

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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.70401 of 2013

(Arising out of Order-in-Original No.2-7/MP/Commr/2013 dated 31.01.2013 passed by Commissioner of Central Excise & Service Tax, Ranchi.)

M/s. Hindalco Industries Limited

(Chota Muri, Dist-Ranchi, Jharkhand, Pin-835101.)

...Appellant

VERSUS

Commissioner of Central Excise, Ranchi

(Central Revenue Building, 5-Main Road, Ranchi-834001.)

.....Respondent

APPEARANCE

Shri Deepro Sen, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

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

FINAL ORDER NO. 75657/2024

DATE OF HEARING : 22.03.2024

DATE OF DECISION : 22.03.2024

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order denying Cenvat Credit on the ground that the services availed by the appellant was not taxable services at the end of the service provider and Cenvat credit of service tax paid on plantation services also sought to be denied.

2. The facts of the case are that the appellant is engaged in the manufacture of excisable goods such as Alumina Hydrate and Calcined Alumina. The appellant decided to expand its manufacturing plant and for this purpose, the appellant awarded various contracts for works

contracts services; erection, commissioning and installation services and construction of railway services to different service providers. The service providers charged service tax at full value from the appellant on works contract services, erection, commissioning and installation services and construction of railway services without availing any abatement or exemption under the law during the relevant period of time. Accordingly, the appellant availed Cenvat credit of service tax paid. The appellant also availed Cenvat credit on plantation services from one M/s. Energy and Resources for development of green cover around Red Mud Pond area. A show cause notice was issued to the appellant on the ground that the appellant has taken Cenvat credit wrongly for the services availed by them as Works Contract Services, as the same were not liable to tax prior to 01.06.2007. Further, the Cenvat credit sought to be denied alleging that the service was not taxable under Construction Service or Commercial or Industrial Construction Services. Further, the Cenvat credit sought to be denied that electricity is neither dutiable to Central Excise nor liable to Service Tax and commissioning of immovable property is also neither liable to service tax nor liable to excise duty, therefore, the Cenvat credit availed by the appellant for the services availed by them which are not liable to Service Tax, therefore the appellant is not entitled to take Cenvat credit. Further, the plantation undertaken by the appellant in red pond area was sought to be denied on the ground that the said area was outside the plant premises, therefore, there is no nexus to manufacture of the final product, therefore, the appellant is not entitled to take Cenvat credit. The show cause notice dated 06.02.2013 was for the period 2006-07 to September 2011. The matter was adjudicated, demand by way of denying of Cenvat credit was raised along with interest and the penalty were also imposed. Against the said order, the appellant is before us.

3. Heard the parties.

4. On careful perusal of the records placed before us and arguments advanced by the parties, we find that the Service Tax paid by the

service provider was accepted by the Revenue and it was not disputed at the end of the service provider. In that circumstances, it cannot be disputed at the end of the service recipient. It is admitted fact that whatever service tax has been paid by the appellant, the appellant has taken the Cenvat credit of the same and it is also not disputed by the respondent that the above said services on which service tax has been paid by the appellant were not received by the appellant. Therefore, whatever service tax paid by the appellant on the services received is entitled to Cenvat credit as held by this Tribunal in appellant's own case as reported in 2023 (12) TMI 117-CESTAT KOLKATA. Moreover, the service tax paid on Plantation Service also cannot be denied on the ground that the same is having no nexus with the manufacturing activity of the appellant. As the appellant is doing plantation for the better environment in their factory premises, in that circumstances, it cannot be said that the said activity have no direct or indirect nexus to their manufacturing activity. In that circumstances, Cenvat credit cannot be denied to the appellant.

5. We find that in appellant's own case cited (supra), this Tribunal has observed as under:-

"14. We observe that there are two issues to be decided in these appeals. The first issue to be decided is whether the Appellant is eligible to avail CENVAT Credit of Business Support Services received by them from ABMCPL (group company) for the period from April 2006 to March 2016?. We observe that the issue is no longer res integra as the same issue has been decided by this Tribunal in Appellant's own case, reported as Hindalco Industries Ltd. v. CCE, Kolkata-II, 2023 (6) reported in TMI 457 - CESTAT Kolkata. The relevant portion of the said decision is reproduced below:

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 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.

13. 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.

14. 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, coaching and training, computer networking, security, legal services etc.

15. 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.

16. 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.

15. We also observe that Cenvat credit ought not to have been denied to service recipient when service tax paid by service provider has not been disputed at service provider's end. The service provider ABMCPL has filed returns intimating the payment of service tax on the Business support Service rendered by them to its group companies and filed their returns. The department has not challenged the assessment made by ABMCPL in the returns and accepted it. Without challenging the assessment, the department cannot question the Cenvat credit passed on by ABMCPL to the Appellant. We observe that the decisions cited by the Appellant mentioned in Para 5 supra supports this view. By following the decisions cited above, we hold that the demands confirmed in the impugned orders along with interest and penalty on this count are not sustainable and accordingly, we set aside the same.

