

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76089 of 2015

(Arising out of Order-in-Original No.13-16/MP/Commr/RAN-II/2015-16 dated 28.08.2015 passed by Commissioner of Central Excise & Service Tax, Ranchi-II.)

M/s. Steel Authority of India Limited

(Bokaro Steel Plant, Ispat Bhawan, Bokaro Steel City-827001, District-Bokaro, Jharkhand.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi-II

.....Respondent

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

APPEARANCE

Ms. Udit Saraf, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 76449/2024

DATE OF HEARING : 16.07.2024
DATE OF DECISION : 16.07.2024

Per : R. MURALIDHAR :

The Appellants are manufacturers of steel. They have captive mines at various places. These captive mines are registered as ISD with the Central Excise Department. For the Service Tax being paid by the mines for the services utilized therein, the Cenvat Credit was pooled and distributed to the various manufacturing units on proportionate basis. The Revenue issued Show Cause Notices on the ground that the mines cannot be functioning as Input Distributing Units. Therefore, the Cenvat Credit taken by the Appellant was sought to be denied. The details of the Show Cause Notices issued is as per the following chart :-

Impugned Order	Order-in- Original No. 13-16/MP/Commr/RAN-II/2015-16 dated 28.08.2015 [pg. no. 68 to 89 of the paper book].			
SCN details	09.05.2013	05.09.2013	24.04.2014	14.01.2015
Period	April 2008 to August 2012	September 2012 to March 2013	April 2013 to December 2013	January 2014 to October 2014
Demand	27,34,96,782/-	3,37,32,443/-	2,41,70,424/-	12,76,20,146/-
Total Demand	45,90,19,795/- along with interest and penalty.			
Issue	Whether the Appellant is entitled to avail CENVAT Credit of input services received at captive mines which is distributed to the Appellant vide ISD invoices?			

2. After due process the Adjudicating authority confirmed the demands. Being aggrieved, the Appellant is before the Tribunal.

3. The Ld.Counsel submits that the mining units have been distributing the Cenvat Credit properly on proportionate basis as per the statutory provisions. She further submits that the issue is no more *res integra*. This issue had come up before this Bench and the following Final Orders have been passed holding that the Appellant is eligible for the Cenvat credit distributed by the mining units as ISD:

- M/s. Steel Authority of India Ltd. v. CCE, Bolpur
[Final Order NO.75468/2024 dated 07.03.2024]
- M/s. Steel Authority of India Ltd. v. C, CGST & CE, Bolpur
[2023 (12) TMI 1062-CESTAT Kolkata]

Therefore, she submits that the present Appeal may be allowed.

4. The Ld.AR for the Department reiterates the findings of the lower authorities and justifies the confirmed demand.

5. Heard both sides.

6. After going through the factual details, we find that identical issue in respect of other units of the Appellant had come up before this Bench vide Final Order No.75468/2024 dated 07.03.2024. This Bench has held as under:-

"5. We find that the issue is no longer *res integra* as this Tribunal has already decided the same issue in their own case for the period June

2016 to June 2017, reported as *Steel Authority of India Ltd. v. Commissioner of CGST & CE, Bolpur 2023 (12) TMI 1062- CESTAT Kolkata*, wherein, on similar facts, it has been held by this Tribunal that the Appellant is entitled to avail CENVAT Credit of input services relating to captive mines. The present appeal covers the period 2006-07 to 2011-12 (up to June 2012), for the same unit. The relevant part of the said decision is reproduced below:

"7. We observe that the issue to be decided in the present appeal is whether the Appellant is eligible to avail CENVAT Credit of input services relating to captive mines, which is distributed to the Appellant vide ISD invoices. We find that both the mines as well as the manufacturing unit belongs to one legal entity i.e. SAIL, which is engaged in manufacture of Steel. The subject mines are set up primarily to serve as captive mines to manufacturing units of SAIL and thus bears an integral link to steel plants. We observe that the input services like security service, mining service, transportation etc used by the captive mines bears a direct nexus with Appellant's units manufacturing final products i.e. Steel. Hence, such services are very well covered within the scope of the definition of 'input services'. Rule 3 of CCR does not mandate that for the purpose of availment of credit on input services, such services should be received within the premises where manufacture of final product takes places but only provides that services should be used in or in relation to the manufacture of final products. Thus, we find that the Appellant is entitled to avail credit of service tax paid on input services received at the mines, which serves as an intermediate product for manufacture of final product i.e. steel items.

8. We observe that the Issue is no longer *res integra* as this Tribunal on identical facts and circumstances has decided the same issue in favour of the Appellant in the case of *Usha Martin Ltd. v. CCE, Jamshedpur, 2023 (6)*

TMI 1153 - CESTAT Kolkata. The relevant paras of the said decision are reproduced below:

9. By relying on the decision cited above we hold that the Appellant is eligible to avail CENVAT Credit of input services relating to captive mines, which is distributed to the Appellant vide ISD invoices. Hence, we hold the demand of reversal of Cenvat credit along with interest and penalty confirmed vide the impugned order dated 30.09.2019, is not sustainable."

6. In view of the above discussions, we hold that the mines and the Appellant's manufacturing unit belongs to one legal entity, which is engaged in manufacture of dutiable goods. Therefore, we hold that the observation given by the Ld. Commissioner that distribution of credit by the mines is in contravention of Rule 7(b) of the CENVAT Credit Rules is legally not tenable. Thus, we hold that the distribution of credit by captive mines as ISD is in accordance with the provisions of law."

7. Vide Final Order No.77736/2023 dated 19.12.2023, this Bench has held as under:-

"8. We observe that the Issue is no longer res integra as this Tribunal on identical facts and circumstances has decided the same issue in favour of the Appellant in the case of Usha Martin Ltd. v. CCE, Jamshedpur, 2023 (6) TMI 1153 - CESTAT Kolkata. The relevant paras of the said decision are reproduced below:

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 8/14/23, 1:36 PM M/s. Usha Martin Limited Versus Commissioner of Central Excise, Jamshedpur [https://www.taxmanagementindia.com/Print/print_case_laws.asp?ID=439579&head_note=No 5/7](https://www.taxmanagementindia.com/Print/print_case_laws.asp?ID=439579&head_note=No5/7) 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'ble 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.

9. By relying on the decision cited above we hold that the Appellant is eligible to avail CENVAT Credit of input services relating to captive mines, which is distributed to the Appellant vide ISD invoices. Hence,

we hold the demand of reversal of Cenvat credit along with interest and penalty confirmed vide the impugned order dated 30.09.2019, is not sustainable.”

8. We find that the facts are identical in the present case. Therefore, following the decisions of this Bench in the above orders, we allow the Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)