
(2023) 12 CESTAT CK 0042

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 1974 Of 2012

M/S Escorts Construction Equipment Ltd

APPELLANT

Vs

CCE, Delhi-IV

RESPONDENT

Date of Decision : 13-12-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(I)

Citation : (2023) 12 CESTAT CK 0042

Hon'ble Judges : S. S. Garg, Member (J); P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : R. K. Hasija, Shivang Puri, Shivam Syal

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 29.03.2012 passed by the Commissioner (Appeals) of Central Excise, Faridabad (Haryana) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the order-in-original.

2. Briefly the facts of the case are that the appellant are engaged in the manufacture of cranes and earthmoving machinery and are availing CENVAT credit of the duty paid on inputs and service tax paid on the input services used in or in relation to the manufacture of the final product or activities relating to the business in terms of CENVAT Credit Rules, 2004 (CCR). The appellant has also provided free of cost warranty services to its customers through its authorized dealers. The cost of such warranty service was included in the cost of goods sold as per Cost Accounting Standards (CAS). The Appellant entered into an agreement with its authorized dealers for providing such warranty services on its behalf for which the dealer does not charge any amounts from the customers but recovers such amounts from the appellant by raising a sale invoice/debit note which included a component of service tax. The appellant make payments to the

authorized dealer and availed the credit of service tax. Both consideration and service tax amounts were paid by the appellant.

2.1 The Department issued a Show Cause Notice dated 07.02.2011 for the period January 2010 to December 2010 proposing to deny the CENVAT credit of service tax paid to the dealers in relation to such after sales services as the said services were allegedly not used in or in relation to manufacture of products and hence could not be covered in the definition of input service as provided under Rule 2(I) of the CCR, 2004.

2.2 After following due process, the Additional Commissioner vide order dated 27.09.2011 confirmed the demand of Rs. 15,41,338/-alongwith a penalty of Rs. 1,00,000/-.

2.3 Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who upheld the order-in-original and dismissed the appeal of the appellant.

2.4 Hence, the present appeal.

3. Heard both the parties and perused the material on records.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on the identical issue. He further submits that this Tribunal in the appellant's own case for the same issue under similar facts, contentions and allegations against the appellant for a different period has already decided in favour of the appellant vide its Final Order No. A/62526/2018-Ex (DB) dated 05.07.2018 reported in 2018 (8) TMI 943 (Chd.). He further submits that it is a settled position of law that providing services of repair and maintenance during the warranty period is covered under the ambit of input services and CENVAT Credit cannot be denied.

4.1 He further submits that the CESTAT, Chandigarh Bench while deciding the identical issue on similar facts pertaining to Excavator Loaders & Earthmoving Machines in JCB India Ltd v. Commissioner of Central Excise Delhi-IV. Faridabad (2023-TIOL-356-CESTAT-CHD) allowed the appeal of the appellant and held that the assessee is entitled to cenvat credit of service tax paid for the services provided by the dealers to the customers on behalf of the assessee for fulfilling the warranty obligations of the assessee.

4.2 Ld. Counsel also relied upon the decision in the case of CCE. Nashik v. Mahindra & Mahindra Ltd (2012 (28) S.T.R. 382 (Tri. Mumbai) and Commissioner of C. Ex., Vadodara-II v. Danke Products 2009 (16) S.T.R. 576 (Tri. - Ahmd.), wherein also it has been held by the Tribunal that the assessee is entitled to cenvat credit.

4.3 Ld. Counsel further submits that the warranty obligations enhance the marketability of the final products, and thus have a significant role to play in

increased sale of the final products. He further submits that as the sale of goods is integrally connected in relation to the manufacture of goods, the services in the present case were used indirectly in relation to the manufacture of final products and the same would fall under the definition of 'input service'. He further submits that this issue is no longer res-integra and the Tribunal in the following cases has held that the repair services rendered by the dealers during the period of warranty, is covered under the definition of 'input service'.

