IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

(1) <u>Service Tax Appeal No.70639 of 2013</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No. 11-16/MP/ Commr./2013 dtd. 19.3.2013 passed by Commissioner of Central Excise & Service Tax, Ranchi)

M/s Hindalco Industries Limited
P.O. Chota Muri, Dist.-Ranchi, Jharkhand, Pin-835101

Appellant

VERSUS

Commissioner of Central Excise, Ranchi
C.R.Building, 5-Main Road, Ranchi-834001

Respondent

WITH

(2) <u>Excise Appeal No.75303 of 2016</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No. 13-15/CE/Commr/2015 dtd. 11/12/2015 passed by Commissioner of Central Excise & Service Tax, Ranchi)

M/s Hindalco Industries Limited
P.O. Chota Muri, Dist.-Ranchi, Jharkhand, Pin-835101

Appellant

VERSUS

Commissioner of Central Excise, Ranchi
C.R.Building, 5-Main Road, Ranchi-834001

Respondent

AND

(3) <u>Excise Appeal No.75023 of 2022</u>
M/s Aditya Aluminium,Samblapur, A Unit of M/s Hindalco Industries Limited

(Arising out of Order-in-Original No. 01/CCE/CE/ RKL/2021-22 dtd. 21.9.2021 passed by Commissioner of Central Excise, Customs & Service Tax, Rourkela)

AND

(4) Excise Appeal No.75245 of 2023
Cross Objection No.75111 of 2023
(On behalf of Revenue)

(Arising out of Order-in-Appeal No. 49/CEX/RKL-GST/ 2022 dtd.16.12.2022 passed by Commissioner of CGST & Excise,Rourkela)

Commissioner of CGST & Excise, Rourkela
KK-42, Civil Township, Rourkela-769004

Appellant

VERSUS

M/s Hindalco Industries Limited
P.O. Hirakud, Dist.-Sambalpur, Odisha, Pin-768004

Respondent

APPERANCE :

Shri Deepro Sen,Advocate & Ms.Payal Bharwani, Chartered Accountant for the Appellant-Assessee
Shri S.S.Chattopadhyay, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77232-77235/2023

DATE OF HEARING : 25.09.2023
DATE OF DECISION : 25.09.2023

Per Ashok Jindal :

Both sides are in appeal against the impugned orders.

2. The assessee has also filed cross objection in the appeal filed by the Revenue.

3. The facts of the case are that the assessee is engaged in manufacturing of goods and discharging their Central Excise duty on the final product by utilizing cenvat credit of duties and taxes paid on

inputs, capital goods and input services used in or in relation of the manufacturing activity.

3.1 M/s Aditya Birla Management Corporation Private Limited (ABMCPL) is a Company, which was incorporated to provide common corporate facilities and resources to group companies of Aditya Birla Group to enable them to optimize the benefit of specialization and achieve economies of scale.

3.2 ABMCL provided common facilities in the areas of human resources, legal support, logistics, infrastructure, information technology, business strategies, research and development, training etc.

3.3 Accordingly, ABMCPL obtained service tax registration under the category of "Business Support Service" (BSS) to be provided to the group companies duly discharged service tax thereon.

3.4 The assessee availed cenvat credit of service tax paid on invoices issued by ABMCPL during the impugned period.

3.5 However, the Revenue is of the view that the availment of cenvat credit of service tax paid on BSS provided by ABMCPL to the assessee is not eligible on the ground that the assessee failed to establish the co-relation between the various services received from ABMCPL and the payment paid to ABMCPL on a pro-rata basis. It was also alleged that there is no direct nexus of the input services with the manufacturing of the dutiable products and hence the same do not fall under Rule 2 (l) of Cenvat Credit Rules, 2004 as input service. It was also observed that ABMCPL was merely distributing credit despite not being an input service distributor and hence cenvat credit is not available to the assessee since it was a violation of provisions of Rule 2 (l),Rule 7 and Rule 9 of the Cenvat Credit Rules, 2004.

3.6 Therefore, various show-cause notices were issued to the assessee and in some of the cases, the cenvat credit was allowed to the assessee.

3.7 Against the said order, the Revenue is in appeal

3.8 Where the cenvat credit has been rejected to the assessee, in that case, the assessee is in appeal. Therefore, all are disposed off by a common order. The assessee has also filed a Cross Objection to the appeal filed by the Revenue.

