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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.717 of 2010

(Arising out of Order-in-Original No.32/Commissioner/2010 dated 26.08.2010 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

M/s. Usha Martin Limited
(Phase-V, Adityapur Industrial Area, P.O. Gamharia-832108, Dist.Saraikela, Jharkhand.)

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

WITH

(i) Excise Appeal No.722 of 2010 (M/s. Usha Martin Limited vs. Commissioner of Central Excise, Jamshedpur); (ii) Excise Appeal No.723 of 2010 (M/s. Usha Martin Limited vs. Commissioner of Central Excise, Jamshedpur); (iii) Excise Appeal No.242 of 2012 (M/s. Usha Martin Limited vs. Commissioner of Central Excise, Jamshedpur); (iv) Excise Appeal No.243 of 2012 (M/s. Usha Martin Limited vs. Commissioner of Central Excise, Jamshedpur);

(i) & (ii) (Arising out of Order-in-Original No.33-34/Commissioner/2010 dated 30.08.2010 passed by Commissioner of Central Excise & Service Tax, Jamshedpur.)

(iii) & (iv) (Arising out of Order-in-Original No.01-02/S.Tax/Commr/2012 dated 25.01.2012 passed by Commissioner of Central Excise & Service Taxs, Jamshedpur.)

APPEARANCE

Dr.Samir Chakraborty, Senior Advocate and Shri Arvind Baheti, Chartered Accountant for the Appellant (s)
Shri Mihir Ranjan, Special Counsel for the Revenue

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

FINAL ORDER NO. 75819-75823/2023

DATE OF HEARING : 2 May 2023
DATE OF DECISION : 26 June 2023

Per : P.K. CHOUDHARY :

The issues involved in Excise Appeal Nos. E-711/2010, E-722-723/2010 and E-242-243/2012 are common and therefore all these appeals have been heard analogously and disposed by a common Order.

2. Briefly stated the facts of the case are that the Appellant has a manufacturing facility at Adityapur Industrial Area, Gamharia, Jamshedpur, engaged in the manufacture of dutiable iron and steel products falling under Chapter 72 of the CETA. Iron ore and coal are essential inputs for manufacture of the said dutiable final products. The Appellant was awarded a Captive Coal Mines (Kathautia) and Captive Iron Ore Mines (Bokna) at Jamshedpur pursuant to mining leases dated 15 October 2007 and 16 August 2005 respectively granted by the Jharkhand State Government. The entire quantity of coal and iron ore mined at Kathautia and Bokna respectively were transferred to the said manufacturing facility for use in the manufacture of dutiable goods save and except iron ore rejects which were not compatible for processing at the manufacturing facility.

3. The manufacturing facility operated under the Cenvat Credit Scheme and, inter alia, availed full/proportionate credit, as the case may be in respect of services rendered at the two mines including the services required for transportation of coal/iron ore from the respective Captive Mines to the manufacturing facility. Such credit was availed either on the strength of invoices issued by the supplier of services or on the basis of ISD invoices issued by the Bokna Iron Ore Mines.

4. Five periodical Show-cause Notices were issued covering the period 2005-06 to 2010-11 to the manufacturing facility of the Appellant proposing denial of Cenvat credit of service tax in respect of services provided at the coal/iron ore mines to the manufacturing facility. Further, Bokna Iron Ore Mines of the Appellant, which had obtained registration as an ISD, was also made a Co-Noticee for

imposition of penalty in four out of five Notices for the alleged violation of Rule 7(b) read withRule 15 of the Cenvat Credit Rules (CCR).All the five Show-cause Notices were issued invoking the extended period of limitation and have culminated into the following proceedings:

(1)	(2)	(3)	(4)	(5)			(6)	
Excise Appeal No.	'O-I-O' No. & Date	SCN Date	Period	Cenvat Credit involved			Penalty involved	
				Kathautia Mines	Bokna Mines	Total	Appellant	Bokna Mines
E/717/2010	32/2010 Dt.26 Aug 2011	6 Aug 2009	2005-06 to 2008-09	50095601	17703698	6779929	6779929	
E/722-723/2010	33-34/2010 Dt.30 Aug 20101	4 Sep 2009 23 Apr 2010	Aug 08 to Mar 09 Apr 09 to Jan 10		13287257 25000910	38288167	45000000	45000000
E-242/12 & E-243/12	01-02 Dt. 25 Jan 2012	25 Feb 2011	Feb 10 to Sep 10	7897424	19381272	54679934	54679933	37379615

