CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SM
Court – I

Appeal No. ST/30467/2017

(Arising out of Order-in-Original No. HYD-SVTAX-000-COM-125-16-17 dated 08.11.2016, passed by Commissioner Service Tax – Hyderabad.)

Commissioner of Service Tax-Hyderabad ....Appellant(s)

Vs.

Tata projects Limited. …..Respondent(s)

Appearance
Sh. Guna Ranjan, (Superintendent), for the Appellant.
Sh. S. Ravi Sr. Advocate, Pushyam Kiran, (Advocates) for the Respondent.

Coram:
Hon'ble Mr. M. V. RAVINDRAN., MEMBER (JUDICIAL)

Date of hearing: 05/02/2018
Date of decision: 05/02/2018

FINAL ORDER No. A/30528/2018

This appeal is filed by the revenue against Order-in-Appeal No. HYD-SVTAX-000-COM-125-16-17.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding eligibility to Cenvat Credit of the service tax paid on hiring of Cranes, Hydra Cranes, Excavators etc., by the respondents. Show Cause Notice was issued for reversal of such Cenvat Credit availed by the appellant during

the period 01.04.2011 to 31.03.2012 on the conclusion that these items are not capital goods as they are ‘Motor Vehicles’. Respondent contested the issue on merits. The Adjudicating Authority after considering the provisions of rule 2(l) on input services definition and Rule 2(a) of Cenvat Credit Rules, 2004 came to conclusion that the said provisions which is dropped eligible to avail Cenvat Credit is not applicable in the respondent case.

4. Ld. Departmental Representative reiterates the grounds of appeal and takes the bench through the entire case records and submits that the findings of adjudicating authority are not in accordance with the scheme of eligibility to avail Cenvat Credit of the service tax paid on supply of tangible goods for use. It is his submission that the Adjudicating Authority’s observations in context of Rule 2 (f) of Cenvat Credit Rules is not applicable the instant case; the Adjudicating Authority has held that goods for example Cranes, Hydra Cranes, Excavators, Motor Vehicles, however applied the classification of goods for CCR which is incorrect; for the period in question, Commissioner has not appreciated the exclusion clause as mentioned under Rule 2(l) of the Cenvat Credit Rules, 2004.

5. Ld. Counsel reiterates the findings of the Adjudicating Authority.

6. On careful consideration of submissions made and perusal of records I find that the Adjudicating Authority in the Impugned order has considered entire issue holistically and periodically. It is seen from the records that the revenue is aggrieved by the impugned order only for the period between dated 01.04.2011 to 31.03.2012 and is not aggrieved by other part of the impugned order which has dropped proceedings initiated for the demand

for the period prior 01.04.2011 and post 01.04.2012. In my considered view, the Adjudicating Authority has considered definition of input services as it is in the statute during the period in question in this appeal and recorded a detailed findings which I find is correct appreciation of the law and needs to be upheld. I reproduce the relevant findings.

"27.1. I find that during this period (i.e. from 04/2011 to 03/2012), the assessee has availed cenvat credit of Rs. 19.62.900-/ on hiring of 'Cranes, Hydra Cranes excavators' under the 'Supply of tangible goods' services considering the same as 'input services'. The definition of 'input services' during this period is as under.

(l) "input services" means any services,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the 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 setting up, modernization, 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, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal; ***but excludes services,-***

(A) Specified...; or

(B) ***Specified in sub-clauses (d), (o), (Zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods****; or*

(C) Such as those provided in relation to outdoor catering............................;

From the above I find that interalia the services specified in sub-clauses (zzzzj) of clause (105) of section 65 of the Finance Act, 1994 i.e. 'Supply of Tangible goods services' are specifically excluded from the definition of input services.

(i) If the said services are in relating to a motor vehicle; and

(ii) If such 'motor vehicle' are not capital goods.

I already held earlier that the services received by the assesssee under 'Supply of tangible goods' are relating to 'Motor Vehicle' only since 'Cranes, Hydra Cranes Excavators' which are hired by the assessee falls under the definition of 'Motor vehicle' as defined at Section 2 (28) of Motor Vehicle Act, 1988.

