

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 20162 of 2017

[Arising out of Order-in-Original No. BEL/EXCUS/000/COM/BKK/031/16-17 (CX) dated 04.11.2016 passed by the Commissioner of Central Excise and Customs, Belgaum]

M/s JSW Steel Limited

P.O. Vidyanagar
Toranagallu
Dist.: Bellary
Karnataka - 583 123

....Appellant

VERSUS

**Commissioner of Central Excise
Belgaum**

No. 71, Club Road
Belgaum - 590 001

....Respondent

APPEARANCE:

Mr. M.S. Nagaraja, Advocate for the Appellant
Mr. M.A. Jithandra, AR for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Final Order No.: 20443 / 2024

Date of Hearing: 28.05.2024
Date of Decision: 30.05.2024

Per: P. Anjani Kumar

M/s JSW Steel Ltd., the appellants, arraign the impugned order dated 04.11.2016 passed by Commissioner Central Excise, Belgaum.

2. Brief facts of the case are that the appellants are engaged in the manufacture of iron and steel products and are registered under Central Excise as well as Service Tax. On conduct of an audit of the records of the appellant, it appeared to the Department that the appellant have availed cenvat credit on certain services which is not eligible in terms of Rule 2(I) of Cenvat Credit Rules, 2004. A show-cause notice dated 01.01.2015 was issued demanding Rs. 5,09,14,878/- covering the period December 2009 to March 2012 along with interest and penalties. The said show-cause notice was confirmed by the impugned order vide which learned Commissioner confirmed duty of Rs. 3,93,18,913/- along with interest and equal penalty under Section 11AC read with Rule 15 (2) of the Cenvat Credit Rules, 2004.

3. Mr. M.S. Nagaraja, learned counsel, appearing on behalf of the appellants submits that the impugned order cannot be sustained on limitation and on merits as well. Learned counsel submits that the dispute regarding the eligibility of services to cenvat credit has been agitated by the Department right from 2010; several show-cause notices (around 20 in nos.) have been issued to the appellants covering the period November 2005 to January 2015, disputing eligibility of different services to cenvat credit.

4. Learned counsel also submits that show-cause notice dated 06.12.2010 covering the period November 2005 to March 2010 was issued to the appellants; Commissioner vide Order-in-Original dated 16.03.2012 has dropped the demand on the issue of limitation; on an appeal filed by the Department this Bench vide Final Order dated 01.12.2021 has decided the issue in favour of the appellants on merits. Learned counsel further submits that the initial show-cause notice dated 06.12.2010 was based on the copy of the cenvat register submitted in the form of CD to the Department by the appellant. The Department has not disputed certain input services in the previous show-cause notice and the present show-cause notice covers such services. Learned counsel submits that it is not open for the Department to issue a show-cause notice invoking extended period for the subsequent period. The facts of the entire activity of the appellants are in the knowledge of the Department. The Department having missed out certain services in the

previous show-cause notice cannot invoke extended period in the subsequent show-cause notice. The show-cause notice covering the period December 2009 to March 2012 was issued on 01.01.2015, beyond the period of limitation and therefore the entire demand is liable to be dropped on limitation alone. He relies on the following cases:

- a. Nizam Sugar Factory Vs. CCE, A.P. – 2006 (197) E.L.T. 465 (S.C)*
- b. ECE Industries Limited Vs. CCE, Delhi – 2004 (164) E.L.T. 236 (S.C)*
- c. Hyderabad Polymers (P) Ltd. Vs. CCE – 2004 (166) E.L.T. 151 (S.C)*
- d. Bhagavati Spherocast Pvt. Ltd. Vs. CCE, Ahm II – 2019 (368) E.L.T. 308 (Guj.)*
- e. CCE & C, Nasik Vs. Mahindra & Mahindra Ltd. – 2018 (11) GSTL 126 (Bom.)*

5. Learned counsel further submits that though the show-cause notices issued covering the period December 2009 to March 2012, it relies on the definition of 'input services' under Rule 2(I) as applicable from 01.04.2012. It is not correct to apply the provisions of law which were not in existence during the relevant period. He further submits that the definition of 'input services' is too vast and all encompassing; credit is not restricted to input services used in or in relation to the manufacture of excisable goods but includes different activities of the manufacturer in relation to the manufacture. He further submits that the impugned order travels beyond the show-cause notice and confirms the demand on the grounds which are not made out or alleged in the SCN; he submits that therefore, the show-cause notice is not sustainable. He relies on the following cases:

- a. Caprihans India Ltd. Vs. CCE – 2015 (325) E.L.T. 632 (SC)*
- b. CC Vs. Toyo Engineering India Ltd. – 2006 (201) E.L.T. 513 (SC)*