		3 Nov 2011	Oct 10 to Mar 11	9402893	17998345			
					Total:	**99748030**	**106459862**	**8237 9615**

5. Excise Appeal Nos. E-717/2010, E-722/2010 and E-242/2012 have been filed by the manufacturing facility assailing the recovery of the alleged irregular availment of Cenvat credit of Rs.9,97,48,030/- and Penalty of Rs. 10,64,59,862/-.On the other hand, Excise Appeal Nos. E-723/2020 and E-243/2012 have been filed by Bokna Mines of the Appellant with respect to imposition of penalty of Rs. 8,23,79,615/-.

6. The common allegations and findings as forthcoming from the Show-cause Notices and the adjudication Orders are summarized hereunder:

(a) Iron Ore and Coal Mines were engaged in the raising of exempted goods. Both the mines are separate profit centres, having separate annual profit and loss and are separate entities from the Appellant and therefore services cannot be said to be used or received by the manufacturer.

(b) Vikram Cement relates to availability of credit on "inputs" and in view of the limitation imposed by Rule 3 of CCR read with definition of input services requiring receipt and use by the manufacturer, the said decision not applicable. The factory and the mines do not constitute one integrated unit but are separate units. Condition attached in the mining lease does not alter that fact and that in any event entire iron ore mined has not been used by the Appellant.

(c) Inclusion of the cost of Iron Ore in valuing the Iron & Steel

products does not entitle the factory to avail credit in view of Sundaram Brake Lines Case relying upon the SC decision in Maruti Suzuki – 2009 (240) ELT 641.

(d) GTA services from Bokna Mines to Rail head not covered by Board Circular No. 97 dt. 23.08.07 as the service not in the nature of input service for the manufacturer and payment for the said service made by the mine. [These observations pertain only to OIO No. 32 (EA 717/2010)].

(e) Bokna Mines is engaged in the raising and transportation of non-excisable goods and therefore cannot be said to be an office of the manufacturer. ISD registration obtained by suppression/mis-representing the fact that mines and factory have different entities and are different profit centres of the Appellant.

(f) Suppressed facts from the department that these are different entities and while taking ISD registration, therefore, extended period and equal penalty justified.

7. The Ld. Advocate appearing for the Appellant has challenged the findings in the impugned Orders on the following grounds/contentions:

(a) The Appellant's factory and its captive mines constitute one integrated unit. Both the mines as well as the factory belonged to the Appellant and the activities of excavating coal and iron ore in the mines and its despatch to the factory were directly and immediately related to the manufacture of excisable goods at the factory. That the Appellant is entitled to Cenvat Credit of service tax in respect of services received at the captive mines albeit away from the factory is well settled in light of the following judicial precedents:

*(*i) *Hindalco Industries Ltd. Vs. CCE, Allahabad [2018 (10) TMI 1733] [Input Services – Mines + ISD]*

(ii) CCE Vs. Ashok Leyland [2019 (369) ELT 162 (Mad)] [Input Services – Power Plant]

(iii) Hindalco Industries Ltd. Vs. CCE, Allahabad [2012 (27) STR 401] [Input Services – Power Plant]

(iv) Vikram Cement Vs. CCE, Indore [2006 (197) ELT 145 (S.C.)] [Inputs – Mines]

(v) Madras Cements Ltd. Vs. CCE [2010 (257) ELT 321 (S.C.)] [Capital Goods – Mines]

Even if iron ore rejects that are unfit for use in the manufacturing facility are sold to third parties, mines still remain a captive mine.

