(2021) 08 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52867 Of 2018

M/s Case New Holland Construction Equipment (I) Pvt. Ltd. APPELLANT

Vs

Commissioner of Central Excise, Ujjain RESPONDENT

Date of Decision : 23-08-2021

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 84
Cenvat Credit Rules, 2004 — Rule 2(1)
Central Excise Act, 1944 — Section 4
Constitution of India, 1950 — Article 141

Citation : (2021) 08 CESTAT CK 0027

Hon'ble Judges : Rachna Gupta, J;P.V. Subba Rao, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Rakesh Agarwal

Final Decision : Allowed

Judgement

1. The order dated May 25, 2018 passed by the Commissioner (Appeals), by which the order passed by the Joint Commissioner disallowing CENVAT

Credit of Rs. 63,95,326/- taken and utilized by M/s Case New Holland Construction Equipment (I) Pvt. Ltd., the appellant has been upheld, is under

challenge in this Appeal.

2. The appellant is engaged in the manufacture of automotive parts, namely, Wheeled Tractor Loader Backhoe and Vibratory Compactor, the final

products falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985, the Tariff Act. The appellant is also availing CENVAT

credit of central excise duty paid on inputs and capital goods as well as service tax paid on input service under the CENVAT Credit Rules, 2004, the

Credit Rules.

3. The appellant sold the final products to its customers, either directly at the factory gate or through the dealers appointed by it. According to the

appellant, the central pillar of the appellantâ??s promotional strategy, as also the unique selling point, is its after-sales services to be provided to

customers during the warranty period in respect of final products sold. The appellant mandatorily included charges for such services in the assessable

value of final products, as contemplated under section 4 of the Central Excise Act, 1944, the Excise Act.

4. Pursuant to the aforesaid promotional strategy, the appellant entered into â??Dealership Agreementâ? with various dealers across India. As per

the Dealership Agreement, the dealers so appointed have to make efforts to promote the sale of final products and also provide after sales services

thereof mandatorily during the warranty period, for which the dealers are required to maintain proper infrastructure and documentary evidences,

including the service reports. Such services pertain to machine servicing activities comprising of commissioning services, services for compactors and

loader backhoes, and breakdown services, as mentioned in the appellantâ??s Service Policy Manual. The appellant has described the services as

â??repair and maintenance servicesâ??.

5. While providing the repair and maintenance services, the dealers have to comply with the checklist and technical instructions provided by the

appellant in this regard. The appellant paid lump-sum commission to the dealers for rendering such services. As mentioned in Clause 6 of the

Dealership Agreement, the commission comprises of two portions â?" sales commission and service commission. The latter is relevant for the present

case, which the appellant pays against the service coupons duly signed by customers and subject to dealers making the service visits as per the norms

specified in the Manual.

6. The dealers, in turn, raise invoice on the appellant for providing the repair and maintenance services. The appellant contends that as it made

payment of lump-sum commission along with applicable service tax to the dealers and the dealers have provided these services to the appellantâ??s

customers on behalf of appellant for fulfilling the appellantâ??s warranty obligation relating to the final products sold, the appellant correctly availed

CENVAT credit of such service tax paid.

7. As a consequence to the audit conducted for the Financial Year 2009-10, the Department issued two show cause notices dated 05.05.2015 and

09.10.2015 to the appellant for the period April 2011 to September 2014 and October 2014 to June 2015, proposing to deny CENVAT credit

amounting to Rs. 69,42,887 and Rs. 1,43,523, respectively. The appellant submitted detailed replies and the said two notices were adjudicated upon by

the Principal Commissioner by a common order dated 27.09.2016. The entire proposed demand with interest and penalty was confirmed.

8. An appeal was filed before the Tribunal to assail the said order dated 27.09.2016 passed by the Principal Commissioner. This appeal was dismissed

by order dated 24.11.2017. The said decision is reported in 2017 (11) TMI 1481, M/s Case New Holland Construction (I) Pvt. Ltd. vs. CCE, Indore.

The relevant portion of the decision of the Tribunal containing the factual aspect is reproduced below :

â??The appeal is against Order-in-Original No. 43-44/2016 dated 27.09.2016 and the period of dispute is April, 2011 to June, 2015.

