IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/168/2009

Arising out of Order-in-Original No. 02-05/S. Tax/Commr./09 dated 31.03.2009 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur.

M/s Tata Steel Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & S. Tax, Jamshedpur

Respondent (s)

Appearance:
Dr. Samir Chakraborty, Sr. Advocate & Shri A. Biswas, Advocate for the Appellant (s)
Shri S. S. Chattopadhyay, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 27.11.2018

ORDER No.FO/A/77036/2018

Per BENCH:

Briefly stated, the facts of the case are that the appellant is engaged in the manufacture and sale of iron and steel products classifiable under Chapter Nos. 72 and 73 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant has its steel plant at Jamshedpur in the State of Jharkhand. The final products, i.e., iron and steel goods manufactured in the said factory, are either sold by the appellant to its customers at factory gate and/or through its depots / consignment agents spread all over India. The transportation of the goods sold are normally done by the buyers themselves. However, in case of certain customers, the goods are sold by the appellant on F.O.R. destination basis, which includes reimbursement of freight on actual basis. The freight charges in these cases are paid by the appellant to the transporter. Accordingly, service tax payable on the taxable Goods Transport Agency Services under the Finance Act, 1994, as amended (hereinafter referred to as "the Act") is paid by the appellant as a service recipient.

2. It is the case of the appellant states that in cases of sale to customers on F.O.R. basis, as aforesaid, the delivery of the goods takes place at the customer's place and on such delivery, title to the goods pass on to the concerned customers. All liabilities and responsibilities in respect of the said goods during the transportation is that of the appellant and in the event, there is any short delivery or damage to the goods, for any reason, whatsoever, during the transportation, the responsibility and liability there for, is solely with the appellant. The appellant, during the material period, availed of CENVAT Credit, in accordance with the provisions of the Cenvat Credit Rules, 2004 of the service tax paid as above as an 'input service' within the meaning of Rule 2*(I)(*ii) of the Cenvat Credit Rules and utilized the same in the manner allowed by the Cenvat Credit Rules. During the period November 2007 to January 2009, the appellant, however, received four show cause notices, all issued by the Commissioner of Central Excise & Service Tax, Jamshedpur, wherein, it was alleged that, during the respective periods mentioned therein, the appellant had availed irregular Cenvat Credit of service tax, alongwith education cess thereon, of the specified sums contained in each of the show cause notices, all being service tax paid on outward transportation of finished goods from the place of removal, i.e., from the factory gate and/or depots / consignment against' places of the appellant to the customers' premises as 'input services' within the meaning of the Cenvat Credit Rules and had thereby allegedly violated the provisions of Rule 2*(I)(*ii) of the Cenvat Credit Rules. According to the show cause notice, as per Rule 2*(I)*(ii) of the Cenvat Credit Rules, 'input service' in respect of outward transportation was restricted only upto the place of removal and the expression "clearances of the final product from the place of removal" meant that the credit of the Services used in clearances of the final product was restricted only upto the place of removal and not beyond the place of removal and, hence, the services availed beyond the stage of manufacturing and

clearance of the goods from the place of removal or the factory cannot be 'input services', since it did not have any direct/indirect relation to the manufacturing process.

3. Heard both sides and perused the appeal records.

4. We find that the issue is no more resintegra in view of the judgment of the Hon'ble Supreme Court in the case of Commr. of Central Excise, Belgaum vs. Vasavadatta Cement Ltd. [2018 (11) G.S.T.L. 3 (S.C.). The relevant portion of the above decision is reproduced below:

> ***"6.*** *The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the High Court.*
>
> *"30. The definition of 'input service' contains both the word 'means' and 'includes', but not 'means and includes'. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of 'input service' deals with service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase 'clearance of final products from the place of removal' is used, it includes the transportation charges. Because, after the final products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer's/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of 'input service'. However, as the legislature has chosen to use the word 'means' in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the 'input service' used by*

the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word 'includes'. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in that portion of the definition. Thereafter, the words 'activities relating to business' - an omni-bus phrase is used to expand the meaning of the word 'input service'. However, after using the omni-bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words 'inputs' or 'capital goods'. But, while dealing with outward transportation those two words are conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the customer. Therefore, 'input service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.

7. *As mentioned above, the expression used in the aforesaid Rule is "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.*

8. *Our view gets support from the amendment which has been carried out by the rule making authority w.e.f. 1-4-2008 vide Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 whereby the aforesaid expression "from the place of removal" is substituted by "upto the place of removal". Thus from 1-4-2008, with the aforesaid amendment, the Cenvat credit is available only upto the place of removal whereas as per the amended Rule from the place of removal which has to be upto either the place of depot or the place of customer, as the case may be. This aspect has also been noted by the High Court in the impugned judgment in the following manner :*

"However, the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by Notification 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance

> *from the place of removal' upto the date of the said substitution and it cannot be included within the phrase 'activities relating to business'."*

5. We find that the period in the present appeal is from January, 2005 to March, 2008 which is covered by the aforesaid decision.

6. In view of the above discussions the impugned order is set aside and the appeal filed by the appellant is allowed.

(Operative Portion of the Order has already been pronounced in the open court.)

(V. Padmanabhan)
Member(Technical)

(P.K.Choudhary)
Member(Judicial)

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