CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
~~~~~

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 150 Of 2012

[Arising out of OIO No. 20/DM/ADJN/2011-2012 dated 10.10.2011 passed by the Commissioner of Central Excise, Faridabad, Haryana]

JCB India Ltd. **: Appellant (s)**
23/7, Mathura Road, Ballabhgarh

Vs

CCE- Delhi-IV **: Respondent (s)**
New CGO Complex, NH-IV Faridabad, Haryana

WITH
Excise Appeal No. 255 Of 2012

[Arising out of OIO No. 21/DM/ADJN/2011-2012 dated 10.10.2011 passed by the Commissioner of Central Excise, Faridabad, Haryana]

JCB India Ltd. **: Appellant (s)**
23/7, Mathura Road, Ballabhgarh

Vs

CCE- Delhi-IV **: Respondent (s)**
New CGO Complex, NH-IV Faridabad, Haryana

APPEARANCE:
Shri Vikrant Kackaria, Advocate for the Appellant
Shri Narinder Singh, Authorised Representative for the Respondent

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

FINAL ORDER No. A/60214-60215/2023

Date of Hearing:20.07.2023

Date of Decision:20.07.2023

Per : S. S. GARG

These two appeals are directed against the impugned order dated 10.10.2011 passed by the Ld. Commissioner of Central Excise, Faridabad, Haryana whereby the Ld. Commissioner has confirmed the
~~~~~

demand of duty along with interest and penalty. The amount and the period involved in the present appeals are given herein below:-

Sr. No.	Appeal No.	O-I-O	Duty	Penalty	Period
1.	E/150 /2012-EX(DB)	20/DM/ADJN/2011-2012 dated 10.10.2011	15679606/-	15679606/-	June 2009 to February 2010
	E/255/2012-EX(DB)	21/DM/ADJN/2011-2012 dated 10.10.2011	25913584/-	25913584/-	March 2010 to January 2011

As the issues involved in both the appeals are identical and both the appeals have been decided by common impugned order, therefore, both the appeals are taken up together for disposal and discussion.

2. Briefly the facts of the present case are that M/s JCB India Limited (in short M/s JCB) is *inter alia* engaged in the manufacture and sale of earth moving machineries such as excavators, loaders, etc., at its plant in Faridabad, in the State of Haryana. While selling the aforesaid earth moving machineries, M/s JCB India Limited promises "free services" to its customers, during the warranty period of the machines sold.

3. For the purpose of providing free service, M/s JCB entered into a contractual relationship with its dealers. The dealers rendered free service to the customers concerned and raised invoice on JCB along with service tax. The tax paid by dealers on the after sales service was also recovered from JCB and the said tax was claimed as credit under the CENVAT Credit provisions by JCB. Two show cause notices were issued to JCB for the relevant period proposing to deny CENVAT Credit

on the ground that the same did not qualify as "input service" within the meaning of Rule 2(l) of CENVAT Credit Rules, 2004.

4. After following due process, both the show cause notices were adjudicated vide Order-in-Original by confirming the demand and penalty against which the present appeals have been filed.

5. Heard both the parties and perused the case records.

6. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on the same issue. He further submitted that the issue of admissibility of credit to Appellant on after sales services or services provided by the dealers to appellant's customers during warranty period is no more *res-integra* and has been decided by this Tribunal vide Order No .A/60111-60112/2023 dated 28.04.2023 in appellant's own case for the prior period i.e. December, 2005 to July 2008 and August, 2008 to May, 2009**.** He further submitted that the period involved in both the appeals is June 2009 to February 2010 and March 2010 to January 2011. He further submitted that while allowing the credit on tax paid on after sales services the Tribunal has made the following observations:

- Input service, prior and post the amendment with effect from 01.04.2011, means any service used by the manufacturer, whether directly or indirectly, or in relation to the manufacture of final products.
- The repair and maintenance services are linked to the sale and thus are used indirectly in relation to the manufacture of final products.

- The demand has been dropped by the Commissioner (Appeals) vide *Order-In-Appeal No.C. Appeal – Favour – 38/CE/CGST-Appeal-Gurugram /SG/2019 dated 31.05.2019*in JCB's own case on the very same issue for the subsequent period vide order dated 31.05.2019. Since the same has not been challenged, the Department is precluded from taking a contrary stand.

7. He further submitted that this issue has been considered by various benches of the Tribunal and stands covered in favour of the assessee by the following decisions:-

Commissioner of C. Ex. Vadodara-II VersusDanke Products 2009(16) S.T.R. 576 (Tri-Ahm.)

Carrier Airconditioning and Refrigeration Ltd. V. CCE Gurgaon 2016 (41) S.T.R. 1004 (Tri-Del.)

Zinser Textiles Systems Pvt. Ltd. V. CCE Ahmedabad 2014 (33) S.T.R. 301 (Tri-Ahmd.)

Leroy Somer India Pvt. Ltd. Vs. CCE Noida 2015 (39) S.T.R. 466 (Tri-Del.)

ElgiEquipments Ltd. CCE Coimbatore 2017 (51) S.T.R. 457 (Tri-Chennai)

Gujarat Forging Ltd. Vs. CCE Rajkot 2014 (36) S.T.R. 677 (Tri-Ahmd.)

Lucas TVS Ltd. V. Comm. Of GST & C. Ex. Chennai 2020 (37) G.S.T.L. 180 (Tri-Chennai)

Johnson Controls Hitachi Air Conditioning India Limited V. C.C.E. & S.T. Ahmedabad- III 2022-VIL-482 CESTAT-AHM-ST

M/s Case New Holland Construction Equipment (I) Pvt. Ltd. Vs. Commissioner of Central Excise, Ujjain 2021 –VIL-383-CESTAT-DEL-ST

Coca Cola India Pvt. Ltd. Vs. Commissioner of C.Ex. Pune-III 2009 (15) S.T.R. 657 (Bom)

Reliance Industries Ltd. CCE & ST, LTU, Mumbai 2022 (380) E.L.T. 457 (Tri-LB)

Commissioner of Central Excise, Ludhiana Vs. Ambika Overseas 2012 (25) S.T.R. 348 (P&H)

8. On the other hand, the Ld. AR reiterated the findings in the impugned order.

9. After considering the submissions of both the parties and perused the material on record, we find that in the appellant's own case for the prior period, this Tribunal vide its order dated 28.04.2023 allowed the appeal of the appellant by relying upon the ratio of the various decisions of the Tribunal.

10. It is pertinent to reproduce the relevant findings from the appellant's own case for the prior period wherein the Tribunal has observed in following paras:-

"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,

Xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx"

(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."

11. With regard to the extended period, we hold that the department has not produced any material to show that there is suppression on the part of the appellant with intend to evade payment of service tax.

12. In view of our discussion above and by following the ratios of the decisions cited (supra), we allow both the appeals by setting aside the impugned order with consequential relief, if any, as per law.

(Dictated & pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.