IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 534 / 2012

[Arising out of Order-In-Appeal No. Commissioner/ RPR / ST/ 10/2012 dated 13.2.2012 passed by Commissioner of Central Excise (Appeals), Raipur (CG)]

Soumya Mining Ltd. **Appellants**

Vs.

CCE, Raipur , **Respondent**

Appearance:

Shri Raj Kumar, Advocate for the Appellants
Shri Ranjan Khanna, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 12.05.2017

FINAL ORDER NO . 53379 /2017

Per V Padmanabhan:

The appellant is engaged in providing site formation and clearance, excavation and earth moving and demolition services. They are registered for payment of Service Tax and were availing the Cenvat Credit under Cenvat Credit Rules 2004. The dispute pertains to the availment of Cenvat Credit amounting to Rs.2,31,53,931/- on dumpers / tippers falling under Chapter 87. The appellant had availed such cenvat credit as capital goods. The department was of the view that dumpers /tippers were classifiable under Chapter 87 as motor vehicles and were not falling within the category of capital goods. The department further alleges that such cenvat credits were availed on the basis of deficient and improper invoices during the period 2005-2006 to 2008-2009. The appellant was not in a position to submit the original / duplicate copies of cenvat creditable invoices. Hence proceedings were initiated against them and vide impugned order, cenvat credit as above was disallowed along with imposition of penalty of equal amount under Rule 15 of Cenvat Credit Rules read with section 78 of Finance Act, 1994. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Rajkumar, CA appearing for the appellant and Shri Ranjan Khanna, DR appearing for the Revenue. Learned Counsel for the appellant submits that dumpers/ tippers were machinery which was used by the appellant for carrying out the activity of site formation and other activities in the mines. The dumpers are used to facilitate the movement of mine material within the mining area. Dumpers will be covered within the definition of "inputs" under Rule 2(k) of Cenvat Credit Rules, since

the same are covered under the expression goods used for providing output service. He further submitted that in the case of the appellant there is no doubt that dumpers / tippers have been used for rendering output services. Consequently, the cenvat credit should be allowed for such goods.

3. Learned DR submitted the impugned order. He further argued that even if dumpers are considered as goods used for providing the output services, the credit cannot be allowed since the appellant was not in a position to submit the original invoices based on which such credits have been allowed.

4. The dispute pertains to the cenvat credit availed by the appellant on earth moving equipment such as dumpers / tippers which are used by the appellant in the mines for providing such services such as site formation clearance excavation etc. In the impugned order, the cenvat credit have been disallowed by taking a view that the dumpers are classifiable under Chapter 87 as motor vehicles. Further, the learned Commissioner has taken a view that goods falling under Chapter 87 are excludable from the definition of capital goods and hence the cenvat credit availed are not in order. It is further held in the impugned order that cenvat credits have been availed on the basis of deficient and improper invoices and in some cases original /

duplicate copies of invoices are not available with the appellant to support their claim for cenvat credit.

5. Heard both sides and perused the records.

6. There is no dispute about the fact that earth moving equipments such as dumpers are being used by the appellant 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 Rules 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; "*

As can be seen from the definition of inputs applicable for a person providing output service, that it covers all goods which are used for providing such output service. The exclusion applies to light diesel oil, high speed diesel oil, motor spirit and motor vehicles. It has been held by the learned Commissioner in the impugned order that dumpers / tippers are motor vehicles falling under Chapter 87 and will not be entitled to Cenvat credit. The learned Counsel for the appellant has submitted that dumpers are not to be considered as motor vehicles within the definition of “motor vehicles” under Motor Vehicles Act, 1988. As per section 2(28) of the Motor Vehicle Act, 1988, the motor vehicles are defined as follows:-

> *“28. “motor vehicle” or “vehicle means any mechanically propelled vehicle adapted for use upon roads whether the power of 1 subs.& ins. By Act propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimeters;”*

It has been further submitted that dumpers, rockers and tractors having been held to be not motor vehicles by the Hon’ble Supreme Court in the case of ***Belani Ores Ltd. Etc. vs. State of Orissa Etc. [1975 AIR 17, 1975 SCR (2) 138]*** 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].

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.

8. The Cenvat credit has also been disallowed on the ground that the credit has been availed on the basis of deficient and improper invoices. Further, the appellant is also said to be not in possession of the original /duplicate invoices based on which the such credit can be availed. We are of the view that issue needs to be re-examined by the original adjudicating authority. The appellant is directed to produce the relevant documents based on which such credits have been taken. The adjudicating authority is directed to verify the documents so as to

satisfy himself on the basis of whatever supporting documents appellant is able to produce to the effect that the invoices are in favour of the appellant and contain all the essential details required for availing the Cenvat credit. Subject to said satisfaction the credit will be allowed by the adjudicating authority in denovo adjudication proceedings.

9. In view of the discussions, we remand the matter for denovo decision and after due verification.

(pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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