

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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.46 of 2012

(Arising out of Order-in-Original No.69/COMMR/ST/BOL/11 dated 02.11.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s. Emta Coal Limited

(Formerly Eastern Minerals & Trading Agency)

(Tara (East & West), OCP, P.O.Churulia, Dist: Burdwan, West Bengal, Pin-713368.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Dr.Samir Chakraborty, Senior Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76498/2023

DATE OF HEARING : 24 August 2023

DATE OF DECISION : 24 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order of denial of cenvat credit and demanding the same from the appellant.

2. The facts of the case are that the appellant was engaged in the business of raising of coal from coal mines of, inter alia, Bengal Emta Coal Mines Limited in Jamuria and adjacent areas in the state of West Bengal and/or Karnataka Emta Coal Mines Limited in the state of Maharashtra. The appellant was registered in terms of section 69 of the Finance Act, 1994 read with rule 4 of the Service Tax Rules, 1994. The registered office of the appellant at Tara (East & West), OCP, Churulia, District – Burdwan under the jurisdiction of Jamuria range. The registration certificate is for providing the taxable output service which is 'mining services' w.e.f. 01.06.2007. The appellant initially started providing mining services at Tara (East and West) OCP of Bengal Emta Coal Mines Limited. Thereafter, the appellant extended providing mining services to Baranj Mines of Karnataka Emta Coal Mines Limited in the state of Maharashtra under the same registration number. The appellant, therefore, had two different premises wherefrom it was providing output services, but having one registered office at Tara (East and West) OCP. The appellant imported capital goods, on payment of customs duties and cleared and directly sent to EMTA's Baranj OCP in the state of Maharashtra wherein EMTA carried out excavation of coal from coal mines and incidental work connected therewith. The appellant at Churulia, Burdwan, West Bengal was registered under Rule 4(2) of Service Tax Rules, 1994 during the material period and taken cenvat credit of duty paid on the said capital goods which was utilized for providing taxable mining service on which appropriate service tax was paid by EMTA as output service provider, through their registered office in Jamuria Range and was filing their ST-3 returns periodically.

3. A show cause notice dated 23.02.2011 was issued to the appellant alleging that they have availed inadmissible cenvat credit on capital goods suppressing the facts from the department that the said capital goods were not brought into the premises of the output service provider and utilized towards payment of service tax on input services. It was further alleged that the appellant imported the capital goods under the Bills of Entry which were addressed to the head office and

were directly sent to the Baranj OCP suppressing the fact from the department that the said capital goods were being used in a non-registered premises which has not been declared to the department and said credit of capital goods was thus availed irregularly. The matter was adjudicated, duty on account of denial of cenvat credit on capital goods was confirmed. Against the said order, the appellant is before us.

4. The Ld.Counsel appearing for the appellant submits that there has been no irregular availment of cenvat credit or utilization thereof by the appellant as Rule 3(1)(i) of the Cenvat Credit Rules, it would be seen that credit is available, inter alia, any capital goods received by the provider of output services and the said capital goods were received at Baranj OCP for use in providing output service, therefore, cenvat credit cannot be denied on the same. In support of this, the appellant referred to the decision of Hon'ble Apex Court in the case of Bansal Wire Industries Ltd. v. State of UP [2011 (269) ELT 145 (SC)].

5. He also submitted that credit is not to be denied where the bill of entry is in the name of registered office/head office, but the subject imported goods are diverted to an unit of assessee, provided that the entire consignment covered by the bill of entry is received in the said unit in registered pack condition. He further submitted that the appellant is providing mining services at Tara (East and West) OCP of Bengal Emta Coal Mines Ltd. and thereafter extended providing such mining services to Baranj mines of Karnataka Emta Coal Mines Ltd., hence there can be no doubt whatsoever that the appellant has been providing mining service to Karnataka Emta Coal Mines at Baranj OCP on which service, service tax was paid. He further submitted that it is settled law that availment of credit is contingent only upon compliance with the provisions of the Cenvat Credit Rules and registration being not mandated therein, non-registration with department irrelevant to availment of credit, in the absence of evidence that the subject input/capital goods services not utilized for provision of output services. To support this, he relied on the decision of the Tribunal in the case of Tata Business Support Services Ltd. v. Commr. of S.T.-VII, Mumbai

[2021 (44) GSTL 169 (Tri.-Mumbai)]. He also submits that whole of the demand is barred by limitation.

6. On the other hand, the Ld.AR for the revenue supported the impugned order.

7. Heard the parties, considered the submissions.

8. The facts of the case are not in dispute that the appellant is a registered service provider at Jamuria Range and engaged in providing service of mining services. It is also fact on record that the appellant received the capital goods for providing mining services at Baranj OCP Mines of Karnataka Emta Coal Mines Limited in the state of Maharashtra for excavation of coal i.e. mining and paying service tax thereon. It is also fact on record that the capital goods imported by the appellant have been installed therein at Baranj OCP and used in providing output service on which service tax has been paid. As the only issue raised is that capital goods were installed by the appellants which were not registered premises, therefore, cenvat credit is not available.

9. The same issue came up before this Tribunal in the case of Tata Business Suport Services Ltd. (supra), wherein the Tribunal held as under:-

"5. It is not in doubt that the appellant had not included the Deonar premises in the registration which continued with the Thane location. At the time of the original adjudication, the decision in Re mPortal India Wireless Solutions P. Ltd. did not appear to have been available to guide the outcome. From the record of proceedings before the Tribunal on the previous occasion, it would appear that this decision was not placed for consideration then. Not unnaturally, after taking note of the Cenvat Credit Rules, 2004, the Tribunal was inclined to refer the matter back to the original authority for ascertainment of utilisation of the 'input service' by the assessee as a feasible alternative. The adjudicating authority appeared to have concluded from this that the issue of relevance of registration was not in question any longer and that process of enquiry prescribed in Rule 9 of Cenvat Credit Rules, 2004 was to be undertaken for its own sake. In our

opinion, nothing could be farther from the intent of the direction of the Tribunal.

.....

7. *Registration of 'person liable to pay the service tax' is mandated by Section 69 of Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994 prescribing the procedures thereof. It does not, as an essential qualification for availment of credit, prescribe that the recipient be registered. Undoubtedly, with the eligibility to avail credit being restricted to providers of 'output service', it is but natural that any assessee availing credit would, normally, be registered. However, such registration is not mandated in Cenvat Credit Rules, 2004 which is a legal framework to operationalise the scheme for setting off taxes/duties to obviate the cascading effects of taxation and, except for relying upon the general power, under Section 94 of Finance Act, 1994, to frame rules, is independent of Service Tax Rules, 1994 and Finance Act, 1994 save for the expression 'in such manner' in Section 68 of Finance Act, 1994. Availment of credit is, thus, contingent only upon compliance with the scheme embodied in Cenvat Credit Rules, 2004.*

.....

11. *The irrelevance of registration for the privilege of availment of Cenvat credit is now settled law. There is no evidence that the impugned 'input services' were not utilised for the provision of output services. The denial of credit, therefore, does not find sustenance of law."*

10. As the facts of the case are not in dispute as per Rule 3 of Cenvat Credit Rules, 2004, the cenvat credit is available on input, input services used for providing output service. Admittedly the capital goods on which cenvat credit have been availed have been used for providing output service, therefore, we hold that the appellant has rightly taken the cenvat credit on the said capital goods.

11. In view of the above conclusion, we hold that appellant has correctly taken the cenvat credit, therefore, there is no merits in the impugned order. The said is set aside.

In the result, the appeal is allowed with consequential relief, if any.

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm