

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 137 Of 2010**

[Arising out of OIO No. 47-48/NS/Adjn/09 dated 30.10.2009 passed by the Commissioner of Central Excise, Delhi-IV]

**JCB India Ltd.**

23/7, Mathura Road, Ballabhgarh

**: Appellant (s)**

Vs

**CCE- Delhi-IV**

New CGO Complex, NH-IV Faridabad, Haryana

**: Respondent (s)**

**With**

**Excise Appeal No. 160 Of 2010**

[Arising out of OIO No. 47-48/NS/Adjn/09 dated 30.10.2009 passed by the Commissioner of Central Excise, Delhi-IV]

**JCB India Ltd.**

23/7, Mathura Road, Ballabhgarh

**: Appellant (s)**

Vs

**CCE- Delhi-IV**

New CGO Complex, NH-IV Faridabad, Haryana

**: Respondent (s)**

APPEARANCE:

Shri Vikrant Kackaria a/w Shri Naveen Bindal, Advocates for the Appellant  
Shri Rajeev Gupta, Shri Narinder Singh, Authorised Representatives for the  
Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**  
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60111-60112/2023**

Date of Hearing:02.03.2023

Date of Decision:28.04.2023

**Per : S. S. GARG**

These two appeals are directed against the common impugned  
order dated 30.10.2009 passed by the Commissioner of Central

Excise, Delhi-IV. Since the issue involved in both the appeals are same, therefore, both the appeals are taken up together for disposal.

2. Briefly stated the facts of the present case are that the appellant is engaged in the manufacture of Excavator Loaders & Earthmoving Machines of chapter 85 of Central Excise Tariff Act, 1985 and was registered with the central excise department under Central Excise Act, 1944.

- While selling the aforesaid earth moving machineries, the appellant promises "free services" to its customers, during the warranty period of the machines sold.
- For this purpose, the appellant entered into a contractual relationship with its dealers, who are requested to provide the aforesaid free service to the customers, on behalf of JCB India Limited. Pursuant to aforesaid contractual relationship, the dealers of the appellant render free service to the customers concerned, which service is rendered on behalf of the appellant. The dealer does not charge anything from the customer in this regard inasmuch as, the contract for rendition of service is with the appellant and not with customer concerned.
- For rendition of aforesaid services, the dealers of appellant charges JCB India Limited. This service is subject to service tax and accordingly, the dealers admittedly pay service tax on the aforesaid services rendered to the appellant. This service tax so paid is in turn charged and recovered from the appellant and the appellant being entitled in law, takes Cenvat Credit thereof under Cenvat Credit Rules, 2004.

- During the course of audit conducted by the department, it was noticed that the appellant paid certain payment to their dealers which they claimed to be charges after sale services provided by the dealers free of cost to their customers on behalf of the appellant.
- On the allegations of wrongful availment of cenvat credit by the appellant, the show cause notices were issued for denial and recovery of said credit availed by the appellant in respect of charges paid by them to the dealers for carrying out after sale services on the ground that the after sale services provided by the dealer were not covered under the definition of input services as provided under Rule 2(I) of Cenvat Credit Rules, 2004.
- After following due process, the demand of cenvat credit alongwith interest and equivalent penalty, was confirmed vide impugned order on the following grounds:-
  - (i) In view of the definition of 'input services' under Rule 2(I) of Cenvat Credit Rules, 2004 and definition of place of removal under Section 4(c) of Central Excise Act, 1944, the after sale services are not covered under the definition of input services as the said services were provided by the dealers to the customers beyond the place of removal of goods and at the time of provision of the said services, the ownership/title of the goods were not with the appellant.
  - (ii) As the said services are claimed to be free service by the appellants, the same cannot form part of the

assessable value. Even otherwise, inclusion in assessable value is not criteria for claiming credit as per the above definitions.

