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

REGIONAL BENCH - COURT NO.2

**Service Tax Appeal No.365 of 2010**

(Arising out of Order-in-Original No.11-16/S.Tax/Commr/2010 dated 29.09.2010 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

**M/s. Tata Motors Ltd.**
(Mr. Dhanuu Kumar, Divl. Manager (Finance), Finance Division, Tata Motors Limited, Jamshedpur-831010.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Jamshedpur**
**.....Respondent**
(143, New Baradwari, Sakchi, Jamshedpur.)

**WITH**

**Excise Appeal No.586 of 2012**

(Arising out of Order-in-Original No.24-25/Commr/2012 dated 30.05.2012 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

**M/s. Tata Motors Ltd.**
(Mr. Dhanuu Kumar, Divl. Manager (Finance), Finance Division, Tata Motors Limited, Jamshedpur-831010.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Jamshedpur**
**.....Respondent**
(143, New Baradwari, Sakchi, Jamshedpur.)

**APPEARANCE**

Shri Deepro Sen & Shri Shovit Betal, both Advocates for the Appellant (s)
Shri P.K.Ghosh, Authorized Repesentative for the Revenue

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

**FINAL ORDER NO. 77738-77739/2023**

DATE OF HEARING : 21 December 2023
DATE OF DECISION : 21 December 2023

**Per : R. MURALIDHAR :**

The Appellant has engaged the services of various outdoor caterers for taking care of the food needs of their employees during the period August 2008 to September 2009 and from July 2010 to March 2011. The Show Cause Notice was issued for the Cenvat credit taken by them for the 'Outdoor Catering Services' received by the Appellant during the period August 2008 to September 2009. Demand of Rs.1,52,82,260/- was made for this period. For the period July 2010 to March 2011, the demand of Rs.98,12,269/- was made. After due process, the adjudicating authority confirmed these demands. Being aggrieved, the appellant is before the Tribunal.

2. The Ld.Advocate appearing for the Appellant submits that in terms of definition of input services under Rule 2(l) of Cenvat Credit Rules, 2004, there was no bar for the appellants to take the Cenvat Credit till 31.03.2011. In the case of the first Show Cause Notice, the entire period involved is prior to 31.03.2011. The first confirmed demand of Rs.1,52,82,260/- pertains to the period prior to 01.03.2011. He submits that on this count itself, the confirmed demand is required to be set aside.

3. He further submits that in the Order-in-Original, in respect of Cenvat pertaining to the first Show Cause Notice, the Adjudicating authority has held that the Cenvat Credit of Rs.76,35,499/- during the period August 2008 to September 2009 is not eligible on the ground that this credit was taken by the Appellant based on the payment made by one contractor M/s. H.N. Pareek & Co., who has paid the entire Service Tax amount for the period 2004-05 to 2006-07 and raised one supplementary invoice on 24.07.2008. The Adjudicating authority has held that since the invoice was raised much after the statutorily provided 14(fourteen) days from the date of providing the service, this supplementary invoice would be ineligible for Cenvat Credit. The Ld.Counsel points out that to Para 3 of the Show Cause Notice, wherein

it is clearly stated that the caterer M/s. H.N. Pareek & Co. has paid this amount by way of GAR-7 Challan dated 11.05.2008 after the short payment of Service Tax was pointed out by the audit team. Therefore, he submits that supplementary invoice issued by the Outdoor Caterer fully satisfies the condition of Rule 9 of Cenvat Credit Rules, 2004 to take the Cenvat Credit.

4. In respect of the other confirmed demand of Rs.98,12,269/- (the second Show Cause Notice), the only ground taken by the adjudicating authority is to the effect that Bills were raised by the service provider after 01.04.2011. The adjudicating authority has held that these Bills have been raised after the amendment, which has come into effect from 01.04.2011. Therefore, they are not eligible for the Cenvat Credit. The Advocate draws our attention to Circular No.943/04/2011-CX dated 29.04.2011. In the clarification given therein, under Sl.No.12, it has been clarified that credit would be available so long as the service is provided prior to 31.03.2011, even when the invoice is raised after this date. Therefore, he submits that they are eligible for the Cenvat Credit.

5. The Ld.AR reiterated the findings of the authorities below and justifies the confirmed demand.

6. We have gone through the appeal papers and documents submitted before us.

7. In respect of the first confirmed demand of Rs.1,52,82,260/- we find that the service provider has raised one invoice which is akin to supplementary invoice on 24.07.2008. There he has stated that Rs.76,35,499/- has been deposited as Service Tax. The calculation sheet for arriving at this amount is also enclosed. Further, we also notice from the Para 3 of the Show Cause Notice that this amount also has been remitted by the service provider on 11.05.2008. As a matter of fact, neither in the Show Cause Notice, nor in the Order-in-Original there is any dispute that this amount was not paid by the service provider so as to deny the Cenvat Credit. So far as the denial of the same on account of raising of the invoice after 14(fourteen) days from the date of provision is concerned, we note that this is not a normal

invoice for which this provision would be applicable. This invoice is specifically raised for the Service Tax paid by the service provider for the past period. Therefore, we do not see any infirmity for the Appellant taking Cenvat Credit. Further, we find that the entire demand of 1,52,82,260/- is for the period August 2008 to September 2009, wherein there was no exclusion clause for taking Cenvat Credit on 'Outdoor Catering Services'. Therefore, we set aside the confirmed demand of Rs.1,52,82,260/0..

8. Coming to the second confirmed amount of Rs.98,12,269/-, we find that almost the entire Cenvat Credit pertains to the invoices raised before 31.03.2011. From the tables annexed to the Show Cause Notice, we find that in the case of one service provider, they have raised the Bills on 01.04.2011, which clearly show that the service has been provided during the month of March 2011 only. In case of another service provider they have raised the Bill on 31.03.2011, but the credit has been taken in the month of July 2011. Therefore, we find that the clarification given in the cited Circular fully applies to these Bills.

9. Considering these factual details and the statutory provisions, we set aside the confirmed demand of Rs.98,12,269/-.

10. Thus, the Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
**(R. MURALIDHAR)**
**MEMBER (JUDICIAL)**

Sd/
**(K. ANPAZHAKAN)**
**MEMBER (TECHNICAL)**

**sm**