16. The next issue to be decided is whether the Appellant is eligible to avail CENVAT Credit on Mining Services received from Avian Overseas

Pvt. Ltd. for the period from April 2006 to June 2011? We observe that Cenvat credit amounting to Rs.11,85,22,981/- along with interest and penalty has been confirmed in the impugned order. The Appellant submits that they are entitled to avail all input services received and used in mines in accordance with the definition of 'input services'. We observe that the services ancillary to mining of coal in the Appellant's mine was used for generation of electricity at their Captive Power Plant located in their factory at Hirakud, Sambalpur, Orissa. The said electricity is supplied to their manufacturing unit for use in manufacture of dutiable goods. Thus, we observe that the services have intricate nexus with manufacturing of dutiable goods. The Appellant cited a plethora of decisions in support of their contention that the input services used in captive mines are available as credit to the manufacturing unit.

17. In the case of India Cements Ltd. v. CCE, Guntur, 2016 (45) S.T.R. 557 (Tri. – Hyd.), the tribunal has held that the input services used in captive mines are available as credit. The relevant portion of the decision is reproduced below:

11. In respect of Appeal No. 20555/2015, I find that none of the input services on which credit has been availed by the appellant are excluded or barred by the provisions of the said Rule 2(I) as amended w.e.f. 1-3-2011. I also find that the said input services are very much in the nature of services directly or indirectly required in relation to the manufacturing/production activities carried out by the appellant at the impugned mine. In the circumstances, I hold that the disputed credits amounting to Rs. 83,823/- availed by the appellants on the aforesaid input services are eligible and correct in law. In consequence, the portion of impugned Order-in-Appeal Nos. 01 and 02/2014 upholding the order dated 26-3-2014 of adjudicating authority, who inter alia disallowed the aforesaid amount, will require to be set aside, which I hereby do. Appeal No. 20555/2015 is thus allowed in toto.

18. In the case of Vikram Cement v. CCE, Indore - 2006 (197) E.L.T. 145 (S.C.), the Hon'ble Supreme Court has held that capital goods and inputs used in captive mines available as credit to the manufacturing unit. The relevant portion of the decision is reproduced below:

5. As regards the Modvat/Cenvat credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on

capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assesseees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue.

19. By following the decisions cited above, we hold that the Appellant is eligible for the Cenvat credit of the input services received and used in the captive mines as the said services were used in mining of coal which was used for generation of electricity at their Captive Power Plant and the electricity was used in the manufacturing unit for manufacture of dutiable goods. Thus, we hold that there is a clear nexus between the input services on which Cenvat credit was availed and the manufacturing activity undertaken by the Appellant. Thus, we hold that the impugned order demanding reversal of such credit along with interest and penalty is not sustainable and accordingly, we set aside the same.

20. Regarding the grounds taken by the adjudicating authority to confirm the demands in the impugned order, we observe that the adjudicating authority has observed that AOPL was providing 'site formation services' and not 'mining services'. Hence, it has no nexus with the manufacturing process of excisable goods. We observe that the classification of service as either 'mining service or 'ancillary to mining service' or 'site formation services' is not relevant to determine the eligibility to Cenvat credit on the subject services, inasmuch as the services are used in the mines, coal extracted wherefrom has been used in their manufacturing unit. Accordingly, we hold that the demands cannot be confirmed on this ground. The adjudicating authority has also observed that AOPL issued the invoices on the Appellant's mines and not the factory address/ registered premise. On these ground the credit availed by the Appellant was denied. We observe that even if such invoices were addressed to the mines, the Cenvat credit ought not be denied thereon on account of such procedural infirmities, in the absence of any dispute as to usage of such services by the Appellant. Accordingly, we hold that the Cenvat credit cannot be denied on this ground.

21. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant."

6. Further, we also find that in the case of Commr. of C.Ex., Surat-II vs. Gujarat State Fertilizers & Chemicals Ltd. [2013 (291) E.L.T. 375 (Tri.-Ahmd.)], this Tribunal has allowed the Cenvat credit on corresponding service by holding as under:-

"5. On careful consideration of the submissions made by both sides, I find that the first appellate authority has relied upon the various judgments to come to a conclusion to hold that appellant is eligible to avail cenvat credit. He has also taken note of the NOC issued by the Gujarat Pollution Control Board issued vide No. GPCB/CTE/SRT-2030/25604 dated 20-11-2009, has specifically laid down the condition, which is as under :-

"Adequate plantation shall be carried out all along the periphery of the industrial premises in such a way that the density of the plantation is at least 1000 trees per acre of the land and a green belt of_____ metres is developed."

6. I find that, if the condition of the Pollution Control Board is to maintain adequate plantation, undoubtedly the respondent herein would require professional services of gardening service providers. In my view, the decisions cited by the learned departmental representative will not carry their case any further as the Hon'ble High Court of Karnataka in a similar situation has held that cenvat credit cannot be denied to the appellant on the Service Tax paid on the Gardening Services. Respectfully following the same, I hold that the impugned order is correct, legal and does not suffer from any infirmity.

7. In view of the foregoing the appeal filed by the Revenue is rejected."

7. As discussed above, we hold that the payment of service tax by service provider was not disputed, the appellant is entitled to take

Cenvat credit of service tax paid. Further, on plantation service, the appellant is entitled to take Cenvat credit of service tax paid.

8. In view of this, we hold that the appellant has correctly taken the Cenvat credit of service tax paid by them.

9. Therefore, we do not find any merits in the impugned order. The same 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)

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