4. The ld.Counsel appearing on behalf of the assessee submits that in their appellant's own case for the earlier period, this Tribunal has allowed the cenvat credit. Thereafter, the issue is no more res integra. Accordingly, the assessee's appeals be allowed and the Revenue's appeal be dismissed.

5. The ld.A.R. for the Revenue reiterated the findings of the impugned order.

6. Heard both sides and considered the submissions.

7. We find that the assessee's own case for the earlier period, this issue came up before this Tribunal and this Tribunal vide its Final Order No.75610/2023 dated 09.06.2023, has observed as under :

> *"10. We observe that the Appellant has provided various services to their group companies to enable them to optimize the benefit of specialization and achieve economies of scale. The Appellant claimed that the services provided by ABMCPL to the*

group companies fall within the definition of 'Business Support Service' defined under Section 65(104c) of the Finance Act, 1994, which is reproduced below:-

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, [operational or administrative assistance in any manner], formulation of customer service and pricing policies, infrastructural support services and other transaction processing. Explanation- For the purpose of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]

11. From the above definition it can be seen that providing operational or administrative assistance in any manner or providing infrastructural support service or managing distribution and logistics service, fall within the ambit of 'Business Support Service'. The ABMCPL has been providing these services to their group companies. As per the definition of BSS mentioned above, the services rendered by ABMCPL to their group companies would rightly fall under the category of 'Business Support Service'. We observe that ABMCPL has been rightly paying Excise Appeal No.70098 of 2013 6 Service Tax under BSS for the services rendered by them to their group companies. The department has also not disputed the payment of service tax by ABMCPL under the category of BSS.

12. The Appellant referred the Board Circular No.102/3/2009-S.T. dated 23.02.2009 and TRU's Letter No.334/4/2006-TRU, dated 28.02.2006 which clarified the scope *of BSS. As per the Board Circular cited above, services which are in the nature of assistance or support provided by the principal to the service recipient would fall under BSS. In the present case, the services rendered by ABMCPL being in the nature of support service provided to the Appellant, qualify as BSS as defined under section 65(104c) of the Finance Act, 1994.The manner of arriving at the value of services rendered would not change the nature of BSS provided by ABMCPL i.e., whether ABMCPL only recovered the expenses incurred or even charged a profit element. Section 67 of the Finance Act, 1994 provides that value of any taxable service is the gross amount charged for such service provided. It neither restricts a service provider from allocating expenses to the recipients nor mandates charging profit margins in exchange for the provision of such services. Therefore, even if ABMCPL merely apportioned expenses incurred by it to support the group entities, such apportioned amount represents the value of taxable service of BSS provided by ABMCPL.*

11. The Appellant availed BSS provided by the ABMCPL, wherein ABMCPL carried on these functions on behalf of the Appellant, thus enabling the Appellant to benefit from specialization in their manufacturing activity and achieve economies of scale. The nature of the activities so performed and their close nexus with the business of the Appellant is also clearly visible from the mails exchanged by ABMCPL with the group companies.

12. Further, most of the activities done by ABMCPL are covered under the inclusive portion of the definition of 'input services' viz. advertisement and market research, procurement of inputs, accounting, auditing, financing, recruitment and quality control, Excise Appeal No.70098 of 2013 7 coaching and training, computer networking, security, legal services etc.

13. Hence the Appellant is entitled to avail the CENVAT Credit of service tax paid on BSS since they have a nexus with the *overall business activity of manufacturing final goods and are essential for the day-to-day operations of the Appellant.*

14. In view of the above discussion, we hold that the services rendered by the ABMCPL is rightly classifiable under the category of 'Business Support Service' and ABMCPL has rightly paid Service Tax under the said category. The service tax paid by ABMCPL has been rightly distributed to their group companies, including Appellant."

8. As the issue has already been decided in favour of the assessee, therefore, we hold that the service rendered by ABMCPL is rightly classifiable under the category of BSS and ABMCPL has rightly paid the service tax under the said category and the service tax paid by ABMCPL has rightly been distributed to their group companies including the assessee.

9. In that circumstances, we hold that the assessee is entitled to take the cenvat credit on the services distributed by ABMCPL.

10. In view of this, the appeals filed by the assessee are allowed and the appeal filed by the Revenue is dismissed. Cross objection also gets disposed off in the above terms.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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