CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51660 of 2019 [DB]

[Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0082-18-19 dated 27.03.2019 passed by the Commissioner of Central Goods and Service Tax, Udaipur]

Commissioner of Central Goods and Service Tax, Excise & Customs, Udaipur **...Appellant**
142-B, Sector-11, Hiran Magri,
Udaipur, Rajasthan - 313001

VERSUS

M/s. Ravji Manji Sorathia & Co. **...Respondent**
Plot No. 8-9, Sector-14,
Hiran Magri, Titardi,
Udaipur, Rajasthan

APPEARANCE:
Shri Harshvardhan, Authorized Representative for the Appellant
Shri Amal Dave, Advocate for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 10.12.2024
DATE OF DECISION: 10.12.2024

FINAL ORDER No. 59934/2024

DR. RACHNA GUPTA

The department has filed the present appeal assailing the Order-in-Original No. 82-18-19 dated 27.03.2019 vide which the entire demand proposed has been dropped. The facts in brief are as follows:

1.1 The respondent is engaged for rendering, 'Mining Services'. Based upon an intelligence gathered by the officers of Anti-Evasion wing of Central Excise Commissionerate, Jaipur-II, following issues were raised:

The service recipient namely M/s. Rajasthan State Mines & Minerals Ltd. (RSMML) had provided 'Diesel & Explosive/blasting accessories' free of cost on actual consumption basis but the value thereof was not included by the respondent.

(ii) The availment of Cenvat credit as ISD on the basis of wrong documents was also objected.

(iii) The availement of Cenvat credit on the dumpers and tippers used for transportation in the mine area as was received by them before 22.06.2010 was also objected.

(iv) The respective demands were accordingly raised vide Show Cause Notice No. 10/2014 dated 31.12.2014. The entire demand has been dropped by the aforesaid Order-in-Original.

Being aggrieved, the department is before this Tribunal.

2. We have heard Shri Harshvardhan, learned Authorized Representative for department and Shri Amal Dave, learned Advocate for the respondent.

3. Learned Departmental Representative for the department has mentioned that the present appeal has been filed to assail the drop of demand of reversal of Cenvat credit amounting to Rs.76,29,496/- on dumpers and tippers received by the respondent before 22.06.2010 as the dumpers and tippers are not covered under the definition of capital goods. It has been mentioned that the adjudicating authority has held that Dumpers and Tippers are inputs used in the course of provision of output services. However, the adjudicating authority has failed to appreciate the fact that

inputs are the goods which get consumed during the course of manufacture of a final product or during the course of provision of output services. An input, once used in the manufacture of final products or for provision of output services, cannot be used again and again for the manufacture of another unit of the final product or for provision of output services. However, capital goods are normally items of machinery etc. which aid on the manufacture of final products or for provision of output services. Capital goods do not get consumed in the course of manufacture of final products or provision of output services, rather the same are used over long period of time for the manufacture of final products or for provision of output services.

3.1 The entire cost of input is, therefore, included while determining the value of final product or for provision of output service as revenue expenditure. However, the cost of capital goods is not directly included in the value of final products or the value of output services. Rather a portion of the value of capital goods is depreciated every year for inclusion in the value of final products or the value of output services because of their long use spread over a period of time. Further, the inputs and capital goods are treated separately under the Financial Accounting System. Inputs are consumed during the course of manufacturing or during provision of output services and the entire value thereof are made part of cost in the Profit and Loss Account, while on the other hand, Capital Goods do not directly form part of costing and are being shown under the "Assets Head" of the Balance Sheet. Thus, it appears that the Adjudicating Authority has committed an error in distinguishing the term input and capital goods and wrongly allowed the Cenvat Credit on dumpers and tippers by treating the same as input but the same are motor vehicles in the nature of capital assets and used for a long span of time.

3.2 It has been mentioned that the Principal Bench of this Tribunal though has considered that the Cenvat credit is allowable on dumpers and tippers. These being covered within the definition of inputs but simultaneously the another Bench (The Single Member Bench of this Tribunal) in the case of **India Cements Ltd. Vs. Commissioner of Central Tax, Tirupati – GST reported as 2019 (5) TMI 1428 CESTAT HYDERABAD** has distinguished the decisions, even the decision of Hon'ble Supreme Court holding that once the dumpers and tippers are registered with the motor vehicle department they cannot cease to be the motor vehicles which are excluded from the definition of inputs given into 2(l) of Cenvat Credit Rules, 2004. Learned Departmental Representative has relied upon the Notification No. 25/2010-C.E.(N.T.) dated 22.06.2010 which had included equipments like dumpers and tippers etc. in the definition of capital goods. It is mentioned that prior this date the Cenvat credit should not be made available to the respondent on dumpers and tippers as capital goods. With these submissions, it is mentioned that the impugned order may be set aside vis-à-vis dropping the demand with respect to the Cenvat credit availed by the respondent on dumpers and tippers.