(i) Johnson Controls Hitachi Air Conditioning India Ltd. v. CCE & ST-Ahmedabad, 2022-TIOL-579-CESTAT-AHM:

(ii) M/s New Holland Construction Equipment Pvt. Ltd. v. Commissioner of Central Excise. Ujjain, 2021- VIL-282-CESTAT-DEL-ST:

iii) Commissioner of Central Excise, Vadodara-II v. Danke Products 2009 (16) STR 576 (TRI.-AHMD.);

iv) Carrier Air-conditioning and Refrigeration Ltd. v. CCE Gurgaon, 2016 (41) STR 1004 (Tri.-Del.);

v) Coca Cola India Pvt. Ltd. v. Commissioner of Central Excise, Pune-III 2009 (15) STR 657 (Bom.);

(vi) Zinser Textiles Systems Pvt. Ltd. v. CCE Ahmedabad, 2014 (33) STR 301 (Tri.- Ahmd.);

(vii) Leroy Somer India Pvt. Ltd. v. CCE Noida, 2015 (39) STR 466 (Tri.-Del.);

(viii) Reliance Industries Ltd. v. CCE & ST-LTU, Mumbai 2022 (380) ELT 457 (Tri.- LB);

(ix) Commissioner of Central Excise, Ludhiana v. Ambika Overseas, 2012 (25) STR 348 (P & H);

(x) Elgi Equipments Ltd. v. CCE Coimbatore, 2017 (51) STR 457 (Tri.-Chennai)

(xi) Gujarat Forging Ltd. v. CCE Rajkot, 2014 (36) STR 677 (Tri-Ahmd.);

(xii) Lucas TVS Ltd. v. Comm. Of GST & C. Ex., Chennai 2020 (37) GSTI. 180 (Tri- Chennai).

He further submits that the term 'input services' has to be construed liberally and after sales support services are a business activity. He also submits that the expression 'activities relating to business' is of wide import and a manufacturer is eligible to avail credit in respect of input service even beyond the place of removal and even after passing of the title in goods to customers by relying upon the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Central Excise & Service Tax, Bangalore vs. M/s Abb Ltd. & Others 2011 (23) ST.R. 97 (Kar.).

4.4 Ld. Counsel further submits that the finding in the impugned order has

travelled beyond the scope of show cause notice. The sole ground averred in the show cause notice for denying CENVAT credit was that the after sales services did not appear to have been used in or in relation to the manufacture of final product and does not appear to be covered in the definition of input service whereas the impugned order was given on the basis of additional grounds, viz. That after sale services were provided by dealers on behalf of appellants to its customers were beyond the place of removal of goods; At the time of providing such services, the ownership of the goods was not with the Appellants and the Appellants were neither the service provider nor the service receiver and further that there is no indication on the excise invoice that cost of providing free service is included in the assessable value of goods.

4.5 Ld. Counsel further submits that the Ld. Commissioner has not taken into account the Chartered Accountant's Certificate produced by the appellant establishing that the expenses in relation to after sales services are included in the cost of goods, on which excise duty was appropriately paid and the expenses on account of warranty claim are specifically included under the heading of 'Selling Overheads'.

5. On the other hand, the Ld. Authorized Representative reiterated the findings in the impugned order and they have filed the written submissions in support of their claim.

5.1 Ld. Authorized Representative further submits that the decision of the Tribunal in the appellant's own case has also been appealed against by the department before the Hon'ble Punjab and Haryana High Court at Chandigarh which has been admitted vide CEA No. 72 of 2019 and the same is pending for decision as on date.

5.2 He further submits that the decision in the case CCE, Nashik vs. Mahindra & Mahindra Ltd. 2012 (28) STR 382 (Tri.-Mumbai) relied upon by the appellant has also been challenged by the Department before the Hon'ble Bombay High Court and the same has been admitted vide CEA No. 36 of 2013 which is pending for decision as on date.

5.3 Ld. Authorized Representative further submits that once an appeal has been admitted in higher forum against any order of lower authority, then the said decision of lower authority cannot be said to have attained finality and correctness of the judgment becomes wide open. In support, he relied upon the decision of the Hon'ble Apex Court in the case of UOI vs. West Coast Paper Mills Ltd. 2004 (164) ELT 375 (SC).

5.4 He further submits that as per sale service rendered in this case by the dealers authorized service stations on behalf of the assessee during the warranty period of vehicles are in no way used directly or indirectly in or in relation to the manufacture of final products or their clearances. Hence, the services are not covered as input services in the main limb of the definition of input service.

5.5 Ld. DR also relied upon the decision of the Hon'ble Apex Court in the case of in Maruti Suzuki Ltd. Vs. CCE Delhi-2009 (240) ELT 641 (SC) wherein the Hon'ble Supreme Court in the said case has held that the inclusive part of the definition should meet the essential conditions laid down in the main part of the definition and that mere fact that the item whose value is included in the assessable value of final product will not entitle the manufacturer to take credit.

