

## Transportation service to the employees cannot be an input service related to manufacture of goods – SC

3 September 2022



## Summary

The Supreme Court (SC) has upheld the order passed by the Bombay High Court (HC) and held that the transportation services provided to the employees for pick up and drop to the factory has no relation with the manufacturing activity of the appellant. Therefore, such services cannot be said to be input services and the CENVAT<sup>1</sup> credit of service tax paid on such services shall not be available. Earlier, the HC had disallowed the CENVAT credit on transportation services availed by the appellant on the ground that such service is provided for personal use or consumption of its employees.

### Facts of the case

- The appellant<sup>2</sup> is a manufacturer of explosives at its factory located in Nagpur. The said factory was located far from the city.
- The appellant had hired a bus service to provide transportation facility to its employees for pickup from their designated area in Nagpur and drop at factory.
- The appellant availed CENVAT credit of service tax paid on such service. Show Cause Notices (SCN) were issued to the appellant by the Adjudicating Authority (AA) for the period July 2009 to December 2015 alleging the availability of CENVAT credit of service tax paid on the bus hire services.
- Pursuant to reply filed by the appellant, the AA allowed the CENVAT credit for the period of July 2009 to March 2011. The balance CENVAT credit from April 2011 onwards was disallowed on the ground that after the amendment in the definition of 'input service'<sup>3</sup>, services used primarily for personal use or consumption of any employee stands excluded from the scope of 'input

service' and the same was thus ineligible for CENVAT credit. Therefore, the demand along with interest and penalty was confirmed<sup>4</sup>.

- The appellant challenged the impugned order before the Commissioner (Appeals) who maintained the disallowance of the CENVAT credit but reduced the penalty.
- On further appeal, the Tribunal maintained the order passed by the Commissioner (Appeals) and set aside the penalty.
- Aggrieved the appellant filed appeal before the Bombay HC<sup>5</sup>.

### Bombay HC observations and ruling<sup>6</sup>

- **Rent-a-cab service excluded from definition of input service:** The Tribunal had found that rent-a-cab service had been excluded from the definition of the term 'input service' by virtue of amendment effective from 1 April 2011. Therefore, the Tribunal was justified in disallowing the CENVAT credit.
- **Not a part of manufacturing activity:** The transportation of employees from

<sup>1</sup> Central Value Added Tax

<sup>2</sup> Solar Industries India Limited

<sup>3</sup> Definition of Input Service in Rule 2(1) of the CENVAT Credit Rules, 2004

<sup>4</sup> Under Rules 14 and 15 of the CENVAT Credit Rules, 2005

<sup>5</sup> Central Excise Appeal No.12/2019

<sup>6</sup> Order dated 22 December 2021

distance of about 40 kms for reaching factory is not an activity which could be said to be a part of manufacturing activity.

- **Transportation facility is merely for personal convenience:** The transportation facility is merely for personal convenience of the employees to enable them to reach the premises of the factory to thereafter participate in the manufacturing activity. Also, the HC has placed reliance on the SC ruling<sup>7</sup> and stated that post the amendment in the scope of input services, the CENVAT credit in respect of services primarily for personal use or consumption of employees could not be availed.
- **Tribunal right in disallowing the CENVAT credit:** The facility of transportation provided by the appellant to its employees was merely in the nature of service for personal use or consumption of its employees. Therefore, the Tribunal did not commit any error in disallowing the CENVAT credit.

### SC observations and ruling<sup>8</sup>

- **Not related to manufacturing activity:** The transportation service to the employees has no relation with the

activity of manufacturing goods. Therefore, it cannot be said to be an 'input service'.

- **Upheld HC's order:** The HC did not commit any error in denying the CENVAT credit and holding that such transportation service is excluded from the definition of input service.

### Our comments

Recently, in the case of M/s Toyota Kirloskar Motor Private Limited, the SC had held that the outdoor catering services used primarily for the personal use or consumption of any employee is excluded from the definition of input service.

In line with the above, the SC has further reiterated that as the transportation facility is merely for personal convenience of the employees, the CENVAT credit in respect of such services primarily for personal use or consumption of employees could not be availed post the amendment in the scope of input services.

The ruling will have widespread ramifications since similar restrictions exist even under the GST regime.

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<sup>7</sup> CEA No.36/2018 with CEA No.7/2019 (Toyota Kirloskar Motor Private Limited)

<sup>8</sup> Special Leave Petition (Civil) Diary No(s). 22650/2022 dated 26 August 2022

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