

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.10249 of 2020**

(Arising out of OIA-RAJ-EXCUS-000-APP-179-2019 dated 15/11/2019 passed by Commissioner (Appeals ) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

**NAYARA ENERGY LTD**

P.B.No. 24, Head Post Office, Khambhalia,  
Devbhumi Dwarka, Devbhumi Dwarka,  
Gujarat

.....Appellant

*VERSUS*

**C.C.E. & S.T.-RAJKOT**

Central Excise Bhavan,  
Race Course Ring Road...Income Tax Office,  
Rajkot, Gujarat-360001

.....Respondent

**APPEARANCE:**

Mrs. Dimple Gohil, Advocate for the Appellant  
Shri Sharad Airan, Assistant Commissioner (AR) for the Respondent

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

**Final Order No. A/11282/2021**

DATE OF HEARING: 16.02.2021  
DATE OF DECISION: 15.03.2021

**RAMESH NAIR**

The issue involved in the present case is that whether the appellant is entitle for Cenvat Credit in respect of following Services:

- I. Air Civil Enclave Services
- II. Authorized Service Station Service.
- III. Mandap Keeper Service.
- IV. Outdoor Caterer Service.
- V. Rent-a-Cab Operator's Service.
- VI. Tour Operator Service.
- VII. Travel Agent Service.
- VIII. Renting of Immovable Service
- IX. Convention Service.
- X. Company Secretary Service.
- XI. Steamer Agent Service.
- XII. Telecommunication Service.

1.1 The Learned Commissioner (Appeals) in the impugned order disallowed the credit in respect of above Services mainly on the ground that the appellant could not establish the nexus between the said services and appellant's manufacturing/business activity. The Learned Commissioner (Appeals) in respect of some services allowed the Cenvat Credit in principle but due to non-availability of invoice/ledger invoice rejected the Cenvat Credit.

2. Mrs. Dimple Gohil, Learned Counsel appearing on behalf of the appellant submits that in respect of all these services, the invoices were issued in the name of the appellant. All these services were used either in relation to manufacturing activity of the appellant or related to business activity. Therefore, it is clearly covered under the definition of Input Service as provided under Rule 2(l) of the Cenvat Credit Rules, 2004 at the relevant period i.e. June- 2008 to February-2009. She relied upon various judgments submitting that the Cenvat Credit in respect of all these services in question has been allowed in one or more judgments:-

- ADANI PORT & SPECIAL ECONOMIC ZONE LTD. v C.S.T., AHMEDABAD [2016 (42) STR 1010 (Tri.-Ahmd.)]
- RELIANCE INDUSTRIES LTD. V. COMMISSIONER OF C.EX.& S.T.,LTU, Mum [2016 (45) S.T.R. 383 (Tri.-Mumbai)]
- PRINCIPAL COMMISSIONER v. ESSAR OIL LTD. [2016 (41) S.T.R. 389 (Guj.)]
- C.C.EX., RAIPUR v. BEEKAY ENGG. & CASTING LTD. [2009 (16) S.T.R. 709 (Tri.-Del.)]
- ESSAR OIL LTD. v. CCE, RAJKOT [FINAL ORDER NO.A/10039/2016 dated 15<sup>th</sup> January, 2016]
- C.C.EX., NAGPUR v ULTRATECH CEMENT LTD. [2012 (278) E.L.T. 523 (Tri.-Mumbai)]
- HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. v COMMISSIONER OF CENTRAL EXCISE, CHENNAI [2019 (5) TMI 251-CESTAT CHENNAI]
- C.C.EX., GOA v HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. [2015 (39) STR 360 (Bom.)]
- ESSAR OIL LTD. v. CCE, RAJKOT [FINAL ORDER NO.A/11288/2017 dated 27<sup>th</sup> February, 2017]
- HINDUSTAN PETROLEUM CORP. LTD. v C.C.Ex., C.&S.T. VISHAKHAPATNAM [2017 (47) STR 136 (Tri.-Hyd.)]

- MANHATAN ASSOCIATES (I) DEV. CENTRE PVT.LTD. v. C.S.T. BANGALORE [2017 (5) G.S.T.L. 99 (Tri.-Bang.)]

