnataka High Court approved the decision of the Larger Bench of the Tribunal in **GTC Industries** and also referred to the CAS-4 Standards. The referring order does not cite any judgment taking a view contrary to the one taken by the Karnataka High Court in **Millipore India**.

63. The Bombay High Court in **Ultratech Cement** and **Coca Cola India** are also in line with the view taken by the Karnataka High Court in **Millipore India.**

64. The judgment of any High Court (not just the jurisdictional High Court) would be binding, unless there is a contrary view taken by a different High Court. In the present case, the judgments of the jurisdictional High Court are consistent with the decision of the Karnataka High Court in **Millipore India**. This being the position, there is no basis for doubting the correctness of the view expressed by the Tribunal in **Reliance Industries** in the two matters concerning the appellant.

65. Even otherwise, the view expressed by the Division Bench that a 'theoretical application' of CAS-4 without even determining the applicability of the said CAS-4 "may not be what has been stated by the Karnataka High Court" may not be correct for the simple reason that **Millipore India** was not a case where the assessee was valuing finished goods in terms of rule 8 of the Central Excise Rules, 2000. Despite this, the High Court held that the cost of production and CAS-4 were relevant for determining the eligibility to CENVAT credit in respect of input services in terms of rule 2 (l) of the 2004 Rules. Reliance placed by the Karnataka High Court on CAS-4 was on a conceptual level and not on the basis that the finished goods in that case, were, in fact, being valued under rule 8 of the Central Excise

Valuation Rules, 2000. The Press Note dated 12.08.2004 itself clarifies that reference to the cost of production is at a conceptual and policy level. When the CBEC itself has taken a view that the eligibility of CENVAT credit on input services is dependent on the question whether or not the input service form a part of the cost of production, there is no reason to take a contrary view.

66. The Referral Order in paragraph 4.15 made the following observations:

> "**4.15** From the above also it is quite evident that the benefits as enumerated are with reference to the employees directly engaged in the manufacturing activity. The employees who opt for the VRS and are provided medical insurance benefit for themselves and the spouse cannot be said to be covered by the phrase **"employees directly engaged in the manufacturing activities."**
>
> **(emphasis original)**

67. The above observations were made after referring to paragraph 5 of the judgment of the Karnataka High Court in **Millipore India**, wherein paragraphs 4.1 and 5.2 of CAS-4 were extracted. It is important to note that paragraph 5.2 is not the only provision in CAS-4, which deals with costs relating to employees. Paragraph 5.2 of CAS-4 deals only with the meaning of the expression, "direct wages and salaries", which is only one of the many items that go into preparation of a CAS-4 Certificate, as is clear from "direct wages and salaries" appearing at Serial No. 2 of the Certificate. There are other components such as works overheads, quality control cost, administrative overheads. This position has also been clarified in paragraph 4.1 of CAS-4, which defines the "cost of production" as the sum total of material consumed, direct wages and salaries, direct expenses, works overheads, quality control costs, research and

development cost, packing cost, administrative overheads relating to production. Each of these heads include "employee costs" as an integral part of these other heads.

68. The expression "employee cost" is separately defined in Cost Accounting Standard–7[28] in the following manner:

> "**4.7 Employee Cost**: The aggregate of all kinds of consideration paid, payable and provisions made for future payments for the services rendered by employees of an enterprise (including temporary, part time and contract employees). Consideration includes wages, salary, contractual payments and benefits, as applicable or any payment made on behalf of employee. This is also known as Labour Cost.
>
> …
>
> Employee Cost includes payment made in cash or kind.
>
> For example:
>
> - **Employee Cost**
> - Salaries, wages, allowances and bonus/incentives.
> - Contribution to provident and other funds.
> - Employee welfare
> - Other benefits
>
> - **Employee Cost – <u>Future benefits</u>**
> - Gratuity
> - Leave Encashment
> - Other retirement/separation benefits
> - VRS/other deferred Employee cost
> - Other future benefits
>
> Benefits generally include
>
> - Paid holidays
> - Leave with pay
> - Statutory provisions for insurance against accident or health scheme
> - Statutory provisions for workman's compensation
>
> - **<u>Medical benefits to the Employees and dependents</u>**

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28. CAS-7

- Free or subsidised food
- Free or subsidised housing
- Free or subsidised education to children

....."

(emphasis supplied)

69. Since CAS-7 defines the expression 'employee cost', in general, all references to employee costs in the Cost Accounting Standards, including in CAS-4, will have to take the same meaning as provided in CAS-7. It is clear from CAS-7, that employee costs include payments made in cash or kind and refers to not only the present costs by way of salaries, wages and employee welfare benefits, but also future benefits such as gratuity, leave encashment, VRS and other employee benefits. It also includes benefits to family members and dependents.

70. It is thus clear from CAS-7 that medical benefits pertaining to employees and dependents, even if they are in terms of VRS/retirement/separation schemes, are an integral part of the 'employee cost'.

71. The two issues that have been referred to the Larger Bench of the Tribunal are, therefore, answered in following manner:

(i) The answer to the first issue would be:

a. The Bombay High Court in **Coca Cola India** and **Ultratech Cement** has settled the interpretation of 'input service' in rule 2(l) of the 2004 Rules, as it stood prior to its amendment on 01.04.2011;

b. The definition of input service can be effectively divided into the following five categories, in so far as a manufacturer is concerned:

(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products;

(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal;

(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory;

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs; and

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal.

c. So far as it concerns the dispute raised in this appeal, the definition would cover not only 'input services' which have a nexus with the manufacture of the final product (covered by the first limb in the definition), but also other 'input services', which do not have such a nexus but are covered by either of the other four limbs of the definition;

d. Each limb of the definition is independent and benefit of CENVAT credit would be available even if any one of them is satisfied;

e. So far as the first limb is concerned, the requirement of establishing a nexus between the 'input services' and the process of manufacture would stand satisfied if the expenditure incurred for the 'input service' forms part of the cost of production/value of the final product on which duty of the excise is levied;

f. In this view of the matter, the appellant would be entitled to avail CENVAT credit on the service tax

paid on insurance premium for employees who had opted for the 'Voluntary Separation Scheme';

and

(ii) Cost Accounting Standard-4 would be applicable for determination of eligibility to CENVAT credit even if the goods are not captively consumed.

72. The papers of this appeal may now be placed before the Division Bench for deciding the appeal on merits.

(Order pronounced on **18.04.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

(AJAY SHARMA)
MEMBER (JUDICIAL)

Rekha/JB/Shreya