*27.2. However to disallow cenvat credit on such services, the other condition that "**no credit is available to assessee on such 'motor vehicle' as capital goods"** should also to be satisfied. To examine this aspect, the statutory provisions relating to the definition of capital goods (Rule 2(a) of CCR, 2004) as applicable for the period 2011-12 are produced as under.*

Rule 2(a) of CCR, 2004 (w.e.f. 01.04.2011)

(A) The following goods, namely:-

(i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the excise Tariff Act;

(ii) Pollution control equipment;

(iii) Components, spares and accessories of the goods specified at (i) and (ii);

(iv) Moulds and dies, jigs and fixtures;

(v) Refractories and refractory materials;

(vi) Tubes and pipes and fittings thereof; and

(vii) Storage tank;

Used-

(1) In the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive used within the factory; or

(2) For providing output service;

(B) Motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act, 1994.

27.3. In the show cause notice it is alleged that, the CENVAT Credit of Service Tax paid on Cranes, Excavators etc are not available to the Assessee under

Capital goods in as much as Rule 2(a) of the CENVAT Credit Rules, 2004 restricts credit on motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n) (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 5 of the Finance Act, 1994 only; that since the assessee is not providing any of the above services, the assessee not eligible for availing CENVAT credit on these capital goods and once they are ineligible to avail credit on cranes, excavators etc., under capital goods, the availment of service tax credit paid on hiring of cranes and excavators becomes irregular in light of the conditions stipulated as detailed above.

27.4. However, I find from the statutory provisions (Rule 2 (a) (A) (i) of CCR, 2004) that the capital goods include "all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to Excise Tariff Act". Hence to find the eligibility of any goods (whether motor vehicle or otherwise) under 'capital goods definition' for the purpose of cenvat credit, the classification of such goods are to examined in respect of Central Excise Tariff Act, 1985. In this regard I find that the classification of 'Cranes, Hydra Cranes, Excavators' falls under Chapter 84 of Central Excise Tariff Act, 1985 as detailed below even though the same are mounted on work trucks.

Tariff Item	*Description of Goods*	*Unit*	*Rate of Duty*
8426	*Ship's derricks;* ***Cranes*** *including cable cranes; 'mobile lifting frames, straddle carriers and* ***works trucks fitted with a crane***	*U*	*12.5%*
8429	*Self-propelled bulldozers, angle dozers, graders, levellers, scrapers, mechanical shovels,* ***excavators,*** *shovel loaders, tamping machines and road rollers*	*U*	*12.5%*

Hence, I find that by virtue of provisions of Rule 2 (a) (A) (i) of CCR, 2004, the goods namely 'Cranes, Hydra Cranes, Excavators' are eligible capital goods for availing cenvat credit since they fall under Chapter 84 of Central Excise Tariff Act, 1985. The allegation in the show cause notice that since 'Cranes, Hydra Cranes, Excavators' are motor vehicles the same are not eligible capital goods is not acceptable since the eligibility under capital goods to be decided based on the definitions available in the CCR,2004 read with Central Excise Tariff Act, 1985. Further I find from the Rule 2(B) of CCR, 2004 which is referred in the show cause notice that the said rule does not exclude any goods

> *but only including certain motor vehicles as eligible capital goods, in addition to the goods mentioned at clause (A) of said rule. Hence, I observe that once the said goods are eligible as capital goods under Rule 2 (a) (A) (i) of CCR, 2004, the clause (B) of said rule has no bearing on their eligibility. Hence I find that 'Cranes, Hydra Cranes, Excavators' in relation to which the assessee had availed cenvat credit under Capital goods. I also find that once they are eligible to avail credit on cranes, excavators etc., under capital goods, the availment of service tax credit paid on hiring of cranes and excavators becomes eligible to them in the light of the conditions stipulated in the said rule and as detailed above. Further, I find that the 'supply of tangible goods/taxable services' received by the assessee by hiring 'Cranes, Hydra Cranes Excavators' were used by them for providing their output service of 'works contract service' which is a taxable service. Hence I hold that the assessee is eligible to the cenvat credit of Rs. 19,62,900/- availed by them during year 2011-2012 on the impugned services and the demand of said amount is liable to be dropped"*

The above reproduced findings clearly indicate that the law of availment of Cenvat Credit based upon definition of input services under Rule 2(l) of the Cenvat Credit Rules, 2004, has been correctly appreciated by the Adjudicating Authority and the said findings do not require any interference. Accordingly, the impugned order is upheld and appeal stands rejected.

(Operative part of this order was pronounced in court
on conclusion of hearing)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Swapna….