3. On the other hand Shri Sharad Airan, Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that since the appellant could not provide the evidence of having nexus between the services and appellant's manufacturing/business activity, the learned Commissioner (Appeals) has rightly denied the Cenvat Credit.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the lower authority has denied the credit on the ground that either there is no nexus between the service and the appellant's manufacturing activity/business activity or in some cases the appellant failed to produce the documentary evidence such as invoices in respect of Input Services on which Cenvat Credit was claimed by the appellant. For ease of reference a chart showing the description of service used and relevant judgments wherein, the same service was dealt with is given below:

| Sr. No | Service Category  | Description of services & Case Laws   |
|--------|---|---|
| 1      | Rent-a-cab, Tour Operator and Travel Agent<br>(Rs. 10,88,061 + 1,18,735 + 3,426)<br>(Total Rs. 12,10,222)<br>representative/s ample copies of invoices are @ <b>pp. no. 158-159</b> | The said services pertain to hiring of vehicles which are used by its employees for their movement within the Refinery premises or for travelling outside in connection with its business. Travel agent service has been utilized for booking of travel tickets for its employees for their official travel. The services are, therefore, used in or in relation to manufacturing / business activities of the company.<br><br>Case Laws:<br><ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)] @ pp. 6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)] @ pp.39- 44</li> <li>• <i>Principal Commissioner v. Essar Oil Ltd.</i> [2016 (41) S.T.R. 389 (Guj.)] @ pp 45-47</li> <li>• <i>C.C.Ex., Raipur v. Beekay Engg. &amp; Castings Ltd.</i> [2009 (16) S.T.R. 709 (Tri. - Del.)] @ pp. 48-50</li> <li>• <i>Essar Oil Ltd. v. CCE, Rajkot</i> [Final Order No. A/10039/2016 dated 15<sup>th</sup> January, 2016] @ pp. 51-54</li> </ul> |

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| 2 | Renting of Immovable Property (Rs. 12,36,000) representative/s ample copies of invoices are @ <b>pp. no. 160-161</b> | These services pertain to service tax paid by the output service provider towards the office premises provided to the company on rent. These office premises are being used for carrying out its business activity viz. procurement, marketing, auditing, accounting etc.<br>Case Laws: <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp. 6-38</li> <li>• <i>(Hindustan Coca-Cola Beverages Pvt Ltd. v. Commissioner of Central Excise, Chennai [2019 (5) TMI 251 – CESTAT Chennai] @ pp 57-63</i></li> </ul>   |
| 3 | Telecommunication Service (Rs. 7,00,014) representative/sample copies of invoices are @ <b>pp. no. 162-163</b>       | The mobile phone service is used by employees for carrying out business activities. Case Laws: <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp no.6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)]@ pp 39- 44</li> <li>• <i>C.C.Ex., Goa v. Hindustan Coca Cola Beverages Pvt. Ltd. [2015 (39) S.T.R. 360 (Bom.)]@ pp 64-66</i></li> <li>• <i>Essar Oil Ltd. v. CCE, Rajkot [Final Order No. A/11288 / 2017 dated 27/02/2017] @ pp 67-71</i></li> </ul>  |
| 4 | Convention Service (Rs. 2,50,506) representative/sample copies of invoices are @ <b>pp. no. 135-153 -</b>            | The said services were utilized in relation to training of its employees. The input service provider has provided the stay and other facilities for the employees of the company who attended such trainings.<br>Explicitly covered in R. 2(i)<br>Case Laws: <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp. 6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)]@ pp 39- 44</li> <li>• <i>Hindustan Petroleum Corp. Ltd. v.C.C.Ex., C. &amp; S.T., Visakhapatnam [2017 (47) S.T.R. 136 (Tri. - Hyd.)]@ pp 72-76</i></li> <li>• <i>Manhattan Associates (I) Dev. Centre Pvt. Ltd. v. C.S.T. Bangalore [2017 (5) G.S.T.L. 99 (Tri. - Bang.) @ pp. 77 - 82</i></li> </ul> |
| 5 | Airport Civil Enclave (Rs. Rs.82,203) representative/sample copies of invoices are @ <b>pp. no. 123-132 -</b>        | The said service is received in connection with its private aircraft which is used for travel of employees, consulting engineers, business clients etc. connected with the manufacturing activity and business of the company. Case Laws: <ul style="list-style-type: none"> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)]@ pp.39-44</li> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp. 6-38</li> </ul>   |

