

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Service Tax Appeal No. 53063 of 2018-SM**

(Arising out of Order-in-Appeal No. 599(CSRM)/ST/JDR/2018 dated 19.06.2018 passed by the Commissioner (Appeals) Central Goods & Service Tax and Central Excise, Jodhpur).

**GMTD, Bharat Sanchar Nigam Limited**                      **Appellant**  
Subhash Nagar, Jodhpur (Rajasthan)

VERSUS

**Commissioner of Goods, Service Tax**                      **Respondent**  
**Customs & Central Excise**  
G-105, New Jodhpur Industrial Area  
Jodhpur.

**APPEARANCE:**

Shri Om. P. Agarwal, C. A. for the appellant  
Ms. Tamanna Alam, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 51327/2019**

DATE OF HEARING: 08.07.2019  
DATE OF DECISION: 08.07.2019

**ANIL CHOUDHARY:**

After hearing both the sides duly represented by Shri Om P. Agarwal for the appellant and Ms. Tamanna Alam, DR for the Revenue, I find that the dispute in the present appeal relates to the denial of the Cenvat Credit of Rs. 2,22,427/- availed by the appellant on "rent a cab" services during the period from 01.04.2014 to 30.09.2015. The said demand stands raised by ways of issuance of a Show Cause Notice dated 11/04/2016, by invoking the longer period of limitation.

2. The Lower Authorities have held that the definition of Input services was changed with effect from 01/04/2011, and which excluded the service provided by way of renting of a motor vehicle, in so far as they relate to motor vehicle, which is not a capital goods. The Commissioner (Appeals) has observed as under;

*"From the above definition, it is apparently clear that the services provided by way of renting of motor vehicle; in so far they relate to a motor vehicle which is not a capital goods have been put in exclusion clause of the definition. The said provisions clearly state that the person who is engaged in providing the motor vehicles or rent a cab is eligible for availment of cenvat credit in respect of related services. But in this case, the appellant is a service receiver from the rent a cab service provider and they are not the owner of the motor vehicle as they are simply taking on rent the vehicle for time being, they are not eligible for availment of cenvat credit in respect of service tax paid on rent a cab services. Further, the credit of repair & maintenance of all vehicle, vehicle insurance has been specifically allowed when they are availed by the person who is engaged in the business of providing motor vehicles and they are the capital goods for him. Therefore, I hold that the appellant is not entitled for availment of cenvat credit in respect of service tax paid on availing the rent a cab services and same is disallowed and made recoverable from them under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73 of Finance Act 1994."*

3. I find that an identical issue was the subject matter before the Tribunal in the case of M/s Marvel Vinyls Ltd. vs CCE, Indore [2016-TIOL-3071- CESTAT-DEL]. The Tribunal after considering the amendment, observed as under;

*"6. However, I find flaw in the above interpretation of appellate authority. He has 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 good 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 good. As such the expression- "which is not a capital good appearing in the said exclusion clause would require examination vis-a-vis the service provider and not vis-a-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 in as much as motor vehicle are admittedly capital goods in terms of the Rule (2) of Cenvat Credit Rules.*

*7. In view of 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.*

*4. In as much as the disputed issue stands concluded by the above decision of this Tribunal, in favour of the assessee. I find no merits in the Revenue's stand".*

4. In view of the above, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open Court).

**(Anil Choudhary)**  
Member (Judicial)