

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TAXC No. 4 of 2017**

- Commissioner, Central Excise, Customs And Service Tax,
Raipur Chhattisgarh, Chhattisgarh

---- Appellant**Versus**

- M/s Vimla Infrastructure India Pvt. Ltd. Nehru Nagar,
Dhamtari Road, Raipur, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Vinay Pandey, Advocate.
Shri Vivek Chopda, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****by Hon'ble Prashant Kumar Mishra J.****14/03/2018**

1. This is Revenue's appeal challenging the order passed by the Customs, Excise & Service Tax Appellate Tribunal (henceforth, the 'Tribunal') whereby the Tribunal has dismissed the appellant's appeal, rejecting its argument that the respondent being a service provider is not entitled to avail CENVAT Credit.
2. This appeal was admitted for hearing on the question as to whether an assessee who is not engaged in the process of manufacturing but is only providing services can avail CENVAT Credit ?

3. Shri Vinay Pandey, learned standing counsel for the Revenue, would submit that the respondent is engaged in providing services by raising construction of Railway Siding, which by itself is not a manufacturing activity as the Railway Siding is a service used by the clients on payment of charges to the respondent, therefore, the respondent is not entitled to CENVAT Credit. Elaborating the argument, Shri Pandey, would further submit that once the respondent has raised the structure through which services of Railway siding is provided, the relation between the respondent and the entity using the services is that of a Licensor and Licensee, therefore, no manufacturing activity is involved in the business of licensing or leasing the Railway side. He would further submit that the Tribunal has erred in placing reliance on **RSWM Limited vs. Commissioner of Central Excise, Jaipur-II-2015 (37) STR 1074 (Tri. Del.)** as also of **Rajasthan High Court in the case of Aditya Cement vs. Union of India-2008 (221) ELT 362 (Raj.)** and **Mudra Ports & Special Economic Zone Limited vs. CCE & Cus.-2015 (39) STR 726 (Guj.)**
4. Per contra, Shri Vivek Chopda, learned counsel for the respondent, would submit that while raising construction on Railway siding, the respondent has used various items like Cement, Iron etc. which are generally used in raising of capital goods. These articles are used for construction of Mono Block Concrete Sleepers and RLS Rails. Even if these items can be reused after detaching it from the earth, for the time being it has been used in manufacture or erection of Railway Siding, therefore, the respondent is entitled to avail CENVAT Credit which has rightly been allowed by the Commissioner and the Tribunal.
5. For dwelling on the issue, definition of 'Input' and 'Input

Service' provided under CENVAT Credit Rules, 2004 needs reference:

(k) "**input**" means-

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam for captive use; or
- (iv) all goods used for providing any output service; but excludes-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) Capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guest house, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

(I) **“input service”** means service,-

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

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture and includes services used in relation to modernisation, 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 excludes services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate

to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

6. The above definition of 'Input' and 'Input service' would manifest that all goods used for providing any output service excluding Light Diesel Oil, High Speed Diesel or Motor Spirit or any goods used for construction of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service etc are treated to be 'Input'.
7. Similarly, an 'Input service' would mean any service used by a provider of taxable service for providing an output service includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output services or an office relating to such factory or premises are treated to be 'Input Service'.
8. In the case at hand, the respondent has constructed a Railway Siding which is a Low Speed Track distinct from a running line or through route such as a main line or branch line. It is used for marshaling, stabling, storing, loading and unloading vehicles and other goods. The Railway Siding of the respondent are located at Silyari Railway Station & Bhupdeopur Railway Station. In raising construction of the Railway Siding, the respondent has used MBC Sleepers, which, in turn, has been constructed by using MBC Railway

Sleepers and RLS Rails.

9. The respondent was issued show cause notice by the Commissioner on the ground that it has wrongly availed and utilized CENVAT Credit and inadmissible Input Service Tax in Central Excise duty paid on Inputs and Capital Goods which have been used for construction of Railway Siding as the goods which were neither the Input Service nor the inputs & Capital Goods for providing "Cargo Handling Services". The Commissioner eventually concluded that the company cannot provide any logistic services' viz; "Cargo Handling Services" without the facility of private Railway Side. Hence, it become essential for them to set/construct their own private Railway Side to facilitate smooth loading, unloading of materials like Coal, Iron Ore, Manganese Ore, Bauxite etc. Hence, 'inputs' and 'input services' used in setting up the Railway Private Siding which is further in use of "Cargo Handling Services" is eligible for Credit under the Rules, 2004. This view of the Commissioner has been affirmed by the Tribunal.
10. Reverting back to the definition and the nature of construction activity carried on by the respondent company for erecting the facility of "Cargo Handling Services" it is to be kept in mind that the 'Inputs' have been used for providing output services which is taxable, therefore, by erecting the Railway Siding, the respondent is providing a taxable service for providing an output service, therefore, it is entitled to avail Credit under Rule, 2004.
11. In taking the above view, we are fortified by the law laid down by the Division Bench of Andhra Pradesh High Court in the matter of **Commissioner of Central Excise, Vishakhapatnam-II v. Sai Sahmita Storage (P) Limited, 2011 (270) ELT 33 (A.P.) = 2011 (23) S.T.R.341 (A.P.)**,

wherein it has been held, with reference to definition of 'Input' in Rule 2 (k) that all the goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing output service are eligible for CENVAT Credit.

12. Yet again, the Gujarat High Court in the matter of **Mudra Ports & Special Economic Zone Limited vs. CCE & Cus.-2015 (39) STR 726 (Guj.)** has taken the same view by allowing CENVAT Credit to the company who has constructed Jetty within the Port Area for providing Port Services.

13. For the above stated reasons, we answer the substantial question of law against the Revenue and in favour of the Assessee Company.

14. Consequently, the appeal fails and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Sd/-

Judge

Ram Prasanna Sharma

Akhilesh