(b) The allegation that the mines and the factory are separate entities having separate profit and loss is contrary to the facts on record as the mines and the factory are part and parcel of the same Company with one Permanent Account Number (PAN), Profit & Loss Account and financial statement. The coal mines and the iron ore mines are not separate profit centers, either. No evidence has been adduced by the revenue to support its contentions that these are separate profit centers. Further and in any event in any case, there is nothing in the Cenvat Rules, which provides for denial of credit merely because any department or division of the Appellant is treated as a separate profit center or has separate mention in the annual report. For exercising better control, even different parts of the same factory may be treated as separate profit centers by the management of the factory. Reliance was also placed on the following decisions

to contend that branches of a Company are not separate entities:

(i) English Electric Co. of India Limited Vs. The Deputy Commissioner of Commercial Taxes [1976 4 SCC 460]

(ii) Sahney Steel and Press Works Ltd. Vs. CTO, [1985 4 SCC 173]

(c) The definition of input service in **Rule 2(l) of the CCR** is wide enough to include services used by a manufacturer directly or indirectly in relation to manufacture of final products without any restriction as regards the usage of such services within the factory premises and also includes services received outside the factory and also specifically covers services in relation to procurement of inputs. Reference in this regard is invited to the following decisions:

(*i) Coca Cola Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-III [2009 (242) ELT 168 (Bom)]*

(ii) Commissioner of Central Excise, Nagpur Vs. Ultratech Cement Ltd. [2012 (278) ELT 523]

(d)Cenvat credit could not have been denied on the ground that iron ore and coal were exempted goods as these were only intermediates required in the manufacture of the final product. The 'CBEC vide Circular dated 3 April 2000 has categorically clarified that Cenvat should not be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that Cenvat credit is admissible so long as the inputs are used in or in relation to the manufacture of final product, and whether directly or indirectly.

(e) Definition of "input service distributor" in Rule 2(m) of the CCR was and is fully satisfied in respect of the Appellant's Bokna mines office. This position was accepted by the department also and Bokna mines office of the Appellant was duly registered by the department as Input Service Distributor. The Commissioner's findings that the said registration was granted based on suppression of facts is totally contrary to the letter dated 25 April 2008 filed by the Appellant along with the application for ISD registration of its Bokna mines. The said registration was valid and subsisting during the relevant period. Further, the Appellant also fully satisfied the conditions of Rule 7 of the CCR. In the event, non-registration as an ISD does not disentitle the Appellant from availing Cenvat credit on input services directly or indirectly, in or in relation to manufacture of its final products.

- *C.C.E. Vs. Dashion Ltd. [2016 (41) S.T.R. 884 (Guj.)]*
- *Circular No. 1063/2/2018-CX dated 16.02.2018 [Paragraph 2**]***

(f) Moreover, in terms of Circular No. 97/8/2007-S.T. dated 23.08.2007 [Para 8(b)] CENVAT Credit is available on GTA services to the recipient of service irrespective of who has made payment of the tax. The learned Commissioner has himself allowed credit in respect of GTA services for transportation of coal from the Coal Mine to the factory in OIO No. 32 dt. 26.08.2010 [EA – 717/2010] but not followed the same for transportation of iron ore [EA-717/2010] as also for coal in OIO No. 1-2 dt. 25.01.12 [EA-242/12].

(g) All the relevant facts concerning the ISD was duly disclosed to the Department by the Appellant vide their letter dated

25.04.2008. Further, a statement tabulating the CENVAT credit taken by the Appellant including the ISD credit was submitted along with the ER-1 returns filed during the relevant period. Therefore, no suppression or mis-statement so as to justify invocation of extended period.

(h) Imposition of dual penalty under Rule 15(4) of the CCR on the Appellant's factory and Bokna mines in unjustified and in any event not supported by any sub-clause of Rule 15 is so far ISD is concerned.

(i) The decision of the Hon'ble Tribunal in Sundaram Brake Linings case reported in 2010 (19) STR 172 on which reliance has been placed by the revenue is no more a good law as the same stands reversed by the Hon'ble Madras High Court as reported in 2015 (39) STR 982. In any event, the final product cannot be manufactured without Iron Ore and Coal and therefore the services are integral to the business of manufacturing the final product.

8. The Ld. Authorized Representative for the revenue on the other hand, supports the impugned Orders and reiterates the findings of the Commissioner.