- (iii) Board' Circular No. 87/05/2006-ST dated 06.11.2006 clarified that dealer were liable to discharge service tax liability in respect of payment received by them from the company for providing free after sale services to the customers. The Circular did not mention anything about the eligibility of credit to the company in respect of the said services.
- (iv) The adjudicating authority mainly relied upon the case laws of Ambuja Cement Ltd. – 2009 (14) STR 3 (P & H) to support his findings and confirm the above demands of Cenvat Credit.

Aggrieved by the said order, the appellant filed the present appeals.

- 3. Heard both the parties and perused the material on record.
- 4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the law and facts and the binding judicial precedents.

- He further submitted that Cenvat Credit on 'Warranty Free Services' has been correctly availed in terms of Rule 3(1) of the Cenvat Credit Rules, since such services are covered under rule 2(I) of Cenvat Credit Rules, 2004.
- The in-warranty 'repair and maintenance services' rendered by dealers are covered under 'means' clause of the definition of

“input service’. The repair and maintenance were received by the appellant from the dealers to fulfil warranty obligations annexed to the final products manufactured and cleared by the appellant. Such warranty obligations enhance the marketability of the final products, thereby having a significant role to play in increased sale of the final products by the appellant. As the sale of goods is integrally connected in relation to the manufacture of goods, the services in question were used indirectly in relation to the manufacture of final products and the same would fall under the definition of “input service’.

- The Ld. Counsel further submitted that this issue is no more *res-integra* and has already been decided in favour of the assessee by various decisions of the Tribunal. In support of his submissions, he relied upon the following judgements:-
  - (i) Order-in-Appeal No. C. Appeal – favour- 38/CE/CGST-Appeal-Gurugram/SG/2019 dt. 31.05.2019
  - (ii) Commissioner of Central Excise, Vadodara-II vs. Danke Products 2009 (16) STR. 576 (TRI.-AHMD.)
  - (iii) Carrier Airconditioning and Refrigeration Ltd. vs. CCE Gurgaon 2016 (41) STR 1004 (Tri.-Del.)
  - (iv) Zinser Textiles Systems Pvt. Ltd. vs. CCE Ahmedabad 2014 (33) STR 301 (Tri.-Ahmd.)
  - (v) Leroy Somer India Pvt. Ltd. vs. CCE Noida 2015 (39) STR 466 (Tri.-Del.)
  - (vi) Elgi Equipments Ltd. vs. CCE Coimbatore 2017 (51) STR 457 (Tri.-Chennai)

- (vii) Gujarat Forging Ltd. vs. CCE Rajkot 2014 (36) STR 677 (Tri.-Ahmd.)
- (viii) Lucas TVS Ltd. vs. Comm. Of GST & C. Ex., Chennai 2020 (37) GSTL 180 (Tri.-Chennai)
- (ix) Johnson Controls Hitachi Air Conditioning India Ltd. vs. CCE & ST- Ahmedabad-III2022-VIL-482-CESTAT-AHM-ST
- (x) M/s New Holland Construction Equipment Pvt. Ltd. vs. Commissioner of Central Excise, Ujjain 2021-VIL-282-CESTAT-DEL-ST
- (xi) Coca Cola India Pvt. Ltd. vs. Commissioner of Central Excise, Pune-III 2009 (15) STR 657 (Bom.)
- (xii) Reliance Industries Ltd. vs. CCE & ST- LTU, Mumbai 2022 (380) ELT 457 (Tri.-LB)
- (xiii) Commissioner of Central Excise, Ludhiana vs. Ambika Overseas 2012 (25) STR 348 (P & H)

5. Ld. Counsel further submitted that the Ld. Commissioner in the appellant's own case for the subsequent period has allowed the cenvat credit of service tax on free warranty services vide Order-in-Appeal No. 38/CE/CGST/Appeal-Gurugram/SG/2019 dated 31.05.2019 which is for the subsequent period whereas the present appeals pertains to earlier period, except the period there is no change in the facts and circumstances of the case. He also submitted that the department in their additional written submissions not brought anything on record to show that the department has filed appeal against the said decision. He also submitted that in the absence of filing of appeal before the Tribunal against the order of the Commissioner, the department

cannot take a contrary view to the one already accepted by it in the appellant's own case on identical issue for the subsequent period.

