

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

Excise Appeal No. 50141 of 2018

[Arising out of Order-in-Original No. RPR/EXCUS/
000/COM/030/2017 dated 21.09.2017 passed by Principal
Commissioner, Central GST, Central Excise & Customs, Raipur
(CG)]

M/s. Jindal Steel & Power Ltd.

Appellant

Vs.

**Commissioner of Central Excise
& ST, Raipur**

Respondent

Appearance:

Shri Amit Jain, Advocate for the Appellants

Shri R K Mishra, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President

Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /Decision: 28.2.2018

FINAL ORDER NO. 50936 /2018

Per: B Ravichandaran:

The appellants are aggrieved by the order dated 21.9.2017 of Commissioner (Appeals), Raipur. The appellants are engaged in the manufacture of various products of iron and steel. They have availed credit on various inputs and input services in terms of Cenvat Credit Rules 2004. The appellants have two power plants to generate electricity, which is captively consumed by them in the

manufacture of iron and steel products. Power plants use coal for generation of power; fly ash emerge during the process of power generation. The appellants removed the fly ash and it was used as backfilling material in the coal mines for leveling. For this activity of removal and disposal of fly ash, the appellants used various inputs services. These services are cargo handling service, site preparation services, supply of tangible goods, and cleaning services etc. The appellants availed credit on service tax paid on these services. The Revenue objected to the same.

2. There is another issue regarding the availment of cenvat credit on the basis of supplementary invoices issued by that service provider. The amount of Rs. 1,13,37,187/- was sought to be denied on the ground that supplementary invoices so issued involve all the tax liability on the supplier, provider of service which is attributable to a case involving suppression, fraud etc.

3. On the above two issues, the case was adjudicated. The original authority denied the total credit of Rs.8,01,68,663/- covering the period of 2011-2012, 2014-2015. He also imposed equal amount of penalty on the appellant.

4. Learned Counsel appearing for the appellant submitted that on the first issue regarding services availed for removing and further disposal of fly ash, the same are mandated activities as per the

Ministry of Environment and Forest. While setting up the power generation plant, clearance has to be obtained from the said Ministry. The Ministry categorically insisted that fly ash arising during the course of power generation should be disposed of in the manner prescribed. As the disposal in the manner prescribed is to be followed, non-adherence of the same will apart from penal consequences will result in cancellation of permission of generation of electricity. He submitted that in view of the statutory regulation and also in view of the compelling nature of the requirement of removal of fly ash for continuation of generation of power, same is essential for manufacture of final excisable goods namely, iron and steel goods. The essentiality of the service itself is sufficient to show that this is input service covered by Cenvat Credit Rules, 2004.

5. On the second issue regarding the supplementary invoices, he submitted that a case was made against the provider of service. The case was with reference to certain valuation dispute of taxable service. The service provider contested the case against him before the Tribunal and the Tribunal held in favour of the said service provider holding that there was no violation of valuation of taxable service. Referring to Final Order of Tribunal in case reported as ***Karamjeet Singh & Co., [2013 (32) STR 740 (Tri-Del)]*** with reference to said service provider M/s. Karamjeet Singh & Co., learned Counsel

submitted that when the case of fraud or suppression, or under valuation against the service provider stand set aside, there is no ground to proceed against the appellant against taking such credit. However, since the full credit amount of Rs.1,07,43,821/- along with applicable interest has already been discharged without any contest on merits, now, they are only pleading for setting aside the penalty in view of the clear finding of the Tribunal in the above referred case. Regarding the differential amount of Rs. 5,93,366/-, he submitted that the said credit has been availed by the appellant on the regular invoices and not on supplementary invoices. The denial of credit and imposition of penalty on such credit is not legally sustainable.

6. Learned AR reiterated the findings of the Commissioner.

7. We have heard Shri Amit Jain and Shri R K Mishra, learned representatives of both the sides and gone through the appeal record.

8. On the first issue, we note that the impugned order (para 39.3.7) clearly records that appellant has undertaken various activities of removal of disposal of fly ash in terms of mandate of Ministry of Environment and Forest. He also recorded that while process is to fulfill action being environment friendly, however, he proceeded to record removal of fly ash to protect environment is not on account of manufacture of finished goods. We note that removal and disposal of fly ash in a manner prescribed by the Government is a mandate

requirement for continued production of electricity for activities used by the appellant. In other words, without such due disposal of fly ash, generation of electricity cannot happen.

9. In view of these facts, it is not correct to say that the removal and disposal of fly ash is nothing to do with the manufacture of excisable goods. Admittedly, the electricity generated is captively consumed by the appellant. Any input services or inputs used for such generation of electricity are necessarily to be considered as input service for final excisable goods. In view of these facts, we find that the impugned order cannot be sustained on merit, regarding denial of various input services or credit with reference to removal and disposal of fly ash is mandate of law.

10. Regarding the dispute relating to supplementary invoices, the appellants are not contesting on merit. They are contesting the case on the ground that since the amount has already been paid, they are contesting the imposition of penalty. We note that main basis for denial of credit is that provider of service is involved in a case of fraud or suppression under the provisions of such services. The case against provider of service has been set aside by the Tribunal in the Final Order mentioned above. As such, basic reason to deny the credit fails. Accordingly, the penalty imposed on the appellant on this issue cannot be sustained.

11. Differential amount of Rs. 5,93,366/- availed as a credit on the service provided by the said provider of service is also not disputed. In this regard, the appellants are availing the credit not on supplementary invoices and there is no reason to deny the credit at all.

12. Learned Counsel submitted that while the fact that credit was taken in normal course, the denial is on the ground that input services are not eligible as the same relates to fly ash handling. Since we have already held that input service relates to removal and disposal of fly ash are eligible for credit, this amount which is for said service will also become eligible.

13. In view of the above discussions and analysis denial of benefit of credit of input services used for removal and disposal of fly ash is not sustainable. Penalty on the dispute of supplementary invoice is also not sustainable. Accordingly, the impugned order is set aside. And appeal is allowed to that extent.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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