

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**Excise Appeal No. 10247 of 2021-SM**

(Arising out of OIA-CCESA-SRT-APPEAL-PS-123-2020-21 Dated- 25/11/2020 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**N R AGARWAL INDUSTRIES LTD**

Unit I Plot No 169 2nd Phase Gidc  
Vapi, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-SURAT-I**

New Building...Opp. Gandhi Baug,  
Chowk Bazar, Surat,  
Gujarat-395001

**.....Respondent**

**APPEARANCE:**

Shri. S. Suriyanarayanan, Advocate for the Appellant  
Shri. Kalpesh P Shah, Superintendent (AR), for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**

**Final Order No. A/ 10055 / 2023**

DATE OF HEARING: 03.01.2023  
DATE OF DECISION: 16.01.2023

**RAMESH NAIR**

The issue involved in the present case is that whether the appellant is entitled for Cenvat credit in respect of Rent-a-Cab service or otherwise. Both the lower authorities have denied the Cenvat credit on the said service on the ground that the Rent-a-Cab service is excluded from the purview of definition of input service.

2. Shri. S. Suriyanarayana, learned Counsel appearing on behalf of the appellant submits that the exclusion is not simpliciter in respect of Rent-a-Cab service but it is only subject to condition that the Motor Vehicle which is taken on rent is not a capital goods. He submits that the identical issue has been decided in the various judgments by this Tribunal in the following judgments:-

- MARVEL VINYLS LTD-2017 (49) S.T.R. (Tri.-Del)

- GUALA CLOSURES (INDIA) PVT. LTD. -2018 (10)TMI 1411 – CESTAT AHMEDABAD

3. Shri. Kalpesh P Shah, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the limited issue involved is whether the appellant is eligible for Cenvat credit in respect of Rent-a-Cab service. Both the lower authorities have denied the Cenvat credit on the ground that the said service is excluded for allowing the Cenvat credit as per exclusion Clause given in Rule 2(I) of Cenvat credit Rules, 2004. Ongoing through the said exclusion Clause, I find that the exclusion is provided in respect of those Rent-a-Cab service where the vehicle taken on rent is not a capital goods. This very issue has been considered by this Tribunal in the following decision:

- MARVEL VINYLS LTD-2017 (49) S.T.R. (Tri.-Del)

*"3. After hearing both the sides, I find that the definition of input service is contained in Rule 2(I) of the Cenvat Credit Rules, 2004 and relates to any service used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of their final product and includes many services specified therein but excludes some of the services specified. An Exclusion Clause B was introduced w.e.f. 1-4-2011 to the following effect :*

*[Services provided by way of renting of a "[b) motor vehicle], insofar as they relate to a motor vehicle which is not a capital goods;]"*

*4. A reading of the above Exclusion Clause show that services provided by way of renting of a motor vehicle do not stand excluded in totality. The Exclusion Clause is in respect of input services of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not capital goods.*

*The contention of the assessee is that motor vehicle is a capital goods, as per the definition of the capital goods contained under Rule 2(a) of the Cenvat Credit Rules, 2004. The appellate authority has specifically observed that the said input service, i.e., renting of "motor vehicles" have been specifically included except in case where motor vehicle is eligible for Cenvat credit as capital goods.*

*5. He has however denied the benefit to the assessee on the ground that such motor vehicle are not capital goods for the appellant, Cenvat credit availed on the input services of renting of motor vehicle would not be admissible.*

*6. However, I find flaw in the above interpretation of appellate authority. He has rightly observed that the exclusion is only in*

*respect of that motor vehicle which is not a capital goods. However, he has not extended the benefit to the assessee by observing that the same is not a capital goods for the appellant. A person who is receiving the input services of renting of immovable property, can never avail Cenvat credit of duty paid on the motor vehicles and as such motor vehicle can never be a capital good to the recipient of the said services. The motor vehicle will always be a capital goods or otherwise for the person who is providing the services. For service provider falling under the category of renting of motor vehicle the motor vehicle would always be a capital goods. As such the expression - "which is not a capital goods appearing in the said exclusion clause would require examination vis-à-vis the service provider and not vis-à-vis the services recipient." As such the interpretation of the lower authorities that motor vehicle are not capital goods for the services recipient cannot be appreciated inasmuch as motor vehicles are admittedly capital goods in terms of the Rule 2(A) of Cenvat Credit Rules.*

*7. In view of the above analysis, I hold that the appellant would be entitled to the Cenvat credit on service tax paid on the said services. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellant".*