4. While rebutting these submissions, learned counsel for the respondent has mentioned that the issue involved i.e. about the availment of Cenvat credit on dumpers and tippers used in the

mining of mineral oil or gases while providing the said services is no more *res integra* as has already been considered in favour of the assessee/service provider in the case of **M/s. Soumya Mining Ltd. Vs. CCE, Raipur reported as 2017 (6) TMI 1071 – CESTAT NEW DELHI.** The said decision has subsequently been followed by this Tribunal in Final Order No.52459/2018 dated 06.07.2018 in the case tiled as **CCE, CCG & ST, Delhi III Vs. Bharmaputra Infrastructure Ltd. reported as 2018 (7) TMI 438-CESTAT NEW DELHI**. It is submitted that the issue of notification dated 22.06.2010 has also been elaborately considered in the case of **M/s. Soumya Mining Ltd. (supra).**

4.1 Learned counsel further mentioned that the decision of Single Member Bench in the case of **India Cements Ltd. (supra)** cannot prevail over the decision of Division Bench of this Tribunal. With these submissions, the demand even with respect to the Cenvat credit availed on dumpers and tippers is not liable to be confirmed. The original adjudicating authority has rightly dropped the same. Accordingly, the order under challenge is prayed to be upheld and appeal is prayed to be dismissed.

5. Having heard both the parties, perusing the records and the decisions as relied upon, we observe that there is no dispute about the fact that the earthmoving equipments such as dumpers and tippers are being used by the respondent to provide the output services of mining. The demand has been dropped considering these dumpers and tippers to be covered under the definition of inputs given under 2(k) of the Cenvat Credit Rules, 2004 to mean there is no dispute about the fact that earth moving equipments

such as dumpers are being used by the respondent to provide output service. We are of the view that dumpers even if classifiable under Chapter 87, can be considered within the definition of inputs, as per Rule 2(k) of the Cenvat Credit Rules, 2004. The definition of inputs as applicable for service provider is given in Rule 2(k)(ii).

> As per Rule 2(k) of the Cenvat Credit Rules, 2004, "input" means-
>
> > *(i) ……*
> >
> > *(ii) All goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;"*

5.1 Exclusion clause of this definition applies to light diesel oil, high speed diesel oil, motor spirit and motor vehicles. We observe that despite this definition, the dumpers and tippers are held to not to be considered as motor vehicle by Hon'ble Apex Court in the case of **Belani Ores Ltd. Etc. Vs. State of Orissa Etc. reported as 1975 AIR 17** wherein it has been observed as follows:

> *"..In the instant case there is evidence to show that the dumpers, rockers and tractors are exclusively used on the premises of the owners [159 E). The machines which are the subject matter of these appeals must be working in their respective mining areas. The mere fact that there is no fence or barbed wire around the leasehold premises in not conclusive. There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress andegress is kept by guards who also ensure that no authorised persons have access to the mining area (160DE]."*

5.2 The Principal Bench of this Tribunal has also relied upon the said decision of Hon'ble Apex Court and has held as follows:

> *"7. Dumpers/Tippers are vehicles which are specially designed for earth moving purposes and are meant to be used in the mining area, In terms of the decision of Hon'ble Supreme Court (supra) they are not to be considered as motor vehicles. Consequently, the appellant would be eligible for cenvat credit on dumpers / tippers as inputs which are used for providing the output service. However, the controversy stand resolved with effect from 22.6.2010 with issue of Notification No. 25/2010-CE which has amended the Cenvat Credit Rules to allow cenvat credit for dumpers / tippers registered in the name of service provider for providing taxable service for providing site formation etc."*

5.3 This Tribunal even in subsequent case titled as **M/s. R.K. Transport Company Vs. Commissioner of Central Excise and Customs, Raipur reported as 2020 (11) TMI 34 – CESTAT NEW DELHI** while considering as to whether the credit is admissible to tippers as inputs has held as follows:

> ***Whether credit is admissible 'tippers' as inputs under rule 2(k) of the Credit Rules?*** *- HELD THAT:- In SOUMYA MINING LTD. VERSUS CCE, RAIPUR [2017 (6) TMI 1071 CESTAT NEW DELHI], the Tribunal held that even for the period prior to June, 2010 credit was admissible on 'tippers' as 'inputs' used by the service provider in providing output services. This view was followed by the Tribunal in CCE, CCG & ST, DELHI-III VERSUS M/S BHARMAPUTRA INFRASTRUCTURE LTD. (2018 (7) TMI 438-CESTAT NEW DELHI) - thus, credit had been correctly availed by the Appellant as 'tippers' qualify as 'input' under rule 2(k) of the Credit Rule - The demand that has been confirmed cannot, therefore, be sustained and is liable to be set aside.*

6. All these decisions have now attained finality i.e. stands accepted by the department. Hon'ble Apex Court in the case of **Boving Fouress Ltd. Vs. Commissioner of Central Excise,**

Chennai reported as 2006 (202) E.L.T 389 (S.C.) has held that the principle laid down by Tribunal in one case if accepted by the department, the department is not entitled to raise the same point in other cases. It cannot pick and choose the issues. The demand was ordered to be set aside by Hon'ble Apex Court in the said case on this sole ground.

7. Applying the above decisions as discussed to the facts of present case, we find no reason to differ with the findings in the impugned order considering the dumpers and tippers used by the respondent while rendering the Mining Services, as inputs. For which the Cenvat credit is held to have rightly been availed. We accordingly uphold the said order. Resultantly, the appeal stands dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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