

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

Appeal No. E/11915, 12038/2018-SM

[Arising out of OIA-AHM-EXCUS-002-APP-409-410-17-18 dated 26/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax- AHMEDABAD]

M/s. Psm Engineering Industries

Appellant

Vs

C.C.E., Ahmedabad-ii

Respondent

Represented by:

For Appellant: Mr. Bhushan Jani (Advocate)

For Respondent: Mr. A. Mishra (A.R.)

CORAM:

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

Date of Hearing/Decision:13/12/2018

Final Order No. A/ 12944-12945 /2018

Per: Ramesh Nair

The issue involved in the present case is that whether the appellant is entitled for the Cenvat Credit on rent-a- cab service.

2. Shri. Bhushan Jani, Ld. Chartered Accountant appearing on behalf of the appellant submits that in the facts of their case the rent-a-cab service is not covered under the exclusion category for the reason that the Motor vehicle they have taken on rent is a capital goods falling under Chapter 8703. He submits that in only those cases where rent a cab service is provided by the vehicle which is not a capital goods it is excluded for the definition which is not a case here. He submits that the issue has been considered by this Tribunal in the case of AIA Engineering Ltd. Vs. CCE., Ahmedabad-iii -2018-TIOL-3028-CESTAT-Ahm. Wherein the similar issue has been considered and Cenvat Credit was allowed on the rent a cab service.

3. Shri. Amit Kumar Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of records, I find that there is no dispute on the fact that both the vehicles taken on rent, as per the invoice are capital goods. In terms of definition of the capital goods provided under Rule 2(a) (B) the exclusion entry reads as the "rent a cab service provided by way of renting of motor vehicle and so far which is not a capital goods". Since, in the present case the motor vehicle taken on rent are capital goods, hence does not fall under the exclusion category. The same issue has been considered in the case of AIA Engineering LTD (Supra) wherein this Tribunal has passed the following order:-

"5. As regard the services of rent a cab, though the exclusion in respect of rent a cab services was made with effect from 01.04.2011, the exclusion entry reads as (B) services provided by way of renting of a 4 | P a g e E/10031/2018-SM motor Vehicle, is so far as they relate to a motor vehicle which is not the capital goods. On reading of the above entry, the rent a cab service was excluded only in a case where a motor vehicle which is rented out is not a capital goods. To ascertain whether in the facts of the present case, the motor vehicle is a capital good or otherwise, I have gone through the definition of 'capital goods'. As per the definition of capital goods provided in Rule 2 (a) under the clause (B), the entry of motor vehicle which reads as, " Motor Vehicle falling under Heading 87.02, 87.03, 87.04, 87.11 and their chassis registered in the name of provider of output services for providing taxable services as specified in sub clause (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of Finance Act. In the present case, the passenger vehicle was taken on rent by the appellant which falls under Chapter Head 87.02 and the rent a cab service falls under clause (0) sub clause (o) of clause 105 of section 65 of the Finance Act. Accordingly, in terms of clause (B) of definition of capital goods provided under Rule 2 (a) the motor vehicle taken on rent by the appellant is a capital good. Therefore, it does not cover under the exclusion entry provided under clause 2 (e) under sub clause B of Rule 2(a) of

CENVAT credit rules. Therefore, rent a cab is an admissible input service and credit is admissible. As regard conventional services, the credit was denied only on the ground that it is an optional service for the appellant. I do not understand how the Revenue can decide which are the optional and which are the essential services of a business organization. From the fact it is clear that conventional services was availed for upgrading their overall system of maintenance of bulk handling which is related to the manufacture and removal of goods. Therefore, in my considerate view, the credit is admissible. As per my above discussion, the 5 | P a g e E/10031/2018-SM demand in respect of conventional service and rent a cab service is set aside. As regard construction service, I uphold the finding of the Ld. Commissioner s as much as he has directed to the adjudicating authority for verification. Accordingly, the appeal is disposed off in above terms. "

5. In view of the above decision and my finding given herein above, I am of the clear view that the rent a cab service in the fact of the present case does not fall under exclusion category of definition of input services, hence, credit is admissible. The impugned order is set aside. Appeals are allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Prachi