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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.175 of 2012

(Arising out of Order-in-Appeal No.07/JSR/2012 dated 23 January 2012 passed by Commissioner(Appeals) of Central Excise & Service Tax, Ranchi.)

M/s. Tata Steel Limited
(Legal Services Department, Jamshedpur-831001.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(143, New Baradwari, Sakchi, Jamshedpur-831001, Jharkhand.)

WITH

(i) Service Tax Appeal No.490 of 2012 (M/s.Tata Steel Limited); (ii) Service Tax Appeal No.70487 of 2013 (M/s.Tata Steel Limited); (iii) Service Tax Appeal No.70488 of 2013 (M/s.Tata Steel Limited); (iv) Service Tax Appeal No.71295 of 2013 (M/s.Tata Steel Limited); (v) Service Tax Appeal No.75865 of 2014 (M/s.Tata Steel Limited, Tubes Division); (vi) Service Tax Appeal No.76242 of 2014 (M/s.Tata Steel Limited); (vii) Service Tax Appeal No.76243 of 2014(M/s.Tata Steel Limited); (viii) Service Tax Appeal No.75701 of 2015(M/s.Tata Steel Limited, Tubes Division); (ix) Service Tax Appeal No.75784 of 2015(M/s.Tata Steel Limited); (x) Service Tax Appeal No.75785 of 2015(M/s.Tata Steel Limited);

(i) (Arising out Order-in-Original No.41/S.Tax/Commr/2012 dated 12 July 2012 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(ii-iii) (Arising out of Order-in-Original No.03-04/S.Tax/Commr/2013 dated 18 February 2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(iv) (Arising out of Order-in-Original No.18/S.Tax/Commr/2013 dated 11 June 2013 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(v) (Arising out of Order-in-Original No.03/S.Tax/Commr/2014 dated 11 March 2014 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(vi-vii) (Arising out of Order-in-Original No.06-07/S.Tax/Commr/2014 dated 29 May 2014 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(viii) (Arising out of Order-in-Original No.01-02/S.Tax/Commr/2015 dated 23 January 2015 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(ix-x) (Arising out of Order-in-Original No.05-06/S.Tax/Commr/2015 dated 30 March 2015 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

APPEARANCE

Dr.Samir Chakraborty, Senior Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 76821-76831/2019

DATE OF HEARING : 26 September 2019
DATE OF DECISION : 26 September 2019

P.K.CHOUDHARY :

1. The instant appeals are against seven adjudication orders passed by the Commissioner of Central Excise & Service Tax, Jamshedpur and one Order-in-Appeal passed by the Commissioner (Appeals), Central Excise & Service Tax, Ranchi, all preferred by Tata Steel Ltd. and Tata Steel Ltd. (Tubes Division), both situated at Jamshedpur and both under the same Jamshedpur Commissionerate of Central Excise & Service Tax.

2. The common issue involved in all the said eight appeals is as to whether the different regional sales offices of Tata Steel Ltd. (in short, "TSL") and Tata Steel Ltd. (Tubes Division) [in short, "TSLD"] come within the ambit of the definition of "Input Service Distributor" ("ISD") under the Cenvat Credit Rules, 2004 and whether credit distributed on such ISD invoices issued by the said Regional Sales Offices ("RSOs") of the companies are admissible. The five impugned orders relate to TSL, covering the periods from January 2005 to September 2013. The remaining three appeals relate to TSLD, covering the periods from June 2007 to December 2013.

3. By the impugned orders the Commissioner has adjudicated periodical show cause notices and has held that the services in question not being input service for TSL/TSLD are not eligible for availment of credit by TSL/TSLD. According to the Commissioner, the services are those which have been used in the Regional Sales Office of TSL/TSLD or by their C & F Agents who are independently registered under service tax as service providers and, hence, while the first would not qualify for distribution in terms of the definition, the second would not be eligible to as these are input services for the C & F Agents who are independent of TSL/TSLD and get remuneration on the basis of quantity of goods handled. On the said premises, the Commissioner, in all the cases have disallowed the Cenvat credit availed by TSL/TSLD respectively, along with interest under Rule 14 of CCR'04 read with Section 11A of the Central Excise Act, 1944 and has also imposed equivalent amount of penalties upon TSL/TSLD in terms of the provisions of Rule 15(2) of the Cenvat Credit Rules read with Section 11 of the Central Excise Act, 1944.

