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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76125 of 2014

(Arising out of Order-In-Original No. 13-14/Commr/2014 dated 27.06.2014 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s. TML Drivelines Ltd.
(TELCO Campus, Jamshedpur-831010, Jharkhand)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur-831001, Jharkhand)

Respondent

With

Excise Appeal No. 76080 of 2015

(Arising out of Order-In-Original No. 25-26/Commr/2015 dated 25.08.2015 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s. TML Drivelines Ltd.
(TELCO Campus, Jamshedpur-831010, Jharkhand)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur-831001, Jharkhand)

Respondent

APPEARANCE :
Mr. Rahul Tangri & Ms. Udita Saraf, both Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

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

FINAL ORDER NO.76946-76947/2024

Date of Hearing : 03 September 2024
Date of Decision: 03 September 2024

PER R. MURALIDHAR:

The appellant M/s. TML Drivelines Ltd. is a subsidiary unit of Tata Motors Ltd. During the period under dispute, Tata Motors were providing various services commonly for their related units and recovering the cost from them on proportionate basis. Since it was reimbursement of the cost, Tata Motors were not paying any Service Tax. The Department took the view that this would amount to provision of service under the category of 'Business Support Service'. A Show Cause Notice was issued to them on 14/09/2010 for the period 01/05/2006 to 09/05/2008 demanding the service under 'Business Support Service (BSS). In order to avoid further litigation, Tata Motors started paying Service Tax under heading of "BSS". Accordingly, during the period under consideration, they have raised their monthly bills on the appellant showing that they have undertaken the service of BSS for the appellants, showing the value of the service along with Service Tax thereof. The appellants have taken the Cenvat Credit on Service Tax charged by the Tata Motors. The Department took the view that the appellant is not entitled for Cenvat Credit on the ground that the BSS services have no nexus with the output service/manufacturing activities of the appellant. The Revenue also took a stand after amendment of Rule 2(l) of Cenvat Credit Rules, 2004 with effect from 01/04/2011, wherein "Business activities" have been excluded from the definition of input service, the appellant would not be eligible for Cenvat Credit. After due process, the Adjudicating Authority passed the impugned order denying the credit and confirming the demands. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the appellant submits that for the total expenses incurred by Tata Motors sharing the expenses among various entities and recovering the cost from the appellant since many years. The Tata Motors were stating that it was simple bifurcation of the total cost incurred between various entities and they do not treat as any service. However, it was Department which insisted that such cost sharing would amount to provision of BSS and issued the Show Cause Notice to Tata Motors. Thereafter, Tata Motors started paying the Service Tax and they started issuing invoices showing the details of BSS provided to the appellant charging the Service Tax under this invoices. Therefore, he submits that Revenue has not denied that the service was being provided by Tata Motors Ltd. to the appellant. He further submits that the definition of input services under the main part of Rule 2 (l) of CCR,2004 is quite exhaustive and so long as any 'input service' is used towards

provision of input service or towards 'manufacturing', the Cenvat Credit can be taken. The only exception is for services which are specifically mentioned under the exclusion clause. In this case, BSS services is not finding place in the exclusion clause. He submits that the issue as to whether such BSS service would be eligible for cenvat credit or not was before this Bench in the case of **Hindalco Industries Ltd. V. CCE, Kolkata-II 2023 (6) TMI 457-CESTAT Kolkata.** It was held that the assessee is eligible for Cenvat Credit. Similar decision was taken by this Bench in the case of **Hindalco Industries Ltd. Vs. CCE, Kolkata-II-2023 (9) TMI 1403 CESTAT Kolkata and Hindalco Industries ltd. Vs. CCE, Kolkata-II-2023 (12) TMI 117-CESTAT, Kolkata**. In view of these submissions, he prays that the appeal may be allowed on merits.

3. The Learned AR reiterates the findings of the lower authorities. He submits that the appellant has provided various services which are included catering services, sport service and other miscellaneous service are not eligible for Cenvat Credit. Therefore, he justifies the confirmed demands.

4. Heard both sides and perused the appeal papers and documentary evidence placed before us.

5. Coming to the point made by the Learned AR on the ground that bifurcation of the services within BSS shows that the services have been provided many of whom their own would not be eligible for Cenvat Credit, it is on record that all these services have been clubbed together and have been termed as 'Business Support Service'. Based on the Show Cause Notice issued by the Revenue to Tata Motors they have classified the entire group of services put together as Business Support Service and have raised their Bills under the category of BSS. There is nothing to indicate that Revenue had any objection towards such classification by Tata Motors and officers were accepting their Returns towards such services. Therefore, we have to treat that as a whole Tata Motors have provided the service of BSS to the Appellant. After this, we have to come to conclusion as to whether such service has any nexus with the manufacturing/output service of the appellant.

6. We do not find anything contrary to this. This issue has also been considered by this Bench in the cited case law of Hindalco Industries Pvt. Ltd. the relevant portion of the Tribunal's Order are extracted below:

Hindalco Industries Ltd. V. CCE,

Kolkata-II 2023 (6) TMI 457-CESTAT Kolkata

> *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.*
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> *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. The Appellant has raised the issue of limitation. They stated that the period involved in the Notice is from March 2007 to March 2012 whereas the Show cause Notice was issued on 22.02.2012 and 29.06.2012. Thus, part of the demand in the Notices is beyond the normal period of limitation. We observe that the availment of CENVAT credit by the Appellant based on the invoices issued by ABMCPL is known to the Department. There is no suppression of facts involved in this case. Accordingly, the notices issued beyond the normal period is hit by limitation.*

Hindalco Industries Ltd. Vs. CCE, Kolkata-II

2023 (9) TMI 1403 CESTAT Kolkata.

> *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 corelation 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.*
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> *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.

Hindalco Industries ltd. Vs. CCE, Kolkata-II

2023 (12) TMI 117-CESTAT, Kolkata.

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.

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.

7. From the above decisions of the Bench, we find that the issue is no more *res integra*. Accordingly, we set aside the impugned orders and allow the appeals 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)

Pooja