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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.93 of 2011

(Arising out of Order-in-Appeal No.71/ST/B-II/2010 dated 23.12.2010 passed by Commissioner (Appeals) of Customs,Central Excise & Service Tax, Bhubaneswar)

M/s Jay Jagannath Steel & Power Limited
(Belapada, PO-Bamra, Dist.-Sambalpur, Odisha)

Appellant

VERSUS

Commissioner of CGST & Excise, Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-7, Odisha)

Respondent

APPERANCE :
Shri Kartik Kurmy, Advocate for the Appellant
Shri A.K.Chaudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.76821/2024

DATE OF HEARING : 30 .08.2024
DATE OF DECISION : 30.08.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the cenvat credit used by the appellant for outward transportation service, was denied by the authorites.

2. The facts of the case are that the appellant is engaged in the manufacture of sponge iron and during the period from 1st April, 2006 to 31st October, 2007, the appellant availed "container services" from M/s CONCOR for use in outward transportation of final product, i.e. sponge iron up to the place of the buyers and claimed cenvat credit and collected by M/s CONCOR in their bills as input service within the meaning of Rule 2 (l) of the Cenvat Credit Rules, 2004..

3. Revenue sought to deny the cenvat credit to the appellant. Therefore, the show-cause notice dated 19.11.2008 was issued to the appellant by invoking extended period of limitation. The appellant contended the issue, but both the authorities below denied the cenvat credit on outward transportation agency service. Against the said order, the appellant is before us.

4. The ld.Counsel for the appellant submits that up to 01.04.2008, the appellant is entitled to take cenvat credit on outward transportation service in terms of the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Central Excise & Service Tax, LTU Vs.ABB Limited reported in 2011 (23) STR 97 (Kar.). He also relied on the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Belgaum Vs.Vasavadatta Cements Limited reported in 2018 (11) GSTL 3 (SC). He, therefore, prayed that the issue is no more res integra. Therefore, they are entitled for cenvat credit on outward transportation agency service during the impugned period.

5. On the other hand, the ld.A.R. for the Revenue, reiterated the findings of the impugned order.

6. Heard both the parties and considered the submissions.

7. We find that the issue is also settled by the Hon'ble Apex Court in the case of Vasavadatta Cements Limited (supra), wherein the Hon'ble Supreme Court has held as under :

> "***5.*** *Coming back to the first part of the definition as to what input service means, the Full Bench of the CESTAT held that all input services which are used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products from the place of removal*

are concerned, they are treated as input services and Cenvat credit in respect of expenditure incurred in relation to such services would be admissible. The expression with which the CESTAT was concerned, and which was the subject matter of discussion, was as to what would be the meaning of "from the place of removal". Obviously, any input service given for clearance of the final products "from the place of removal" and tax paid thereon the Cenvat credit has to be given. The question is from the place of removal up to what place. The assessees had claimed the tax paid on the transportation of final products from the place of removal (i.e. the place of manufacture) to either the place to their respective depots or transport upto the place of the customers, if from the place of removal the goods were directly delivered at customers place. It is made clear that only first set of transportation from the place of removal was claimed. To put it otherwise, in those cases where the tax paid on transportation on the goods from the place of removal upto the place of depot only that was claimed and if there was any such tax again paid from the place of depot to the place of customers, the Cenvat credit thereof was not claimed and there is no dispute about it.

6. *The aforesaid approach of the Full Bench of the CESTAT, as affirmed by the High Court, appears to be perfectly correct and we do not find any error therein. For the sake of convenience, we would like to reproduce the following discussion contained in the judgment of the High Court.*

"30. The definition of 'input service' contains both the word 'means' and 'includes', but not 'means and includes'. The portion of the definition to which the word means applies has to be construed restrictively as it is exhaustive. However, the portion of the definition to which the word includes applies has to be construed liberally as it is extensive. The exhaustive portion of the definition of 'input service' deals with service used by the manufacturer, whether directly or indirectly, in or in relation to

the manufacture of final products. It also includes clearance of final products from the place of removal. Therefore, services received or rendered by the manufacturer from the place of removal till it reaches its destination falls within the definition of input service. What are the services that normally a manufacturer would render to a customer from the place of removal? They may be packing, loading, unloading, transportation, delivery, etc. Though the word transportation is not specifically used in the said section in the context in which the phrase 'clearance of final products from the place of removal' is used, it includes the transportation charges. Because, after the final products has reached the place of removal, to clear the final products nothing more needs to be done, except transporting the said final products to the ultimate destination i.e. the customer's/buyer of the said product, apart from attending to certain ancillary services as mentioned above which ensures proper delivery of the finished product upto the customer. Therefore, all such services rendered by the manufacturer are included in the definition of 'input service'. However, as the legislature has chosen to use the word 'means' in this portion of the definition, it has to be construed strictly and in a restrictive manner. After defining the 'input service' used by the manufacturer in a restrictive manner, in the later portion of the definition, the legislature has used the word 'includes'. Therefore, the later portion of the definition has to be construed liberally. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in that portion of the definition. Thereafter, the words 'activities relating to business' - an omni-bus phrase is used to expand the meaning of the word 'input service'. However, after using the omni-bus phrase, examples are given. It also includes transportation. The words used are (a) inward transportation of inputs or capital goods (b) outward transportation upto the place of removal. While dealing with inward transportation, they have specifically used the words 'inputs' or 'capital goods'. But, while dealing with outward transportation those two words are *conspicuously missing. The reason being, after inward transportation of inputs or capital goods into the factory premises, if a final product emerges, that final product has to be transported from the factory premises till the godown before it is removed for being delivered to the customer. Therefore, 'input service' includes not only the inward transportation of inputs or capital goods but also includes outward transportation of the final product upto the place of removal. Therefore, in the later portion of the definition, an outer limit is prescribed for outward transportation, i.e., up to the place of removal.*

7. *As mentioned above, the expression used in the aforesaid Rule is "from the place of removal". It has to be from the place of removal upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.*

8. *Our view gets support from the amendment which has been carried out by the rule making authority w.e.f. 1-4-2008 vide Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 whereby the aforesaid expression "from the place of removal" is substituted by "upto the place of removal". Thus from 1-4-2008, with the aforesaid amendment, the Cenvat credit is available only upto the place of removal whereas as per the amended Rule from the place of removal which has to be upto either the place of depot or the place of customer, as the case may be. This aspect has also been noted by the High Court in the impugned judgment in the following manner :*

"However, the interpretation placed by us on the words 'clearance of final products from the place of removal' and the subsequent amendment by Notification 10/2008-C.E. (N.T.), dated 1-3-2008 substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the

said substitution and it cannot be included within the phrase 'activities relating to business'."

9. *In view of the aforesaid discussion we hold that the appeals are bereft of any merit and are accordingly dismissed."*

8. As the issue has already been settled up to 01.04.2008, the assessee is entitled to claim the cenvat credit on outward goods transportation service up to the place of removal.

9. In that circumstances, we hold that the appellant is entitled to take the cenvat credit on outward transportation service. Accordingly, the demand confirmed in the impugned order is set aside and no penalty is imposable on the appellant.

10. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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