- GUALA CLOSURES (INDIA) PVT. LTD. -2018 (10)TMI 1411 – CESTAT AHMEDABAD

*"4. I have carefully considered the submission made by both the sides and perused the records. The services of Rent a cab and Hotel Accommodation are services are used for overall business activities of the appellant. The only business carried out by the appellant is manufacturing of excisable goods and sale thereof. Therefore, these services are actually 4 E/10692/2018-SM related to the manufacturing activities of the appellant. This tribunal in the following judgments held that the CENVAT credit on Hotel Accommodation and Rent a Cab service is admissible:*

*"Rent a Cab Service:*

- 1. Aia Engineering Ltd. Vs. C.C.E. & Ahmedabad-III, Final Order No. A/11320/2018 dated 12.06.2018, CESTAT (A/bad)*
- 2. M/s. Welspun Corp Limited vs. Commissioner of Central Excise and Customs, Service Tax, Vadodara, Final Order No. A/11000- 11001/2018 dated 08.05.2018, CESTAT, (A,bad)*
- 3. M/s DCM Shriram Lt.d Vs. CCE & ST- Vadodara-II, Final Order No. A/10834/2018 dated 25.04.2018, CESTAT (A/bad)*
- 4. Commissioner of Service Tax, Chennai Vs. M/s Chennai Container Terminal Pvt. Ltd. 2018-TIOL-2411-CESTAT-MAD*
- 5. Technocraft Industries India Pvt. Ltd. Vs. Commissionr of Central Excise Thane-1 2018-TIOL-1738-CESTAT-MUM*
- 6. Commissioner Vs. Transpek Industry Ltd. 2018(12) GSTL 29 (Guj.)*
- 7. Commissioner of Service Tax, Pune Vs. M/s Nihilent Technologies Pvt. Ltd. 2017-TIOL-2696-CESTAT-Mum*

8. *M/s Marvel Vinlys Ltd. Vs Commissioner of Central Excise, Indore 2016-TIOL-3071-CESTAT-DEL House Accommodation Service:*

1. *M/s Sarita handa Exports Pvt. Ltd. Vs. Commissioner Central Excise, Gurgaon-II 2016-TIOL-2559-CESTAT-CHD*

5. *Following the above judgments the appellant is entitled for the CENVAT credit. Accordingly I hold that the demand in respect of CENVAT credit on Rent a Cab service and Hotel Accommodation is set aside. As regard courier service as per Hon'ble Supreme Court judgment in the case of Ultratech Cement Ltd. (supra) credit is admissible only in respect of services used for the removal of goods upto the place of removal. From the perusal of the records, it is not clear that whether all the courier services is used for removal of goods. As per the submission of Ld. Counsel, the courier service is used for sending documents or inward transportations as well as for outward transportation. As regard the inward transportation and sending and receiving the documents, the CENVAT credit is admissible. However, as regard the courier service used for outward transportation of the goods, if it is beyond place of removal then it is not admissible. As 5 E/10692/2018-SM regard the limitation issue raised by Ld. Counsel, I agree that on the issue of service used for removal of goods there was a serious doubt. There were various conflicting judgments on the said issue, the matter was referred to the larger bench in the case of ABV Ltd. 2009 (15) STR 23-Larger Bench and, thus, subsequently Hon'ble Supreme Court in the case of Ultratech Cement Ltd. (supra) decided the issue. It is also a fact that the appellant was availing the credit relying on the Board's Circular dated 23.08.2017 which was not withdrawn by the Revenue. In these circumstances, malafied intention cannot be attributed to the appellant. Therefore, the demand for extended period is hit by limitation. The same is set aside being time barred. For the normal period in respect of courier services the demand will sustain only in respect of courier services which is used for removal of excisable goods beyond the place of removal. Therefore, the demand in respect of courier services for the normal period of one year needs to be requantified by the Adjudicating authority. As a result, the demand in respect of CENVAT credit on Rent a Cab service, Hotel Accommodation and demand of extended period in respect of courier service is set aside and for remaining portion, the matter is remanded for requantification to the Adjudicating Authority. Taking into consideration overall facts and circumstances and since no malafied intention is involved, the penalty imposed by the lower authority is set aside in entirety. Accordingly, the appeal is disposed off in the above terms".*

4.1 From the above decision, it can be seen that since the Motor Vehicle was held to be a capital goods, the eligibility of Cenvat credit on Rent-a-Cab service shall not be hit by the exclusion clause provided under Rules 2(l) of Cenvat Credit Rules, 2004. In the present case also the vehicle taken on rent is defined as capital goods in terms of Rule 2(a) of the Cenvat Credit Rules, 2004, therefore, the exclusion clause is not applicable in the present case.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 16.01.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

PRACHI