# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

**ST/20058/2019-SM**

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-769-2018 dated 03/10/2018 passed by Commissioner of Central Tax, COCHIN (Appeal).]

**ST/20134/2019-SM**

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-1076-2018 dated 11/12/2018 passed by Commissioner of Central Tax, COCHIN (Appeal).]

**Bharath Sanchar Nigam Ltd**
KPM Towers Down Hill
Malappuram - 676519
Kerala

Appellant(s)

**Bharath Sanchar Nigam Ltd**
KPM Towers Down Hill
Malappuram - 676519
Kerala

*VERSUS*

**Commissioner Of Central Tax And Central Excise, Thiruvanthapuram**
P.B.No.13, I.C.E Bhawan, Press Club Road
Thiruvanthapuram - 695001
Kerala

Respondent(s)

**Commissioner Of Central Tax & Central Excise, Calicut**
C.R. Buildings, Mananchira
Calicut - 673001
Kerala

Respondent(s)

**Appearance:**

Mr. A. Mony, CA — For the Appellant
Mr. Madhup Sharan, AR — For the Respondent

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**Final Order No. 20464-20465 / 2019**

Date of Hearing: 11/06/2019
Date of Decision: 11/06/2019

**Per : S.S GARG**

These two appeals have been filed by the appellant against the impugned order dated 3.10.2018 and 11.12.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected both the appeals of the appellant.

2. Since the issue involved in both the appeals is identical, therefore, both the appeals are being disposed of by this common order. The details of both the appeals are given herein below:

| **Appeal No.** | **Period** | **Amount** |
|---|---|---|
| ST/20058/2019 | 2013-2014 | Rs.2,93,910/- |
| ST/20134/2019 | 2014-2015 | Rs.4,49,945/- |

3. For the sake of convenience the facts of appeal No.ST/20058/2019 are taken. The appellant is a service tax registrant under the service category of 'Telecommunication Service' to their subscribers. During the audit, it was noticed that they have availed ineligible CENVAT credit of service tax of Rent-a-Cab service during the period December 2013 to September 2014 amounting to Rs.2,93,910/-. Accordingly, a show-cause notice No.06/2015-ST dated 9/3/2015 was issued to them demanding the ineligible CENVAT credit availed along with interest and penalty. The adjudicating authority has confirmed the demand along with interest and equal penalty vide the Order-in-Original No.26/2016-ST dated 29/1/2016. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner (A) who rejected the same.

4. Heard both the parties and perused the records.

5. Learned consultant appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the definition of 'input service' as provided in Rule 2(l) of CENVAT Credit Rules, 2004 and without considering the binding

judicial precedent. He further submitted that the appellants are service providers of 'Telecommunication Service' and has hired the service of vehicles which were used by BSNL employees for the purpose of maintaining BSNL telephone exchanges, BTS and other Telecommunication services, etc., operational at various locations in their Telecom Circles. He further submitted that these services are essential and have connection to the provision of their output service. He further submitted that the exclusion clause of the input service under Rule 2(l) is not applicable in the present case. He also submitted that the documents evidencing ownership of a cab to the Rent-a-Cab service provider are already produced before the assessing authority. He further submitted that this issue is no more *res integra* and has been settled in favour of the assessee in the following cases:

- ***Marvel Vinyls Ltd. vs. CCE: 2016-TIOL-3071-CESTAT-DEL,***
- ***CST vs. M/s. Nihilent Technologies Pvt. Ltd.: 2017-TIOL-2696-CESTAT-MUM.***
- ***M/s. Godawari Power and Ispat Ltd. vs. CCE: 2018-TIOL-456-CESTAT-DEL***
- ***Kansai Nerolac Paints Ltd. vs. CST: 2017-TIOL-4494-CESTAT-MUM***

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the decisions relied upon by the appellant, I find that the Tribunal in the case of *Marvel Vinyls Ltd.* cited supra has considered the issue after the amendment in the definition of input service after 1.4.2011. The Tribunal in the said case has observed as under:

> *"3. After hearing both the sides, I find that the definition of input service is contained in Rule 2(l) of the Cenvat Credit Rules, 2004 and relates to any service used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of their final product and includes many services specified therein but excludes some of the services specified. An Exclusion Clause B was introduced w.e.f. 1-4-2011 to the following effect :*

> *"[(b) [Services provided by way of renting of a motor vehicle], insofar as they relate to a motor vehicle which is not a capital goods;]"*

*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.*

*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.*

*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.*

*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.*

*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."*

The said decision has also been followed by the Tribunal in the cases of ***M/s. Godawari Power and Ispat Ltd.*** (supra) and ***M/s. Macurex Sensors Pvt. Ltd. vs. CCT vide Final Order No.20569/2018*** has allowed the CENVAT credit.

7. Following the ratio of the said decisions, I am of the view that the impugned order is not sustainable in law and therefore, the same is set aside by allowing both the appeals of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **11/06/2019.**)

**S.S GARG**
**JUDICIAL MEMBER**

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