9. Heard both sides and perused the appeal records.

10. The crux of the issue before us in all these appeals is whether cenvat credit of service tax could be availed by the factory in respect of input services received at the captive coal & iron ore mines, either directly or on the strength of the ISD invoices issued by the Bokna Mines Office. Ld. Commissioner entertained a view that coal and iron ore mines situated away from the factory were separate entities having their own financial transactions engaged in the manufacture of exempted goods and consequently the services rendered at the mines

could not be said to have been received by the factory. However, no material has been placed on record by the revenue to substantiate that the mines were owned by separate entities. On the contrary, it is evident from the coal and iron ore mining leases dated 15.10.2007 and 16.08.2005 that these mines were allotted to the Company, Usha Martin Limited (UML), for its captive use. The contention of the Appellant that the factory and the mines were a part of UML holding a single PAN has also not been negated/refuted by the learned Commissioner. It is not in dispute that coal and iron ore were essential raw materials for the Appellant and it is also not the case of the revenue that the Appellant had more than one factory or that the credit availed at the factory was in excess of the tax paid in respect of the services availed at the mines during the relevant period. Nonetheless the revenue proceeded on the premise that the ratio of the decision of the Hon'ble Supreme Court in the case of Vikram Cements (supra) rendered in the context of availability of credit on inputs/ capital goods used in the captive mines could not be applied to input services, requiring receipt and use by the manufacturer under Rule 3 of the CCR. We are not able to appreciate this distinction given that the definition of input services under Rule 2(l) of the CCR is much wider than the definition of input and that unlike the locational restriction carved out for receipt of inputs in the factory of manufacture under Rule 3 no such limitation exists for input services. We also find that a similar issue in the context of availment of cenvat credit of service tax in the hands of the factory in respect of input services received at the Captive Mines had fallen for consideration of the Tribunal in the case of Hindalco Industries case (supra). The period involved therein was March 2005 to October 2010 and the credit was availed by the assessee's factory therein, directly as also on the strength of ISD invoices issued by the mines. The Tribunal allowed the credit of service tax to the assessee's factory by treating the

Captive Mines and the factory as one integrated unit. Para 9 of the said decision reads as under:

> *"(9) …… We note that Hon'be Supreme Court in the case of Vikaram Cement reported at 2006 (197) ELT 3 (SC) had ruled that if the mines are the captive mines then the Cenvat credit on capital goods used in such mines will be available to the appellant. We find from the records submitted before us that the above stated mines were captive mines for the appellants also due to reason that revenue has stated on record that the records being maintained at various mines were having the same PAN Number. Therefore, the Cenvat credit of service tax on services availed at mines was admissible to the appellant. Further, we note that the appellant were availing Cenvat credit received through invoices issued by Lohardaga mines which has registration as 'Input Service Distributor' and therefore, we find that said Cenvat credit was admissible to them. We further note that as held by Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs Dashion Ltd. (supra) even for the period when Lohardaga unit was yet to register as input service distributor the Cenvat credit distributed by said Lohardaga mine was admissible to the appellant, since Lohardaga mine was part and parcel of the establishment of the appellant……".*

We find that the ratio of the said decision is squarely applicable to the facts of the present case as well. Our attention has also been invited to another decision of the Madras High Court in the context of admissibility of credit of tax paid on lease rentals, operation and maintenance of Wind Mill situated far away from the assessee's factory. The power generated from the Wind Mill therein was supplied to 'TNEB' grid which in turn transmitted the

power to the factory of the assessee. The Hon'ble Court after taking note of the wide definition of input service allowed the credit of service tax to the factory of the assessee.

In light of the above decisions, we hold that the denial of credit of service tax by the Ld. Commissioner in the instant case is unsustainable. We also find that the statutory ER-I returns were being filed along with a statement containing invoice-wise details of the credit taken and the ISD registration was obtained after disclosing all the relevant facts vide letter dated 25 April 2008 addressed to the Superintendent, Jharkhand Commissionerate. Therefore, the charge of suppression against the factory and the Bokna Mines also fails.

11. Accordingly, the appeals succeed on merits as well as limitation and the impugned orders are set aside, the penalties imposed are also set aside. The Appeals are allowed with consequential relief, if any.

(Order pronounced in the open court on 26 June 2023.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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