

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Bench – SM
Court – I

Appeal No. ST/22099/2014

(Arising out of Order-in-Appeal No. 20/2014 (V-I) ST dated
21.03.2014 passed by Commissioner of Customs, Central Excise &
Service Tax (Appeals), Visakhapatnam)

M/s Varun Motors

.....Appellant(s)

Vs.

**Commissioner of Customs & Central
Excise, Visakhapatnam – G S T**

.....Respondent(s)

Appearance

Shri V. Ravindranath, Advocate for the Appellant.

Shri AVLN Chary, Superintendent (AR) for the Respondent.

Coram:

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

Date of hearing: 16/10/2018

Date of decision: 16/10/2018

FINAL ORDER No. A/31388/2018

[Order per: M. V. Ravindran.]

This appeal is directed against Order-in-Appeal No.
20/2014 (V-I) ST dated 21.03.2014.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is
regarding demand of service tax from the appellant of a service tax an

amount of Rs. 20,116/- interest thereof. On the ground that appellant had not paid the tax on Renting of Immovable Property service and another issue which was raised is regarding denial of CENVAT credit of Rs. 6,88,215/- on various input services. Both the lower authorities have held against the appellant. Hence this appeal.

4. Learned Counsel submits that in respect of Renting of immovable property service, the service tax amount of Rs. 20,116/- and interest thereof was paid by the appellant on 17.09.2012 when the Order-in-Original was passed. It is his submission that this payment is complying with the provisions of Section 78 of the Finance Act, 1994 which was granted to the appellant if the tax amount and interest is paid within six months of date on which the payment is made i.e. 28.05.2012. He submits that the First Appellate Authority has not considered the payment of service tax and not set aside the penalty involved. As regards the CENVAT credit availed on various input services, he draws my attention to the chart prepared by them. The CENVAT credit of service tax paid on various input services like Telephone charges, Mobile Charges, Advertisement, Vehicle Servicing and Polishing, Travels, Insurances, Cleaning, Courier and Security Services. He draws my attention to the specimen invoices enclosed and produced before the Bench and submits that the lower authority has taken a view in respect of Telephone charges, Telephone charges are not in the name of appellant. He would submit that the documents which were produced before the lower authorities indicate very clearly though individual workshop or service tax payment and it is the submission they have not taken CENVAT credit more than the amount which is due from the invoices.

5. Learned Departmental Representative reiterates the findings of the lower authorities.

6. As regards the service tax liability availed on renting of immovable property services, I do find that the appellant had intimated the lower authority regarding the discharge of service tax liability and the interest thereof on 17.09.2012. In my view, the appellants were correct in following the law and are eligible for the benefit of Section 80(2) of the Finance Act, 1994. As regards the setting aside the penalty, the Finance Act, 2012 specifically mandates from the penalty if the amount of service tax liability and the interest in respect of Renting of immovable property services is discharge within six months from 28.05.2012. In view of this, I find that having discharge of service tax liability within time there was no reason to visit the appellant on any penalty. The penalty imposed on appellant is set aside.

7. As regards the confirmation of the demand of ineligible CENVAT credit, I find both the lower authorities have not recorded any findings as to the submissions made by the Learned Counsel before them on the eligible to avail the CENVAT credit of service tax paid on various services like telephone, Mobile charges etc. On causal perusal of the documents enclosed, which are voluminous in nature, I find that the submission of the Counsel seems to be acceptable these payments were made from the head office as a receiver of the services. In my view, the Adjudicating Authority should consider the plea of the appellant in its correct perspective and go through the documents and come to a conclusion as to the correctly availed the CENVAT credit.

Without going on this point leaving all the issues open and the matter pertaining to eligibility to avail CENVAT credit is remitted back to the Adjudicating Authority to reconsider the issue afresh after following the principles of natural justice. Appellant is with liberty to produce the documents on which he wishes to rely upon.

8. In view of the foregoing, the appeal is partly allowed and partly remanded as indicated herein above.

(Order pronounced & dictated in open court)

M. V. RAVINDRAN
MEMBER(JUDICIAL)

Lakshmi....