4. The common brief facts of the cases are:

(i) TSL carries on the business of manufacture and sale of iron and steel products. It has its steelworks at Jamshedpur in the State of Jharkhand. TSLD carries on the business of manufacture of iron and steel tubes and products therefrom. It also has its factory at Jamshedpur. Both the companies have RSOs situated at various parts of the country. The main function of these offices are exploring customers, procurement of sales orders and ensuring fulfillment/compliance with such orders. In Mumbai, apart from the registered and Head office, TSL also has a RSO. The RSOs receive service of various natures which are required for its smooth functioning and for carrying out the said functions. All these offices are registered as "Input Service Distributors" under the provisions of the Finance Act, 1994 (in short, “the Act”).

(ii) Both the companies have appointed C & F Agents in cities/towns where the RSOs are situated. These C & F Agents manage the manufactured products of TSL/TSLD which are stock transferred to them from the Jamshedpur factories. They are appointed under specific agreements entered into with them by and between TSL/TSLD and the respective C & F Agent(s).

(iii) The RSOs avail various services in carrying out their functions from their respective offices. The concerned service providers issue invoices to the respective RSOs in terms of Rule 4A(i) of the Service Tax Rules, 1994 for the taxable services rendered, wherein the service tax paid/payable is separately indicated. The RSOs reimburse the service tax paid/payable to such service providers. Such tax paid is distributed by the RSOs, as ISDs, in accordance with the provisions of the Finance Act read with Cenvat Credit Rules. Thereupon TSL and TSLD avail Cenvat credit of such tax paid and distributed, on the strength of the respective ISD invoices issued by the RSOs, in terms of Rule 9(i)(g) read with Rule 3 of the Cenvat Credit Rules.

(iv) Service tax under the Act is also paid by the C & F Agents on the services rendered by them of managing the depot/stockyard. The respective C & F Agents are also duly registered in accordance with the provisions of the Act with their respective jurisdictional Service Tax authorities. The tax paid by the said C & F Agents is reimbursed to them by the RSOs and such tax paid/payable is also distributed by the said RSOs as ISDs to TSL/TSLD.

(v) On the allegation that Cenvat credit was not available to TSL/TSLD on the strength of the invoices received by them through their ISDs on the ground that the same did not fall within the definition of "input service" under the Cenvat Credit Rules, periodical show cause notices were issued to both TSL and TSLD separately by the jurisdictional Central Excise authorities, which resulted in the impugned orders.

5. It has been contended on behalf of the appellants that:

(i) Rule 2(m) of the Cenvat Credit Rules has defined "Input Service Distributor". The three requirements laid down in this rule, for one to be qualified as Input Service Distributor are:

(a) It has to be an office of the manufacturer,

(b) The said office receives invoices issued under Rule 4A of the Service Tax Rules towards purchase of input services,

(c) Issues invoice, bill or challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer.

All the said requirements have been duly satisfied herein.

(ii) For the sale of manufactured goods, various RSOs across the country have been established by the appellants. The key functions of such RSOs are (a) exploring customers (b) procurement of sales orders, (c) ensuring the fulfillment of the orders and (d) any other function as may be prescribed by TSL/TSLD.

(iii) All the RSOs are registered as ISDs at different places. Such RSOs who are engaged to explore customers, procurement of sales orders and to ensure fulfilling such orders, are the offices of manufacturer or producer of final products, TSL and TSLD respectively. Therefore, it cannot be said that RSO is not the office of the said manufacturer(s), TSL/TSLD. This is further confirmed from the registration numbers of the ISDs. The registration numbers have been taken on the PAN No.

AAACT2803M which belongs to TSL (also in the case of TSLD since it is a division of TSL). The ST-2 granted as ISD at different places is in the name of TSL. The RSOs are registered as ISDs under same PAN Number and in the name and style of Tata Steel Limited. In Service Tax Registration Certificates the premises of RSOs are registered with the Department in the name of "TATA STEEL LIMITED". Further, the service tax registration of all the ISDs are on the PAN No. of TSL. Hence, RSOs are eligible for distributing credit on services rendered and these sales offices are therefore authorised to issue invoices under Rule 4A of the Service Tax Rules, 1994, as an office of TSL/TSLD, the manufacturers, as held in Commissioner Vs. Varun Motors, 2013 (30) STR 31 (T).

(iv) The finding that such RSOs are offices of C & F Agents and not of TSL/TSLD is an erroneous assumption unsupported by any material on record. The materials on record, on the contrary, show that the C & F Agents raised invoices to RSOs which have duly been paid by the RSOs, along with the amount of service tax. Since the C & F Agents' end is the place of removal for depot sale transactions, they (C & F Agents) raise invoice to RSO, an office of the manufacturer for reimbursement of the expenditure incurred in respect of input services. Accordingly, the service tax which has been paid by the RSO becomes input service and in capacity of ISD, it distributes the same to TSL/TSLD. As the RSOs are the offices of TSL/TSLD, therefore the service availed by TSL/TSLD on the ISD invoices distributed by the RSOs are correct.