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4. The ld. Counsel submitted that during the period under warranty, the dealers provided after sales service to the customer and the same

was reimbursed to them by the appellant. The value of in-warranty repair was included in the cost of the goods and such services qualified

as â??input serviceâ??.

He also relied on the following decisions in which the issue stands settled in favour of assesses :

i) M/s Carrier Air Conditioning & Refrigeration Ltd. vs CCE, Gurgaon, 2016 (41) STR 1004 (Tri.-Delhi)

ii) Samsung India Electronics Pvt. Ltd. vs CCE & ST, Noida, 2017-TIOL-05-CESTAT-All.

5. The ld. DR justified the impugned order. He submitted that the definition of â??input serviceâ?? was modified w.e.f. 01.04.2011 and

after such amendment, after sales service in the form of repair etc. is not covered by the definition. He further submitted that in the case

laws cited by the appellant, the benefit stands allowed by the Tribunal during the period prior to 01.04.2011 and hence the cases are

distinguishable.

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9. After considering the amended definition of â??input serviceâ?? w.e.f. 01.04.2011, as contained in rule 2(l) of the Credit Rules, the Tribunal

agreed with the findings recorded by the adjudicating authority and distinguished the decisions cited on behalf of the appellant holding that they had

been rendered for a period prior to 01.04.2011 when the definition of â??input serviceâ?? was different. The relevant portions of the decision on this

aspect are reproduced below :

â??7. Since the appellant is engaged in the manufacture of goods, it is covered by the portion Rule 2(i)(ii). The main portion of the

definition cover those services which are used directly or indirectly, in or in relation to the manufacture of final products and clearance of

the same up to the place of removal. In the present case, the service of after sales repair has been rendered not in the factory and not even

used in the manufacture of goods up to the place of removal. Hence, the Cenvat Credit is not allowable under main clause.

8. Next we consider whether these services are covered within the â??includesâ?? portion of the definition. These include various services,

such as, modernization, repairs to factory, market research, sales promotion, etc. However, after carefully considering all the services

listed, we find that the in-warranty repairs are not covered by any of the services. We find that the adjudicating authority has discussed, in

detail, the definition of â??input serviceâ?? in para 23 to 25 of the impugned order and have come to the conclusion that the activities in

dispute cannot be covered within the definition of â??input serviceâ??. We are in agreement with the findings of the adjudicating authority

and uphold the demand for the reasons mentioned therein.

9. The appellant has also argued that the cost of such in-warranty services are included in the assessable value of the goods. They have

also relied on certain case laws in which such services have been allowed as â??input serviceâ??.

The eligibility of a service as input service is required to be decided in relation to the definition of input service given in rule 2(l) of the

Cenvat Credit Rules. The fact that the value of certain services are included in the assessable value by itself will not entitle the Cenvat credit. We have also perused the case laws citied by the appellant but find that the case laws have been rendered for the period prior to the

01.04.2011 when the definition of â??input serviceâ?? was different. We find that these case laws are not applicable for the period under

consideration.

10. In view of the above discussions, we find no reason to interfere with the impugned order which is upheld and the appeal filed is

dismissed.â??

[emphasis supplied]

10. This order of the Tribunal was assailed by the appellant before the Madhya Pradesh High Court in Central Excise Appeal No. 57/2018, but the

Appeal was ultimately dismissed as withdrawn by order dated 13.01.2021 for the reason that the matter was settled under the Sabka Vishwas

Scheme, 2019.

11. For the subsequent period from July 2015 to December 2016, a show cause notice dated 03.05.2017 was also issued to the appellant proposing to

deny CENVAT credit amounting to Rs. 63,95,326 with interest and penalty on the ground that the â??repair and maintenance servicesâ?? are not a

specified category of input service and further are not used directly or indirectly, in or in relation to the manufacture of the final products. The show

cause notice also mentions that the said services are also not covered under rule 2(l) of the Credit Rules because the definition of input service is

restricted upto the factory or place of removal.

12. The appellant filed a detailed reply to the show cause notice on 11.10.2017 denying all the allegations. The Joint Commissioner, Ujjain, by order

dated 27.12.2017 confirmed the entire demand of credit as proposed in the show cause notice with interest and further imposed a penalty equal to

10% of the demand confirmed, solely on the ground that rule 2(l) covers repair and maintenance service only in respect of factory or office and not

the services as received by the appellant in the present case.