6. As regard the invocation of extended period of limitation, Ld. Counsel submitted that there does not exists any reason for the invocation of extended period of limitation as the issue is already covered by the decision of the Tribunal in favour of the assessee. In such a situation it cannot be alleged that there is any fraud, suppression, wilful statement on the part of the appellant. He also submitted that audit of the appellant was conducted on 28/30.03.2007 and 03/04/.02.2007 whereas the show cause notice was issued on 26.02.2009. When the department was itself aware of all the facts in the year 2007 itself and the show cause notice was issued after two and half years and the substantial demand is beyond the period of limitation.

7. On the other hand, the Ld. DR filed written submission and additional written submissions supporting the impugned order and submitted that the Tribunal in the cases of Commissioner vs. Mahindra & Mahindra Ltd. – 2014 (34) STR. J207 (Bom.) and M/s Danke Products cited (supra) has not separately examined the definition of 'input service' and the concept of place of removal in the context of the definition of 'input service' and just relied upon the decision of the larger bench of the Tribunal in the case of M/s ABB Ltd. vs. CCE-2009 (15) STR 23 (Tri.-LB.). He also submitted that the larger bench of the Tribunal in the case of M/s ABB Ltd. has categorically mentioned that valuation of goods and eligibility of cenvat credit are independent of each other and has no relevance to each other. He further submitted that the revenue has denied the input service credit as input service

availed by the appellant has neither been used by the appellant in or in relation to manufacture of final product nor for providing output service as mandated under Rule 2(l) of Cenvat Credit Rules, 2004 and the said input service credit relates to **after sales service**. He further submitted that the appellant is neither a service provider nor service receiver and the service, in question, has been rendered by the dealers not only beyond the place of removal but also after transfer of title of goods in the name of the customers. After removal and transfer of ownership, the appellant has ceased to be the owner of goods. Further, Rule 2(l) of Cenvat Credit Rules, 2004 service provided beyond the place of removal and after transfer of title of goods in the name of customers cannot be treated as input service for the appellant.

8. Further, the place of removal under Section 4(c) of Central Excise Act, 1944 is:-

- A factory or any other place or premises of production or manufacture of excisable goods;
- A warehouse or any other place or premises wherein the respective goods have been permitted to be stored without payment of duty;
- A depot or premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory; from where such goods are removed;

9. Ld. DR relied upon the decision of the Hon'ble Apex Court in the case of Commissioner of Customs & Central Excise, Nagpur vs. Ispat Industries Ltd. wherein it was held by the Hon'ble Apex Court that the

place of removal can only be manufacturer's premises, its depot or premises of consignment agent of manufacturer.

10. Regarding the justification for invoking the extended period of limitation, Ld. DR submitted that the appellant has suppressed the material facts from the department about availment of cenvat credit of service tax paid by dealers and it could only be detected by the audit team after examination of their records. In support of his submissions, he relied upon the following decisions:-

- Ambuja Cements Ltd. vs. Union of India 2009 (14) STR 3 (P & H)
- CCE vs. Danke Products – 2009 (16) STR 576 (Tri.-Mumbai)
- CCE vs. Ultra Tech Ltd. – 2018 (9) GSTL 337 (SC)
- CCE vs. Roofit Industries Ltd. – 2015 (319) ELT 221 (SC)
- CCE vs. Ispat Industries Ltd. - 2015 (324) ELT 670 (SC)
- Deepak Fertilizers & Petrochemicals Corpn. Ltd. – 2013 (32) STR 532 (Bom.)
- Ultra Tech Cement Ltd. vs. Commissioner- 2018 (13) GSTL. J101 (SC)
- CCE vs. Indian Special Castings (P) Ltd. – 2008 (227) ELT 332 (Tri.-Del.)
- Ultra Tech Cement Ltd. vs. CCE-2019 (366) ELT 891 (Tri.-chan.)
- Carrier Airconditioning and refrigeration Ltd. 2016-TIOL-450-CESTAT-CHD
- Samsung India Electronics Pvt. Ltd. vs. CCE – 2017-TIOL-05-CESTAT-ALL