(v) In addition, the credit availed and distributed by the ISDs pertain to the input service availed upto the place of removal, i.e., till stockyard/depot/C & F Agents. Such service used upto the place of removal for the purpose of storage and clearance of final products is well within the ambit of the main as well as inclusive part of the definition of "Input Service".

(vi) The finding that the said services are not "input service" is also incorrect. "Input Service", as defined under Rule 2(1) of the Cenvat Credit Rules, as in force during the material period means "any service (i) used by a provider of taxable service for providing an output service; (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotions, marketing research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitments 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." This definition was considered and interpreted by the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise Vs. Ultratech Cement Ltd., 2010 (260) ELT 369 (Bom). It has been held that the definition of 'input service' not only covers services, which fall in the substantial part, but also covers services, which are covered under the inclusive part of the definition. It has further been held that the definition of 'input service' is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products, but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products.

(vii) From the invoices of the C & F Agents on record it is evident that services are mentioned as ‘Consignment Handling Charge’, ‘Handling Charges of Steel Materials for the month of June, 2014’, ‘Consignment Agency Service’, ‘Chennai Handling Charges for material sold/Handling Charges for despatch of materials received by Rail’, Office Maintenance and Expenditure service’ etc. Such depots/stockyards are also the premises of TSL/TSLD and have been treated as ‘Place of Removal’. Therefore, on application of the principle laid down by the Bombay High Court the input services availed upto the place of removal by TSL/TSLD are well within the scope of Cenvat Credit Rules. Accordingly, the RSOs have rightly availed and distributed the cenvat credit to TSL/TSLD in the capacity of ISDs.

(viii) The finding in the impugned orders that as per Rule 2(m) of the Cenvat Credit Rules, which defines an ISD, only one office of a manufacturer and not number of offices of the said manufacturer can be ISD and distribute credit accordingly is patently erroneous. This would be evident from the decision of the Supreme Court in CCE Vs. United Electrical Industries**,** 1959 (108) ELT 609 (SC) and the decisions of the Tribunal in Indian Cements Ltd. Vs. CCE, 2015 (40) STR 497 (T) and CCE Vs. Varun Motors (supra).

(ix) As evident from the impugned orders itself as well as from materials and documents on record, the RSOs as ISDs distributed credit only of the service tax paid with respect to the services rendered in the respective premises of the concerned RSOs and of the services rendered by C&F Agents for managing the depots/stockyards of TSL/TSLD and that there has been no distribution of credit of the tax paid with respect to the services rendered at the C&F Agents’ places/depots. The relevant materials on record also conclusively evidence that the Consignment Agents who manage the depots/stockyards and charge TSL/TSLD handling charges for the same, pay service tax on such handling charges and pass on the same to the RSOs and it is thus reimbursed service tax which is distributed to TSL/TSLD under ISD invoices by the RSOs. Such handling charges rendered by the Consignment Agents, being in the nature of service in relation to storage of goods upto the place of removal, was in relation to the manufacture and sale of the said goods and, hence, duly qualified as “input service” within the meaning of the Cenvat Credit Rules and, hence, the ISDs had legally and validly distributed the credits involved in relation to the said services.

(x) The impugned orders have proceeded on the fundamental erroneous assumptions that the depots/ stockyards and RSOs are one and same and are situated in the same premises and owned by and belonging to C&F Agents and are managed by them. Inspite of TSL/TSLD demonstrating with documentary evidence that except for Ludhiana, the RSOs/depots/stockyards of the C&F Agents are situated at different premises in the same town/city and each RSO and Mumbai Head Office of TSL are separately registered as ISDs and further that in several places the depots/stockyards are at places which are at quite a distance from the places where the RSOs are placed, the Commissioner, proceeding on a preconceived and perverse manner to somehow or the other confirm against TSL/TSLD a fabricated demand, ignored this relevant and material evidence on record. TSL/TSLD had specifically stated that at all material point of time the RSOs and the C&F Agents operated/functioned and are still functioning from different premises and produced evidence in support thereof. As such, the onus to establish that during any part of the said period the C&F Agents and the RSOs were not operating from separate/different premises, was that of the Department, to be established with relevant materials and evidence, which the Department has failed to discharge.

(xi) Under Rule 7 of the Cenvat Credit Rules only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services. Both of the said conditions are satisfied in the instant cases.

(xii) As a matter of fact in case of both TSL and TSLD subsequent Orders-in-Original have been passed by the Commissioner of Central Excise & Service Tax, Jamshedpur involving the same issue for subsequent periods. The adjudication orders have been passed in cases involving similarly alleged show cause notices/statement of demands. The said adjudication orders passed by the Commissioner are as under:

(i) 08-10/S.Tax/Commr/ 2016 dated 09.06.2016 – in case of TSL

(ii) 02/S.Tax/Commr/2017 dated 16.02.2017 - in case of TSL

(iii) 03-04/Commr/2016 dated 18.07.2016 - in case of TSLD.

