

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

PRINCIPAL BENCH - COURT NO. 2

Excise Appeal No. 53968 of 2023-SM

(Arising out of order –in-appeal No. 76(RLM)CE/JPR/2022 dated 30.12.2022 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur).

M/s National Engineering Industries Ltd., Appellant

Khatipura Road, Jaipur
Rajasthan-302006.

VERSUS

**Commissioner, Central Excise and
Central Goods & Service Tax,**

New Central Revenue Building
Statue Circle, 'C' Scheme, Jaipur- 302005.

Respondent

APPEARANCE:

Sh. Manish Hirani, Advocate for the appellant
Sh. Gopi Raman, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50822/2023

**DATE OF HEARING: 27.06.2023
DATE OF DECISION: 03.07.2023**

BINU TAMTA:

The appellant /assessee has filed the present appeal against Order-in-Appeal No. 76(RLM/CE/JPR/2022 dated 30.12.2022, whereby the appeal filed by the appellant was dismissed by the Commissioner (Appeals).

2. The appellant is engaged in the manufacture of bearing, bearing components, machines falling under chapter 84, Axle Box falling under chapter 86, Wire under chapter 72 and Scrap under chapter 27, 39, 40, 47, 68, 72, 84 of the first schedule to the Central Excise Tariff

Act, 1985 and under Service Tax registration No. AAACN9969LST006 is providing services of Business Auxiliary Service, Consulting Engineering Service, Erection Commissioning & Installation, Maintenance & Repair Service, Renting of Immovable Property and receiving the services of Business Auxiliary Service, Consulting Engineer Service, Legal Service Maintenance and Repair, Manpower Service, Rent-a-Cab, Sponsorship service, GTA and Work Contract Service.

3. On verification of the cenvat records of input services maintained by the appellant it was found that they have wrongly availed cenvat on input services on various ineligible services like construction service, laptop insurance etc., as they did not fall under the definition of input service in view of the exclusion clauses (A) and (C) of Rule 2(I) of Cenvat Credit Rules, 2004. Accordingly, show cause notice dated 04.11.2019 and corrigendum dated 12.01.2020 was issued to the appellant for recovery of the cenvat credit amounting to Rs. 37,91,504/- alongwith interest under Section 11AA of the Central Excise Act, 1944 and penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act. In response to the show cause notice, the appellant submitted the reply, inter alia relying on the definition of 'input service' as defined under Rule 2(I) of Cenvat Credit Rules to say that the expenses incurred by the company related to renovation or repair of the factory premises, which is eligible under the rules. For the laptop insurance, it was submitted that the same is indirectly related to the whole process and is accordingly eligible.

4. The Adjudicating Authority vide order-in-original dated 30.06.2021 affirmed the show cause notice disallowing the wrongly

availed cenvat credit and ordered for recovery of it alongwith interest and penalty. The said order was affirmed by the Commissioner (Appeals) by the impugned order. The appellant has now challenged the order before this Tribunal.

5. I have heard Sh. Manish Hirani, Id. Counsel for the appellant and also Sh. Gopi Raman, Id. Authorised Representative for the revenue and have perused the record of the case.

6. The issue in the present appeal relates to the availment of cenvat credit on input services, which according to Revenue are ineligible in view of the exclusion clause in the definition of input service as defined under Rule 2(I) of the Cenvat Credit Rules, 2004. To appreciate the issue, I quote the definition of input service as under:-

“(I) —input service means any service, -

- (i) used by a provider of [output service] for providing an output service; or
- (ii) (ii) used by a 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 modernisation, 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 excludes, -

[(A) service portion in the execution of a works contract and construction services including service listed under clause

(b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –

(c) construction or execution of works contract of a building or a civil structure or a part thereof; or

(d) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or]

[(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or

[(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(d) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]"

7. Learned Counsel for the appellant has submitted that the department and the authorities below have considered only the exclusion part of the definition of input service without appreciating the inclusive part as referred above in the definition, i.e. it includes services used in relation to modernisation, renovation or repairs of the factory premises or an office relating to such factory etc. Learned Authorised Representative had relied on the findings of the authorities below and submitted that the appellant had not submitted the requisite documents either before the Adjudicating Authority or the Appellate Authority.

8. On perusal of the order under challenge, I find the authorities below have specifically noted that the assessee has not provided any contract/ work order/ agreement with the service provider to identify the work done on behalf of the appellant. The appellant has only annexed certain copies of the invoices, which were not figuring in the annexure to the demand notice and the other invoices were found attached with the appeal though such invoices of the service provider were part of the annexure enclosed to the demand. The appellant has during the course of hearing submitted a compilation including several

agreements as well as invoices of various companies. On perusal of these documents, I feel that the matter needs to be reconsidered by the original authority. Therefore, it would be proper to remand the matter back to the Adjudicating Authority, who may examine the case in the light of the documents which may be submitted by the parties and the definition of 'input service', which comprises of three components, namely, the means clause, the inclusion clause and the exclusion clause. In today's scenario, the expression modernisation, renovation or repair are of very wide amplitude including multifarious activities within its purview. So far as the construction or execution work of a building or a civil structure is concerned, the matter has to be construed on a different footing as no such structure can be executed without any drawings/ sanction plan and on that basis a distinction can be drawn as to whether the activity/ services rendered are merely modernisation/ renovation /repair or it amounts to construction of a building or civil structure.

9. I accordingly set aside the impugned order and remand the matter back to the Adjudicating Authority for reconsideration. Appeal is accordingly allowed, by way of remand.

(Pronounced on 3rd July, 2023).

(Binu Tamta)
Member (Judicial)