- Case New Holland Construction Equipment (I) Pvt. Ltd. vs. CCE 2018-TIOL-33-CESTAT-DEL
- Commissioner vs. Ultratech Cement Ltd. – 2014 (36) STR 170 (S.C.)
- CCE vs. Neminath Fabrics Ltd. – 2010 (256) ELT 369 (Guj.)

11. Further, in his additional written submission, the Ld. DR stated that the decisions of the Tribunal in the case of Carrier Air-conditioning and Refrigeration Ltd. and Honda Motorcycle & Scooter India Pvt. Ltd. cited (supra) have not been accepted by the department and the appeals have been admitted by the respective jurisdictional High Court against the said orders.

12. In reply to the additional written submissions, the appellant has also filed written submission stating that the Commissioner in the appellant's own case for the subsequent period has allowed the cenvat credit which has not been challenged by the department. He also submitted that it is an accepted principle of law that the orders of the higher appellate forum are binding on the lower appellate authorities unless the same are set-aside or stayed by the higher appellate authorities.

13. There is nothing on record to show that these decisions have been stayed by the jurisdictional High Court. In support of this submission, Ld. Counsel relied upon the decision of the Hon'ble Apex court in the case of Union of India vs. Kamalakshi Finance Corporation reported in 1991 955) ELT 433 (SC.) wherein the Hon'ble Apex Court has held that the order of the higher appellate forum would be binding on the lower authority in the absence of any stay of the same.

14. Ld. Counsel further submitted that the appellant has relied upon two latest decisions of the Tribunal in the case of Johnson Controls Hitachi Air Conditioning India Ltd. and M/s Case New Holland Construction Equipment (I) Pvt. Ltd. cited (supra) wherein all the earlier decisions on this issue have been discussed and thereafter the demands have been dropped.

15. Ld. Counsel distinguished the decision of the Hon'ble Apex Court relied upon by the Revenue in the case of Maruti Suzuki Limited cited (supra) and submitted that the said decision relates to the definition of 'inputs' and did not relate to the definition of 'input services'. In case, the said decision has been differed by the Hon'ble Apex Court in the case of Ramala Sahkari Chini Mills Ltd. – 2010 (260) ELT 321 (SC.).

16. We have considered the rival submissions made by both the parties and perused the records and the written submissions and additional written submissions filed by the both the parties.

17. The appellant claims that it is eligible for CENVAT credit on the in-warranty repair and maintenance services under the 'means' clause of the definition of 'input service' in rule 2(I) of the Credit Rules which requires the service to be "used, directly or indirectly, in or in relation to the manufacture of final products". The contention is that 'means' clause of the definition is very widely worded and words such as 'directly or indirectly' and 'in or in relation to', further expand the scope of the definition to include even those services which are indirectly used in relation to the manufacture of the final products.

18. The appellant further claims that the final products manufactured and cleared by the appellant are expensive and their maintenance is

also cost-intensive for which specific training is required. The after sales services is the central pillar of the appellant's promotional strategy towards sale of its final products, since these services augment the value of final products and thus, become important considerations for the customers while purchasing such products. Accordingly, the final products carry contractual obligations of the appellant as the manufacturer of such goods, which are enumerated under the warranty policy of the final products. The dealers provide the services in accordance with the checklist provided by the appellant. The appellant also contends that it manufactured the final products with the sole intention to sell them and thus, sale of goods is integrally connected in relation to the manufacture of goods. The contention, therefore, is that since the repair and maintenance services are fundamentally linked to sale and sale directly affects the manufacturing activities, the services were used indirectly in relation to the manufacture of final products and would fall under the 'means' part of the definition of 'input service'. Thus, it has been contended that the appellant was justified in availing CENVAT credit of the service tax paid by the appellant on 'maintenance and repair services'.

