IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/71269/2018-ST[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1921-17-18 dated 26/03/2018 passed by Commissioner of Central Excise & Central Tax (Appeals), Noida)

M/s Gourav Energen India Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Hapur **Respondent**

Appearance:

Shri Abhinav Kalra, Chartered Accountant, for appellant
Shri Shiv Pratap Singh, Deputy Commissioner (AR), for Revenue

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/03/2019
Date of Decision : 19/03/2019

FINAL ORDER NO-**70653 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Abhinav Kalra learned Chartered Accountant on behalf of the appellant and Shri S.P. Singh learned Deputy Commissioner on behalf of revenue, I note that the issue involved in the present appeal is whether the appellant who is service provider is eligible to avail Cenvat credit of around Rs.1.61 lakhs of service tax paid on Rent-A-Cab Service in view of the exclusion clause provided under Rule 2 (l) of Cenvat Credit Rules, 2004. On perusal of record, I note that the proceedings were initiated for disallowing the said credit in view of the clause B under exclusion clause of Rule 2 (l) of Cenvat Credit Rules, 2004 stating that service tax paid on Rent-A-Cab Service is not admissible to the appellant as input service for availment of Cenvat credit.

2. I note that the issue is no more res-integra and has been settled by this Tribunal in the case of M/s Marvel Vinyls Ltd. Vs Commissioner of Central Excise, Indore reported at 2017 (49) STR 424 (Tri.-Delhi) wherein this Tribunal has given following findings:-

> **"4.**A reading of the above Exclusion Clause show that services provided by way of renting of a motor vehicle do not stand excluded in totality. The Exclusion Clause is in respect of input services of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not capital goods.
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> The contention of the assessee is that motor vehicle is a capital goods, as per the definition of the capital goods contained under Rule 2(a) of the Cenvat Credit Rules, 2004. The appellate authority has specifically observed that the said input service, i.e., renting of "motor vehicles" have been specifically included except in case where motor vehicle is eligible for Cenvat credit as capital goods.
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> **5.**He has however denied the benefit to the assessee on the ground that such motor vehicle are not capital goods for the appellant, Cenvat credit availed on the input services of renting of motor vehicle would not be admissible.
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> **6.**However, I find flaw in the above interpretation of appellate authority. He has rightly observed that the exclusion is only in respect of that motor vehicle which is not a capital goods. However, he has not extended the benefit to the assessee by observing that the same is not a capital goods for the appellant. A person who is receiving the input services of renting of immovable property, can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services. The motor vehicle will always be a capital goods or otherwise for the person who is providing the services. For service provider falling under the category of renting of motor vehicle the motor vehicle would always be a capital goods. As such the expression - "which is not a capital goods appearing in the said exclusion clause would require examination vis-à-vis the service provider and not vis-à-vis the services recipient." As such the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(A) of Cenvat Credit Rules.
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> **7.**In view of the above analysis, I hold that the appellant would be entitled to the Cenvat credit on service tax paid on the said services. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellant."

3. As is clear from the earlier decision of this Tribunal from the above said case that there is no requirement that the motor vehicle is registered in the name of service receiver. I find from the impugned order that learned Commissioner (Appeals) has observed that the motor vehicle which were used for provision of service were not registered in the name of the appellant and the Cenvat credit was denied to the appellant. The said observation of learned Commissioner (Appeals) is not sustainable in view of the settled position of law as decided by this Tribunal in the above stated Final Order.

4. I, therefore, set aside the impugned order and allow the appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

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