13. The appellant assailed the said order in an appeal before the Commissioner (Appeals). The Commissioner (Appeals), by an order dated

25.05.2018, rejected the appeal relying on the order dated 24.11.2017 passed by the Tribunal in the own case of the appellant for the previous period.

The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

â??7.2 Thus following the well settled principle of judicial discipline, there remains nothing to decide in this matter at this stage. Therefore

respectfully following the ratio of above judgment dated 24.11.2017 of Honâ??ble CESTAT, New Delhi, in their own matter, I hold that the

Cenvat credit is not admissible to the Appellant. Accordingly, I find that there is no reason to interfere in the impugned adjudication order

passed by the adjudicating authority on this issue. Therefore, I find that the impugned appeal is liable for rejection on this issue. Held

accordingly.â??

14. This appeal has been filed to assail the said order dated 25.05.2018 passed by the Commissioner (Appeals).

15. Shri B.L. Narasimhan, learned Counsel appearing for the appellant, made the following submissions :

(i) CENVAT credit on the â??repair and maintenance servicesâ?? has been correctly availed in terms of rule 3(1) of the Credit Rules, since

such services are covered under rule 2(l);

(ii) The in-warranty â??repair and maintenance servicesâ?? rendered by dealers are covered under the â??meansâ?? clause of the

definition of â??input serviceâ?. The repair and maintenance were received by the appellant from the dealers to fulfil warranty obligations

annexed to the final products manufactured and cleared by the appellant. Such warranty obligations enhance the marketability of the final

products, thereby having a significant role to play in increased sale of the final products by the appellant. As the sale of goods is integrally

connected in relation to the manufacture of goods, the services in question were used indirectly in relation to the manufacture of final

products and the same would fall under the definition of â??input serviceâ?. In support of this submission, reliance has been placed on the

following decisions of the Tribunal :

(a) Carrier Airconditioning & Refrigeration Ltd. v. C.C.E., Gurgaon, 2016 (41) STR 1004 (Tri.-Del);

(b) Honda Motorcycle & Scooter India Pvt. Ltd. & Ors. v. CCE&ST, Alwar, 2018 (12) TMI 929 â?" CESTAT New Delhi;

(c) Commissioner of C. Ex., Nashik v. Mahindra & Mahindra Ltd., 2012 (28) STR 382 (Tri.-Mumbai); and

(d) Samsung India Electronics Pvt. Ltd. vs Commissioner of Customs, Central Excise & Service Tax, Noida., 2017-TIOL-05-CESTAT-

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(iii) In the alternative, the in-warranty â??repair and maintenance servicesâ?? are also covered in theâ??inclusiveâ?? portion of the

â??input serviceâ?? definition under the term â??sales promotionâ??;

(iv) Reliance on the order of the Tribunal in the own case of the appellant for the previous period, is misplaced. The Tribunal wrongly

distinguished the authorities cited by the appellant by holding that the same were rendered for the period prior to the amendment of 2011

when the definition of â??input serviceâ?? was different. Firstly, out of the cases cited, the decision in the case of Carrier Airconditioning

dealt with the period prior to and post 2011, namely July 2005 to May 2012. Secondly, the â??meansâ?? portion of the â??input serviceâ?

definition remained unchanged even after the amendment made in 2011. Thus, the binding precedent of coordinate Benches of the Tribunal

have been wrongly distinguished by the Tribunal and so the order passed by the Tribunal is per incuriam; and

(v) Penalty is not imposable nor interest is recoverable.

16. Shri Rakesh Agarwal, learned Authorised Representative appearing for the Department, however, supported the impugned order and submitted:

(i) The Commissioner (Appeals) correctly relied upon the earlier decision rendered by the Tribunal on 25.05.2018 in the own case of the

appellant as there is no change in the material facts and circumstances;

(ii) Repair and maintenance is an output service rendered by the dealer to the customer after sale of the goods. Service tax is paid by the

Customer to the dealer. The dealer in turn gets it reimbursed from the manufacturer. Dealer has not rendered any services to the

manufacturer. Even if it is considered that the services rendered by the dealer were services rendered by the manufacturer, then too the

service would not be an output service; and

(iii) Penalty and interest were imposable.