19. The issue, therefore, that arises for consideration in the present appeal is whether CENVAT credit of service tax paid by the appellant on 'repair and maintenance services' provided by the dealers for fulfilling the warranty obligations of the appellant has been denied for good and valid reasons.

20. To examine this issue, it would be necessary to reproduce the relevant portion of the definition of 'input service', as defined in rule

2(l) of the Credit Rules. Rule 2(l) was substituted by Notification dated 01.03.2011 w.e.f 01.04.2011 and it is reproduced below :

*w.e.f 01.04.2011*

**"2(l) "input service" means any service,-**

*(i) used by a provider of output service for providing an output service; or*

***(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,***

*and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

*but exclude,*

*XXXXXXXXXXXX*

*XXXXXXXXXXXX*

*XXXXXXXXXXXX"*

(emphasis supplied)

21. Rule 2(l), as it stood prior to 01.04.2011, is also reproduced below :

*17. prior to 01.04.2011*

**"2(l) "input service" means any service,-**

*(i) used by a provider of taxable service for providing an output service; or*

***(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of***

***final products and clearance of final products upto the place of removal,***

*and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;”*

*(emphasis supplied)*

22. 'Input service' either prior to 01.04.2011 or w.e.f. 01.04.2011 means any service used by the manufacturer, whether directly or indirectly, or in relation to the manufacture of final products. The appellant is under an obligation to provide after sale service on the final products manufactured by it. The dealers provide the services and the appellant pays service tax on the amount paid by it to the dealers. The service is provided free of cost by the dealers during the warranty period but the appellant makes payment to the dealers for the services they provide to the customers. The repair and maintenance services are, therefore, linked to the sale. The services are, therefore, used indirectly in relation to the manufacture of final products.

23. Further, we find that the Ld. Commissioner (Appeals) has dropped the demand of the appellant on the very same issue for the subsequent period vide its order dated 31.05.2019 and the department has not brought anything on record to show that they have been challenged the said decision, if that is correct, then the

department has accepted the said decision and in the present appeals they are precluded from taking a contrary stand.

24. Further, we also find that the department has filed appeals before the Hon'ble High Court where the Tribunal has given the relief to the assessee but the decisions of the Tribunal in those cases have not been stayed and hence, the ratio of the said decisions are binding on the lower authorities.

25. Further, we also find that the department has not been able to distinguish the latest two decisions of the Tribunal in the case of Johnson Controls Hitachi Air Conditioning India Ltd. and M/s Case New Holland Construction Equipment (I) Pvt. Ltd. cited (supra) involving identical issues wherein all earlier decisions of the Tribunal were considered and thereafter, the demands were dropped.

26. Further, we are of the opinion that the decisions relied upon by the Revenue are not directly on the issue and does not reflect the controversy involved in the present case.

27. In view of our discussion above, we hold that the appellant has correctly availed cenvat credit on the amount of service tax paid for the services provided by the dealers to the customers on behalf of the appellant for fulfilling the warranty obligations of the appellant.

28. The ratio of the decisions relied upon by the appellant is squarely applicable to the instant case and relying upon the aforesaid decision, we find that the credit on warranty service provided free of cost during the warranty period through third parties cannot be denied.

29. As regards, the invocation of extended period of limitation, we hold that there does not exists any reason for invoking the extended

period of limitation as the issue involved in the present case has already been decided in favour of the appellant. Moreover, the department did not bring any material on record to show that the appellant has suppressed the material facts with intend to evade payment of service tax. Besides this, the audit of the record of the appellant was conducted in February/March 2007 whereas the show cause notice was issued in 2009 after the expiry of two and half years which makes the substantial demand beyond the period of limitation.

30. In view of our discussion above, the impugned orders are set-aside and both the appeals of the appellant are allowed with consequential relief, if any, as per law.

*(Pronounced on 28.04.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.