In addition, in respect of TSLD, for the subsequent period an adjudication order bearing No. 56/Addl.Commr/2017 dated 01.03.2017 has been passed by the Additional Commissioner of Central Excise & Service Tax. In all these orders the respective adjudicating authorities, upon detailed analysis of both facts and law, have come to the conclusion that the cenvat credits had been legally and validly availed and there was no irregularity involved. All the said four orders have been accepted by the Department and, hence, they have become final. In that view of the matter also the impugned orders cannot survive.

(xiii) It is thus established that there has been no wrongful or erroneous availment of cenvat credit by either TSL or TSLD and that the Commissioner has erred in law in purporting to disallow the cenvat credit availed and to confirm the erroneous demands made in the respective show cause notices. The demands for interest confirmed by the impugned orders are also therefore untenable. Further, there being no contravention by TSL/TSLD of any provision of the Central Excise Act or the Act or the Cenvat Credit Rules, the imposition of penalties upon them by the impugned orders is also untenable and unsustainable.

6. On behalf of the Revenue the findings of the Commissioner in the respective impugned orders have been reiterated. They have however confirmed, upon verification, that the subsequent adjudication orders referred to and relied upon by the appellant have been accepted by the Department and that the said orders involve the self same issues involved in the present appeals.

7. We have heard Dr. Samir Chakraborty, learned Sr. Advocate and Shri S.S.Chattopadhyay, learned Authorized Representative for the Revenue and have perused the records of the appeal cases, as well as the subsequent orders of the adjudicating authority referred to hereinabove.

8. Since the Department has accepted the admissibility of Cenvat credit of the service tax on input services distributed by the RSOs of the applicants as ISDs for subsequent periods in case of both TSL and TSLD and identical issues are involved in the present appeals, accepting the principle of certainty and consistency in tax matters, we hold that the Cenvat credits availed in all the instant appeals are also legally and correctly availed by the appellants. Consequently,

discussion on the other contentions raised by the parties in these appeals would be a mere academic exercise and, hence, not resorted to.

9. In this respect we refer to and rely upon the observation of this Bench of the Tribunal in Tata Steel Ltd. Vs. CCE, Jamshedpur, 2016 (335) ELT 303 (T-Kol). In paras 5.9 and 4.4 (*sic*) of the said order it has been observed as follows:

> "5.9 Needless to emphasize, certainty is the hallmark of taxation, a principle laid down by Adam Smith, the famous economist way back in seventeenth century. The Hon'ble Supreme Court in *Amar Bitumen and Allied Products*' case referring to its judgment in *Birla Corporation* case has observed as:
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>> '6. This Court in a catena of cases has consistently taken the view that if an earlier order is not appealed against by the Revenue and the same has attained finality, then it is not open to the Revenue to accept judgment/order on the same question in the case of one assessee and question and its correctness in the case of some other assessees. The Revenue cannot pick and choose [See: *Union of India & Others V. Kaumudini Narayan Dalal & Anr. [2001 (10) SCC 231]; Collector of Central Excise, Pune V. Tata Engineering & Locomotives Co. Ltd. [2003 (158) ELT 130 (SC)]; Birla Corporation Ltd. V. Commissioner of Central Excise [2005 (186) ELT 266 (SC)]; Jayaswal Neco Ltd. V. Commissioner of Central Excise, Nagpur [2006 (195) ELT 142 (SC)]*, etc.
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>> 7. It was held in *Birla Corporation Ltd. (supra)*, as under:
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>>> 'In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was, therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in *Pepsico India Holdings Ltd.*

> *[2001 (130) ELT 193]* cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary.'

> 4.4 Since the department has accepted the admissibility of cenvat credit on rails and railway track materials involving the same assessee, i.e., M/s SAIL, for subsequent period under the CCR, 2004 and identical issue is also involved in M/s Tata Steel's case, therefore, adopting the principle of certainty and consistency in tax matters, in our view, the appellants are eligible to credit on rails and railway track materials. Consequently, the discussion on the applicability of the said judgment to the present Cenvat Credit Rules, 2004 and other contentions raised in these appeals would become more of academic in nature rather than resolving the dispute, hence not resorted to."

10. In the result the impugned orders passed in respect of the appeals filed by TSL and TSLD are set aside and the appeals are allowed, with consequential relief to the appellants.

(Operative part of the order was pronounced in the open Court.)

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(C.J.MATHEW)
MEMBER (TECHNICAL)

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