17. The submissions advanced by the learned Counsel for the appellant and the learned Authorized Representative of the Department have been

considered.

18. The appellant claims that it is eligible for CENVAT credit on the in-warranty repair and maintenance services under the â??meansâ?? clause of

the definition of â??input serviceâ?? in rule 2(l) of the Credit Rules which requires the service to be â??used, directly or indirectly, in or in relation to

the manufacture of final productsâ?. The contention is that â??meansâ?? clause of the definition is very widely worded and words such as

â??directly or indirectlyâ?? and â??in or in relation toâ??, further expand the scope of the definition to include even those services which are

indirectly used in relation to the manufacture of the final products.

19. The appellant further claims that the final products manufactured and cleared by the appellant are expensive and their maintenance is also cost-

intensive for which specific training is required. The after sales services is the central pillar of the appellantâ??s promotional strategy towards sale of

its final products, since these services augment the value of final products and thus, become important considerations for the customers while

purchasing such products. Accordingly, the final products carry contractual obligations of the appellant as the manufacturer of such goods, which are

enumerated under the warranty policy of the final products. The dealers provide the services in accordance with the checklist provided by the

appellant. The appellant also contends that it manufactured the final products with the sole intention to sell them and thus, sale of goods is integrally

connected in relation to the manufacture of goods. The contention, therefore, is that since the repair and maintenance services are fundamentally

linked to sale and sale directly affects the manufacturing activities, the services were used indirectly in relation to the manufacture of final products

and would fall under the â??meansâ?? part of the definition of â??input serviceâ??. Thus, it has been contended that the appellant was justified in

availing CENVAT credit of the service tax paid by the appellant on â?? maintenance and repair servicesâ??.

20. The issue, therefore, that arises for consideration in the present appeal is whether CENVAT credit of service tax paid by the appellant on

â??repair and maintenance servicesâ?? provided by the dealers for fulfilling the warranty obligations of the appellant has been denied for good and

valid reasons.

21. To examine this issue, it would be necessary to reproduce the relevant portion of the definition of â??input serviceâ??, as defined in rule 2(l) of

the Credit Rules. Rule 2(l) was substituted by Notification dated 01.03.2011 w.e.f 01.04.2011 and it is reproduced below :

w.e.f 01.04.2011

â??2(l) ""input service"" means any service,-

(i) used by a provider of output service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final

products upto the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an

office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal,

procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit

rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward

transportation upto the place of removal;

but exclude,

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(emphasis supplied)

22. Rule 2(l), as it stood prior to 01.04.2011, is also reproduced below :

prior to 01.04.2011

â??2(l) ""input service"" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final

products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of

removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control,

coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods

and outward transportation upto the place of removal;â??

(emphasis supplied)

23. â??Input serviceâ?? either prior to 01.04.2011 or w.e.f. 01.04.2011 means any service used by the manufacturer, whether directly or indirectly,

or in relation to the manufacture of final products. The appellant is under an obligation to provide after sale service on the final products manufactured

by it. The dealers provide the services and the appellant pays service tax on the amount paid by it to the dealers. The service is provided free of cost

by the dealers during the warranty period but the appellant makes payment to the dealers for the services they provide to the customers. The repair

and maintenance services are, therefore, linked to the sale. The services are, therefore, used indirectly in relation to the manufacture of final products.

24. This precise issue was examined by the Tribunal in Carrier Airconditioning & Refrigeration and reliance was placed by the appellant on this

decision when the matter was heard by the Tribunal for the earlier period from April 2011 to June 2015. It would, therefore, be appropriate to examine

this decision of the Division Bench of the Tribunal.

25. The appellant therein was a manufacturer of airconditioners and was also providing service of â??repairing and maintenanceâ?? of the

airconditioners sold to the customers either directly or through the dealers. The period of dispute in the appeal was from July, 2005 to May, 2012. In

respect of the airconditioners sold by the appellant either directly or through the dealers to the customers, the appellant was under an obligation to

provide free â??repair and maintenance serviceâ?? during the warranty period of twelve months. This service, at the behest of the appellant, was

being provided by the dealers and for the payments received by them from the appellant, service tax was paid by the dealers. The dispute that had

arisen in the Appeal was whether the appellant could avail credit of the service tax paid by the dealers on the â??repair and maintenance serviceâ??