- c. *CCE & C, Surat Vs. Sun Pharmaceuticals Industries Ltd. – 2015 (326) E.L.T. 3 (SC)*
- d. *CCE, Nagpur Vs. Ballarpur Industries Ltd. – 2007 (215) E.L.T. 489 (SC)*
- e. *Hindustan Polymers Co. Ltd. Vs. CCE – 1999 (106) E.L.T. 12 (SC)*
- f. *CCE, Bhubaneswar-I Vs. Champdany Industries Limited – 2009 (241) E.L.T. 481 (SC)*

6. Learned counsel further submits that all the services on which credit was availed by the appellants are linked and connected to the main activity of manufacture directly or indirectly. He submits that the credit was availed on services utilized in relation to mines, airport, guest houses, township, roads the activities of which are inseparably linked to the main activity of manufacture. He relies on the Final Order of this Bench(supra) and submits that credit cannot be denied. He submits that the Department has displayed a vexatious nature by issuing repeated show-cause notices, on the same issue which was dropped by the Commissioner, invoking extended period time and again. He submits that such an order is not legally sustainable.

7. Mr. M.A. Jithandra, AR appearing for the Revenue reiterates the findings of the Order-in-Original and points out that credit on certain services, which are clearly not covered by the definition under Rule 2(I) has been availed; and in some cases the appellants themselves have accepted in their written reply that credit was wrongly availed. Learned AR submits that credit on such cases at least cannot be permitted.

8. Heard both sides and perused the records of the case. We find, as submitted by the learned counsel for the appellants that a show-cause notice has been issued disputing the eligibility of certain services to credit. However, extended period has been invoked for the second time. We find that Revenue has already issued a show-cause notice dated 06.12.2010, covering the period November 2005 to March 2010, disputing the eligibility of certain services to credit and invoking extended period. The said show-cause notice has been dropped by the

Commissioner; the appeal filed by the Department against that order was rejected by this Bench vide Final Order cited above, while deciding the issue in favour of the appellants. We find that in the instant case also extended period has been invoked while relying on the data which was already available with the Department. We find that where there are no changes in the material facts of the case and the information available with the Department extended period cannot be invoked again in the subsequent period as held by the Hon'ble Supreme Court in the case of Nizam Sugar Factory (supra).

9. Further we find that learned Commissioner acknowledges the fact that the amount disputed in the instant case also included Rs. 1,00,74,687/- which was already included/covered in the earlier show-cause notices; learned Commissioner therefore confirms the demand to the extent of 3.93 Crores only as against demand of about 5 Crores. As submitted by the learned counsel for the appellants, we find that while acknowledging that the amounts/services are already covered in the previous show-cause notices, learned Commissioner proceeds to confirm the instant demand on limitation. We find that this is not legally permissible. Invocation of extended period requires the evidence regarding the satisfaction of the conditions prescribed therein like suppression of facts etc. with an intent to evade payment of duty. Leaving alone such proof, we find that learned Commissioner does not even discuss as to why extended period can be invoked. We are of the considered opinion that such a show-cause notice and the impugned order cannot be sustained. We find that invocation of extended period is a weapon in the hands of the Department to demand duty where the belligerent assessee evades payment of duty and not in cases wherein all the material facts of the case were available with the Department and show-cause notices are being issued regularly on the same issue. Therefore, we conclude that the appellants have a strong case in their favour on limitation.

10. Coming to the merits of the case, we agree with the submissions of the learned counsel for the appellants that the services on which credit was availed are integral to the business of manufacture carried out by the appellants. In fact this Bench has analyzed various services

on which the appellants have availed credit in the Final Order cited above and have decided the issue in favour of the appellants. We further find that learned counsel for the appellants therein has relied upon various cases to justify the credit taken in respect of 67 services on which credit was taken; these are elaborately discussed in the Final Order dated 01.12.2011, cited above. We further find that this Bench has further held that -

“6. On going through the provisions of the Rules it appears that the definition of input service did give vast connotation before or after amendment making the services used directly or indirectly, in or in relation to the manufacture of the final products. Only change made after amendment is that certain services are excluded. We find that various High Courts have interpreted to Rules to have a wider connotation rather than the constrictive view taken by Revenue. We find that Hon’ble High Court of Bombay in the case of Coca Cola India Ltd. Vs. CCE, Pune – 2009 (15) STR 657 (Bom.) has held that the manufacturer is entitled to take credit on services used directly or indirectly, in or in relation to manufacture and clearance of the final products up to the place of removal and on various services as illustrated in the inclusive part of the definition; further they held, in the case of CCE, Nagpur Vs. Ultra Tech Cement Ltd. – 2010 (20) STR 577 (Bom.) that the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In view of the same and in view of the judgments of various High Courts and this Tribunal in respect of eligibility of individual services as tabulated above, we find that the appellants have correctly availed the credit on various disputed services. Accordingly, the impugned order does not survive and needs to be set aside. We do so. For the reasons cited above, the department’s appeal against dropping of a portion of demand, vide impugned order, does not survive.”

11. In view of the above, we find that the appellants have a strong case in their favour. The impugned order cannot be sustained and is liable to be set aside.

12. In view of the above, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 30.05.2024)

(P.A. Augustian)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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