6. After considering the submissions of both the parties and perusal of material on record, we find that the issue involved in the present case has been considered in the appellant's own case for a different period by this Bench of the Tribunal and vide its order dated 05.07.2018 cited (supra), it has been held as under:-

"As the issue has already been settled by this Tribunal that the free service sale services of the vehicle provided during warranty period is an input service for the manufacturer i.e. the appellant in this case. Therefore, we do not find any merit in the impugned order, the same is set-aside."

6.1 Further, we find that this issue has also been considered by this Tribunal recently in the case of JCB India Ltd. cited (supra) wherein this Tribunal on identical facts has considered various decisions rendered on the issue of cenvat credit of service tax paid on repair and maintenance service during the warranty period and has also considered the definition of input service prior to 01.04.2011 and after 01.04.2011 and held as under:-

"19. The issue, therefore, that arises for consideration in the present appeal is whether CENVAT credit of service tax paid by the appellant on ?repair and maintenance services? provided by the dealers for fulfilling the warranty obligations of the appellant has been denied for good and valid reasons.

20. To examine this issue, it would be necessary to reproduce the relevant portion of the definition of ?input service?, as defined in rule 2(I) of the Credit Rules. Rule 2(I) 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

"2(I) "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,

XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX" (emphasis supplied)

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

5. prior to 01.04.2011

"2(I) "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;"

(emphasis supplied)

22. "Input service" 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. Further, we also find that the department has filed appeals before the Hon'ble High Court where the Tribunal has given the relief to the assessee but the decisions of the Tribunal in those cases have not been stayed and hence, the ratio of the said decisions are binding on the lower authorities.

25. Further, we also find that the department has not been able to distinguish the latest two decisions of the Tribunal in the case of Johnson Controls Hitachi Air Conditioning India Ltd. and M/s Case New Holland Construction Equipment (I) Pvt. Ltd. cited (supra) involving identical issues wherein all earlier decisions of the Tribunal were considered and thereafter, the demands were dropped.

26. Further, we are of the opinion that the decisions relied upon by the Revenue are not directly on the issue and does not reflect the controversy involved in the present case.

27. In view of our discussion above, we hold that the appellant has 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.

28. The ratio of the decisions relied upon by the appellant is squarely applicable to the instant case and relying upon the aforesaid decision, we find that the credit on warranty service provided free of cost during the warranty period through third parties cannot be denied.

29. As regards, the invocation of extended period of limitation, we hold that there does not exist any reason for invoking the extended period of limitation as the issue involved in the present case has already been decided in favour of the appellant. Moreover, the department did not bring any material on record to show that the appellant has suppressed the material facts with intent to evade payment of service tax. Besides this, the audit of the record of the appellant was conducted in February/March 2007 whereas the show cause notice was issued in 2009 after the expiry of two and half years which makes the substantial demand beyond the period of limitation.

30. In view of our discussion above, the impugned orders are set-aside and both the appeals of the appellant are allowed with consequential relief, if any, as per law."

6.2 Further, we find that the Tribunal in the case of M/s New Hollend Construction Equipment (I) Pvt. Ltd. cited (supra) has considered the identical issue and has held as under:-

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:

"18. Furthermore, this Court, while rendering judgment in Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal¹⁵ was bound by its earlier decision of a coordinate Bench in Ramchandra Keshav Adke vs. Govind Joti Chavare¹⁶. 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."

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.”

6.3 Further, we find that the contention of the Revenue is that the earlier decisions of the Tribunal in the appellant’s own case as well as in the case of CCE, Nashik vs. Mahindra & Mahindra Ltd. cited (supra), the department has filed appeal which is pending before the Hon’ble High Court of Punjab and Haryana and Hon’ble High Court of Bombay will not help the case of the Revenue because in both the cases only appeal has been admitted and no stay granted.

6.4 Further, we find that this Tribunal in various decisions relied upon by the appellant on identical issues has consistently held that the assessee is entitled to cenvat credit of service tax paid on Repair and Maintenance during the warranty period as the same fall within the ambit of ‘Input Service’ as provided in Rule 2(I) of CCR, 2004.

7. By following the ratio of the above said decisions, we are of the considered view that the impugned order is not sustainable in law and therefore, we set-aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.