provided by them to the consumers on behalf of the appellant. The Department took a view that the appellant would not be eligible for such CENVAT

credit and a demand of Rs. 9,82,03,090/- was made on this basis. The Tribunal observed that the services received by the appellant from the dealers

has to be treated as â??input serviceâ?? used in or in relation to the manufacture of the final products by the appellant and, therefore, the demand

that was confirmed was not sustainable. The relevant portion of the decision of the Tribunal is reproduced below :

â??10. The Cenvat credit demand of Rs. 9,82,03,090/- is in respect of the service received from the dealers who had provided repair and

maintenance service during warranty period on behalf of the appellant to the customers. The sale price of the air conditioners sold by the

appellant to their consumers during the period of dispute included the warranty charges. There is no dispute that Central Excise duty had

been paid on the value which included the warranty charges. During the warranty period, the appellant were under obligation to provide

free repair and maintenance services to the consumers, who had purchased the air conditioners from them. However, instead of providing

the free repair and maintenance service directly in discharge of their obligation, the appellant roped in the dealers who provided free repair

and maintenance to the consumers on their behalf and the dealers for providing this service on behalf of the appellant, received the payment

from the appellant and on that amount, they paid the service tax. The point of dispute is as to whether the service provided by the dealers to

the appellant is an input service and whether the appellant would be eligible for Cenvat credit in respect of the same. The service received

by the appellants from their dealers is Business Auxiliary Service which has to be treated as an input service for the appellant used in or in

relation to manufacture of their final products, as free warranty repair and maintenance during warranty period, has enriched the value of

the goods. This issue stands decided in favour of the appellant by the Tribunalâ??s judgment in the case of Danke Products (supra) and

Gujarat Forgings (supra) and also in the case of Zinser Textile Systems Pvt. Ltd. (supra). In view of this, this Cenvat credit demand is also

not sustainable and has to be set aside.â??

[emphasis supplied]

26. In Honda Motorcycle & Scooter India, the same issue was considered by a Division Bench of the Tribunal. The appellant was engaged in the

manufacture of motorcycles & scooters and had availed CENVAT Credit on inputs, capital goods and input services under the Credit Rules. The

dispute was for the period June 2011 to March 2016. The Tribunal examined whether the appellant was justified in availing CENVAT credit on

services received by the appellant from their authorized service stations with regard to repairs during the warranty period. The Tribunal held that the

appellant was justified in availing the CENVAT credit on the service of repairs received from their authorized service stations during the period of

warranty in view of the decision of the Tribunal in Carrier Airconditioning & Regrigeration. The relevant portion of the decision is reproduced below :

â??8. We have heard both the sides and perused the record of the appeal. We feel that so far as the credit on services received by

appellant from their authorized service stations with regard to free after sale services and repairs etc. of warranty period, the matter is no

longer res-integra as this Tribunal in the case of Carrier Airconditioning & Refrigeration Ltd. vs. CCE, Gurgaon â?" 2016 (41) S.T.R. 1004

(Tri. â?" Del.) has already held that services provided by the authorized representative/ service stations are on behalf of the manufacturer

and the service tax paid on availment of such services by the manufacturer, they are entitled for Cenvat credit of such input

services..............

9. Accordingly, we hold that since the value of free after sale services and the warranty period repairs and maintenance are already

included in the assessable value of the two wheelers, the service tax paid on availment of such input services by the manufacturer from their

authorized representatives the appellant/assessee is entitled for credit of such input services.â??

[emphasis supplied]

27. In Mahindra & Mahindra Ltd., a Division Bench of the Tribunal also observed as below :

â??6. In view of these observations, we hold that if after sales service expenses are included in the assessable value, the assessee is entitled for input service credit on the expenses incurred on after sales charges.................â??

28. In Samsung India Electronics, the appellant provided after sale service to the customers in respect of the products sold through authorized service

centres and bore expenses incurred for providing such service during the warranty period. The authorized service centres paid service tax and the

appellant took CENVAT credit. The Department, however formed an opinion that the services provided by the authorized service centres were not

â??input servicesâ?? for the goods manufactured and cleared by the appellant. The Tribunal, in view of the earlier decision of the Tribunal in

Mahindra & Mahindra Ltd., held that the CENVAT credit can be taken on service tax paid on expenses incurred for providing warranty service.