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| 6 | <p>Authorized service station (Rs.1,921) representative/sample copies of invoices pertaining to the said service@ <b>pp. no. 133-134</b></p>  | <p>The said service is used for servicing of company owned vehicles which are used by the employees for their official travel for carrying out their official responsibilities which are in relation to manufacture / business.</p> <p>Case Laws:</p> <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp.6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)]@ pp .39- 44</li> </ul>  |
| 7 | <p>Company secretary (Rs. 12,048) representative/sample copies of invoices pertaining to the said service are @ <b>pp. no. 156-157 -</b></p>  | <p>The said service is utilized for fulfilling various statutory obligations of the company such as Secretarial Audit under Clause 47 (c) of the SEBI's listing agreement and certification etc. which are in relation to manufacture /business. Explicitly covered in R. 2(1) Case Laws:</p> <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp.6-38</li> <li>• Essar Oil Ltd. v. CCE, Rajkot [Final Order No. A/11288 / 2017 dated 27/02/2017] @ pp.67-71</li> </ul>  |
| 8 | <p>Outdoor catering (Rs. 2,32,624) representative/sample copies of invoices pertaining to the said service are @ <b>pp. no. 156-157 -</b></p> | <p>The said service pertains to operation of industrial canteens which are located in its Refinery. In terms of the provisions of the Factory Act, it is mandatory for certain factories to provide an industrial canteen within the factory premises.</p> <p>Case Laws:</p> <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)]@ pp 6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)]@pp no.39-44</li> <li>• <i>Essar Oil Ltd. v. CCE, Rajkot</i> [Final Order No. A/10039/2016 dated 15<sup>th</sup> January, 2016] @ pp.51-54</li> </ul> |
| 9 | <p>Mandap Keeper (Rs. 3,503) representative/sample copies of invoices are @ <b>pp. no. 154-155 -</b></p>                                      | <p>The said service is rendered by the hotel used by the company for the purpose of conducting interviews for recruitment of employees and for business conferences held with its business associates</p> <p>Case Laws:</p> <ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)] @ pp no.6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)] @pp no. 39-44</li> </ul>  |

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| 10 | Steamer agent (Rs. 34,240)<br>representative/sample copies of invoices are @ <b>pp. no. 164-165 -</b> | The said service has been utilized by it in relation to procurement of inputs / inward transportation of inputs or capital goods which is specifically covered by the definition of input service<br><br>Case Laws:<br><ul style="list-style-type: none"> <li>• Adani Port &amp; Special Economic Zone Ltd. v. C.S.T., Ahmedabad [2016 (42) STR 1010 (Tri.-Ahmd)] @ pp. 6-38</li> <li>• Reliance Industries Ltd. v. Commissioner Of C. EX. &amp; S.T., LTU, Mum [2016 (45) S.T.R. 383 (Tri. - Mumbai)] @ pp 39- 44</li> </ul> |
|    | <b>Total (Rs. 37,63,282/-)</b>  |   |

4.1 From the above it can be seen that as per the use declared by the appellant, all the services were used either in relation to the manufacturing activity of the appellant or in relation to the overall business activity. It is also not disputed that the invoices were issued in the name of the appellant therefore, there is no question of receipt and use of service by any other person except by the appellant. The judgments cited by the appellant are directly on the input services which are involved in the present case therefore, in principle the services have been considered as input services. Therefore, following the various judgments I am of the view that the appellant is entitle for the Cenvat Credit. However, in respect of same services some of the invoices were not produced by the appellant which needs to be verified. Therefore, in such cases the matter needs to be remitted back to the Adjudicating Authority.

5. Accordingly, I set aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 15.03.2021 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**