IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH: MUMBAI

Service Tax Appeal No. 85614 of 2019

Arising out of Order-in-Appeal No. NA/GSTA-III/MUM/341/2018-19 dated 22.01.2019 passed by the Commissioner of GST and Central Excise (Appeals-III), Mumbai.

M/s. Aban Offshore Limited
8, Vikas Centre, S. V. Road
Santacruz (West)
Mumbai-400054.

....Appellant (s)

Vs.

Commissioner of GST & Central Excise (Appeals-III), Mumbai.
9th Floor, Piramal Chambers Jijibhoy Lane,
Lalbaug, Parel Mumbai-400012.

....Respondent (s)

Appearance:
Shri Ajit Majumdar, Sr. Manager for the Appellant (s)
Shri Nitin Ranjan, A. C. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL

Date of Hearing:-21 February 2020

Date of Pronouncement: - 28 July, 2020

FINAL ORDER No. **A/85685 / 2020**

P.K.Choudhary :

The Appellant is engaged in providing various services including mining service and therefore, utilized Cenvat credit on the input services used for providing such output services. The input services being used by the Appellant included Short term hotel accommodation, rent-a-cab, outdoor catering and housekeeping services.

Show cause notices were issued to the Appellant alleging that the Appellant had availed CENVAT Credit on illegible input services. Accordingly, the Show Cause Notices proposed recovery of inadmissible CENVAT Credit of Rs.3,68,404/- on Short term accommodation in hotels, Rs.3,698/- on Rent-a-cab, Rs.11,94,790/- on Outdoor catering/Cleaning service and Rs.12,34,451/- on Housekeeping service, totalling to Rs.28,01,343/- along with interest. Penalties under Sections 77 and 78 of the Finance Act, 1994 were also sought to be imposed.

2. The Adjudicating Authority confirmed the demands proposed in the Notices along with interest and penalties. On appeal, the Commissioner (Appeals) allowed the availment of Cenvat credit on Housekeeping service and on Cleaning service and rejected the availment of Cenvat credit on Short term accommodation in hotels, Rent-a-cab and Outdoor catering services. Hence, the present appeal before this Tribunal.

3. Heard both sides and perused the appeal records.

4. The issue before this Tribunal is whether the Appellant has correctly availed Cenvat credit on Short term accommodation in hotels, Rent-a-cab and Outdoor catering services for the period from April 2016 to June 2017.

Short term accommodation in hotels:

5. In respect of the said service, the Appellant submitted that the crew working at the offshore location, where mining activities are carried out, comprises of people from various geographical locations. The Appellant stated they required specialized personnel to handle the relevant equipment. The Appellant submitted that such personnel are required to obtain the necessary permissions and approvals from the service recipient before commencement of work. While such permissions and approvals are being processed, the Appellant states that they are required to accommodate their personnel in hotels and the expense incurred by the Appellant in this respect is in relation to the output service being provided by the Appellant.

6. I find that the Adjudicating Authority, in his order, has recorded that "*there is no doubt that the assessee has extended this facility to run their day to day show and thus essential to their business*." He has however, gone on to observe that since the term 'activities relating to business' was omitted in the amended definition of input service (w.e.f. 01.04.2011), the said service would not qualify as input service.

7. On perusal of the records, I find that the Appellant's personnel necessarily had to undergo the required training to obtain the necessary permissions and approvals for the service recipient to avail the services of the Appellant. Had such training not been completed before such personnel were deployed at the rig, the service recipient would have deducted a certain amount at the time of payment to the Appellant. In any case, the Appellant could not afford to deploy people without the required police clearance certificate and Safety training. Therefore, the Appellant had no choice but to

accommodate its personnel for the time impending the said approvals and permissions. The said service extended to its personnel by the Appellant would not qualify as a service availed for personal consumption. Therefore, I am of the view that the said service is in relation to and in pursuance of the service being provided by the Appellant and therefore, Cenvat credit availed on the same is admissible.

<u>Rent-a-cab service</u>:

8. The Appellant submitted that they have registered themselves in mining services for charter hire of rig to ONGC. As an operational requirement, they are required to send surveyors, naval officers for surveys and naval security clearance on their rigs. In this regard, they are required to hire vehicles for transporting such officers. Further, the Appellant is also required to provide conveyance for inspection agencies for various inspections such as Fire safety, underwater inspection, tubular inspection, thickness gauging inspection, etc. Therefore, the Appellant has availed Cenvat credit on the said input service. I find that the Tribunal in Marvel Vinyls Ltd. Vs. CCE Indore 2017 (49) STR 424 (Tri-Del) while considering the amended definition of input service has already decided the matter in favour of the assessee and held that the definition does not provides for total exclusion but only restricts those cases where the vehicles do not qualify as capital goods. From recipient point of view, motor vehicle can never be capital goods and he would never be eligible for credit if a narrow interpretation is given. I do not find any reason to take a contrary view and hence, applying the ratio of said decision, CENVAT Credit on rent a cab is allowed.

<u>Outdoor catering service</u>:

9. The Appellant submitted that they had hired reefer/chiller containers and dry containers to store edible items to prevent them from getting spoilt. I find that the Commissioner (Appeals) held that food is for personal use and consumption of the employees and therefore, has no nexus to the output service of the Appellant.

10. I find that as the personnel working at the rig have been deployed by the Appellant, it is the Appellant's responsibility to ensure healthy working conditions for such personnel. Therefore, the Appellant had availed the said service to prevent food from getting spoilt. I am of the view that access to proper food is the most basic requirement for any person to carry out a task. I am surprised by the observation made by the Commissioner (Appeals). It is

common sense that if the Appellant's personnel fall ill on account of stale/spoilt food, the operation being carried out by the Appellant would be adversely impacted and consequently, the output service being provided by the Appellant. The Commissioner (Appeals) ought to have appreciated the facts of the present case, wherein the personnel have been deployed on a rig and away from the coastal area. The said personnel do not have access to food other than what is available on the rig and therefore, it is apposite in the given circumstances for the Appellant to ensure that its personnel remain healthy. The Hon'ble Rajasthan High Court in CCE Udaipur Vs. Mangalam Cement Ltd. [2018 (9) GSTL 17 (Raj.)] has, in Appeal No. 44/2015, for a period post the amendment of the definition of input service (w.e.f. 01.04.2011) and has held that 'Outdoor Catering' services are required to be carried out for the process of manufacture and delivery and hence eligible for credit. The appeals filed by the Revenue before the Hon'ble Supreme Court against the said judgment has been dismissed by the Hon'ble Supreme Court vide order dated 6th August 2018. Therefore, I am of the view that the service availed by the Appellant is in relation to the output service being provided by the Appellant and is therefore, admissible for Cenvat credit.

11. In view of the above discussion, the appeal filed by the Appellant is allowed.

(Pronounced in the open court on 28/07/2020)

(P. K. Choudhary)
Member (Judicial)

Tushar Kr.