29. The Division Bench of the Tribunal, in the own case of the appellant, for the earlier period from April 2011 to June 2015, however, took a contrary

view holding that the earlier decisions of the Tribunal in Carrier Airconditioning & Refrigeration and Samsung India Electronics were distinguishable

since they were rendered for the period prior to 01.04.2011, when the definition of â??input serviceâ?? was different. The finding recorded by the

Tribunal in this decision dated 24.11.2017, is again reproduced below:

â??We have also perused the case laws citied by the appellant but find that the case laws have been rendered for the period prior to the

01.04.2011 when the definition of â??input serviceâ?? was different. We find that these case laws are not applicable for the period under

consideration.â??

30. A perusal of the decision of the Tribunal in Carrier Airconditioning & Refrigeration would indicate that it concerns the period from July 2005 to

May 2012. The decision of the Tribunal in Honda Motorcycle concerns the period from June 2011 to March 2016. These decisions, therefore, cover

the period prior to 01.04.2011 and post 01.04.2011 and are based on the â??meansâ?? part of the definition of â??input serviceâ?? and have not

considered the â??includesâ?? part of the definition of â??input service. The decisions clearly hold that the services received from the dealers would

be â??input serviceâ?? used in or in relation to the manufacture of the final products.

31. The factual position in the Division Bench decisions of the Tribunal and the

decision dated 24.11.2017 rendered by the Tribunal in the case of the

appellant for earlier period is almost identical. It also needs to be noted that the decisions of the Tribunal in Carrier Airconditioning & Refrigeration,

Honda Motorcycle and Samsung India Electronics are based on the â??meansâ?? part of the definition of â??input serviceâ??, which part of the

definition had not undergone any change on 01.04.2011. However, the Tribunal in the decision dated 24.11.2017 distinguished the aforesaid decisions

of the Tribunal solely for the reason that an amendment had been made in the definition of â??input serviceâ?? on 01.04.2011. It is no doubt true that

an amendment was made on 01.04.2011, but that amendment was made in the â??inclusiveâ?? part of the definition of input service.

32. The issue, therefore, that would arise for consideration is whether the earlier Division Bench decisions of the Tribunal in Carrier Airconditioning &

Refrigeration, Honda Motorcycle and Samsung India Electronics should be relied upon as precedents and the decision of the Tribunal rendered on

24.11.2017, in the own case of the appellant, should be taken to have been rendered per incuriam.

33. The learned counsel appearing for the appellant submitted that the principle of per incuriam should be applied and the Tribunal should follow the

law laid down in the aforesaid three decisions of the Tribunal rendered in Carrier Airconditioning & Refrigeration, Honda Motorcycle and Samsung

India Electronics.

34. The principle of per incuriam has been developed in relaxation to the rule of stare decisis. While referring to exception to the rule of stare decisis,

it has been observed in â??Precedent in England Lawâ?? by Rupert Cross, 1961 Edition:

â??No doubt any court would decline to follow a case decided by itself or any other court (even one of superior jurisdiction), if the

judgment erroneously assumed the existence or non-existence of a statute, and that assumption formed the basis of the decision. This

exception to the rule of stare decisis is probably best regarded as an aspect of a broader qualification of the rule, namely, the courts are

not bound to follow decisions reached per incuriam.â??

35. In State of U.P. vs. Synthetics and Chemicals Ltd, (1991) 4 SCC 139, the Supreme Court observed:

â??40. â??Incuriaâ?? literally means â??carelessnessâ??. In practice per incuriam appears to mean per ignoratium. English courts have

developed this principle in relaxation of the rule of stare decisis. The â??quotable in lawâ?? is avoided and ignored if it is rendered, â??in

ignoratium of a statute or other binding authorityâ??. (Young vs. Bristol Aeroplane Co. Ltd, (1944) 2 All ER 293 (CA)) Same has been

accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents

as a matter of law.â??

36. The maxim â??per incuriamâ?? is derived from the latin expression that means â??through inadvertenceâ??. The literal meaning of the

expression â??per incuriamâ?? is â??through want of careâ??. In Blackâ??s Law Dictionary, 5th Edition, it has been defined as â??through

inadvertenceâ??. In Halsburyâ??s Law of England Fourth Edition, Volume 26, it has been stated:

â??A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate

jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a

House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statue or

rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or

because the court had not the benefit of the best argument, and as a general rule, the only cases in which decisions should be held to be

given per incuriam are those given in ignorance of some consistent statue or binding authority. Even if a decision of the Court Appeal must

follow its previous decision and leave the House of Lords of rectify the mistake.â??

37. In Babu Parasu Kaikadi (Dead) by Lrs. vs. Babu (Dead) Through Lrs., (2004) 1 Supreme Court Cases 681, the Supreme Court observed:

â??14. Having given our anxious thought, we are of the opinion that for the reasons stated hereinbefore, the decision of this Court in

Dhondiram Tatoba Kadam having not noticed the earlier binding precedent of a coordinate Bench and having not considered the mandatory provisions as contained in Section 15 and 29 of the Act had been rendered per incuriam. It, therefore, does not constitute a

binding precedent.â??

38. In Yeshbai vs. Ganpat Irappa Jangam, AIR 1975 Bom 20: (1974) 76 BOMLR 278, a Division Bench of the Bombay High Court observed:

â??27. Now, a precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute. The rule

apparently applies even though the earlier court knew of the statute in question. If it did not refer to and had not present to its mind, the

precise terms of the statute. Similarly, a court may know of the existence of a statute and yet not appreciate its relevance to the matter in

hand; such a mistake is again such incuriam as to vitiate the decision. These are the commonest illustrations of decision being given per

incuriam. In order that a case can be decided per incuriam, it is not enough that it was inadequately argued. It must have been decided in

ignorance of a rule of law binding on the court, such as a statute. (See the observations in â??Salmond on Jurisprudenceâ? Twelfth Edition,

pages 150 and 169).â??

39. It, therefore, follows that the principle of per incuriam can be applied for such decisions which have been given in ignorance of some statutory

provision or some authority that is binding.

40. In the present case, the Tribunal in the decision dated 24.11.2017, distinguished the earlier binding decisions of the Tribunal on a mistaken belief

that an amendment had been made in a definition of â??input serviceâ?, whereas the â??meansâ?? clause of the definition had come up for

consideration before the Tribunal and it had not been amended. The Division Bench proceeded on an assumption that the benefit of CENVAT credit

was being taken by the appellant therein either under the â??includesâ?? clause or â??excludesâ?? clause of the definition of â??input serviceâ??,

which portion had been amended whereas reliance had been placed by the appellant on the decisions which had interpreted the â??meansâ?? clause

of the definition of the â??input serviceâ??. It was, therefore, clearly a case where that part of the statutory provision that should have been applied

was ignored and that part of the statutory provision that was not relevant to the controversy was considered. When CENVAT credit was sought to be justified by the appellant under the â??meansâ?? clause, for which reliance was placed on the earlier decisions of the Tribunal, there was no

necessity to examine whether it can be justified under the â??includesâ?? clause or â??excludesâ?? clause of the definition. The decision rendered

by the Tribunal on 24.11.2017 is, therefore, clearly per incuriam.

41. It is, therefore, considered appropriate to follow the three decisions rendered by the Tribunal in Carrier Airconditioning & Refrigeration, Honda

Motorcycle and Samsung India Electronics in preference to the later decision rendered on 24.11.2017, which has distinguished these three decisions

on a non-existent ground. This is what was observed by the Supreme Court in Babu Parasu Kaikadi and the relevant portion is reproduced below:

â??18. Furthermore, this Court, while rendering judgment in Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal, (1994) 3 SCC

366 was bound by its earlier decision of a coordinate Bench in Ramchandra Keshav Adke vs. Govind Joti Chavare, (1975) 1 SCC 559. We

are bound to follow the earlier judgment which is precisely on the point in preference to the later judgment which has been rendered

without adequate argument at the Bar and also without reference to the mandatory provisions of the Act.â??

42. In this view of the matter, the appellant correctly availed CENVAT credit on the amount of service tax paid for the services provided by the

dealers to the customers on behalf of the appellant for fulfilling the warranty obligations of the appellant.

43. The order dated 25.05.2018 passed by the Commissioner (Appeals), therefore, cannot be sustained and is set aside. The appeal is, accordingly,

allowed.

(Pronounced in the open Court on 23.08.2021)