

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

REGIONAL BENCH- COURT NO.2

Service Tax Appeal No.10044 of 2020

(Arising out of OIA-CCESA-SRT-APPEAL-PS-374-2019-20 dated- 30/08/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

JK PAPER LTD

Po. Central Pulp Mills, Fort Songarh
Tapi, Gujarat

.....Appellant

VERSUS

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

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

.....Respondent

APPEARANCE:

Shri. Sunil Vatvani, Chartered Accountant for the Appellant
Shri. Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11148 /2022

DATE OF HEARING: 15.09.2022

DATE OF DECISION:15.09.2022

RAJU

This appeal has been filed by M/s. JK PAPER LTD against the denial of the Cenvat Credit availed by the appellant on GTA Service.

2. Learned Chartered Accountant appearing for the appellant pointed out that M/s. JK PAPER LTD was processing sludge for the environmental purpose through the Special Purpose Vehicle (SPV) namely JK Environ-tech LTD (JKEL). The appellant and JK Environ-tech LTD (JKETL) has submitted a scheme for merger to the Hon'ble High Court, Gujarat. The said Scheme provided for the appointed date of merger as 01.04.2013. Learned Chartered Accountant pointed out that the entire demand has been raised on the ground that the Special Purpose Vehicle (SPV) namely JK Environ-tech LTD (JKETL) who received the GTA services and who paid for the GTA services was not a service provider or a manufacturer of goods and therefore could not have availed the Cenvat Credit. Learned Chartered Accountant pointed out that in terms of the decision of the Tribunal in the case of ITC HOTELS LTD reported in -2011 16 taxmann.com 54 (New Delhi-CESTAT), the two entities namely the appellant and JK Environ-tech LTD (JKETL) are to be treated as one w.e.f the appointed date i.e. 01.04.2013. He argued that in that scenario all these services received by JK Environ-tech LTD (JKETL) are

to be treated as services received by the appellant themselves. He argued that the appellant themselves are a manufacturer of paper they are entitled to avail Cenvat Credit of GTA Services. He argued that in that view of the matter the credit of Cenvat of GTA Service should be allowed.

3. Learned Authorised representative relies on the impugned order.

4. I have gone through the rival submission, I find that the fact that the appellant and JK Environ-tech LTD (JKETL) have merged w.e.f 01.04.2013 is not in dispute. It is also not in dispute the services were received by the JK Environ-tech LTD (JKETL) for the period 01.04.2013 to 30.09.2015, i.e. after 01.04.2013, the appointed date from which the two are entities have merged. It is seen that the Tribunal in the case of ITC HOTELS LTD (Supra) has observed as follows:-

"9. The sole dispute required to be decided in the present appeal is as to whether the appointed date as approved by the Hon'ble High Court i.e. 1-4-2004 is required to be taken as the date of amalgamation of ITC Hotels Ltd. and Ansal Hotels Ltd. with ITC Ltd. or the date on which the entire formalities were completed and the application was filed with the Registrar of the Companies i.e. whether 23-3-2005 should be taken as the relevant date for amalgamation. We find that the law on the issue stands settled by the Hon'ble Supreme Court decision in the case of Marshall Sons & Co. (India) Ltd. v. Income Tax Officer referred supra. It stands held in para 14 of the said judgment as under :-

"Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. January 1, 1982. It is true that while sanctioning the scheme it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in this facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it - as has happened in this case - It should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under Section 39(1) a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by Section 391 to 394A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e. the Transferor company and the Transferee company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, clause 6(b) does expressly provide that with effect from the transfer date, the transferor company (subsidiary company) shall be deemed to have carried on the business for and on behalf of the Transferee company (holding

company) with all attendant consequences. It is equally relevant to notice that the Courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it could not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income Tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the transferor company (subsidiary company) should be deemed to have been carried on for and on behalf of the transferee company. This is the necessary and the logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. The order of the Court, sanctioning the scheme, the filing of the certified copies of the orders of the Court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be January 1, 1982. This is also the ratio of the decision of the Privy Council in Raghubar Dayal v. Bank of Upper India Ltd. - AIR 1919 PC 9."

As is seen from the above, the Hon'ble Apex Court has observed that it is the date of amalgamation as presented in the scheme which has to be taken as the 'transfer date', inasmuch as the Court's approval may come much later. Further, it is seen from the highlighted portion of the above reproduced order that the Hon'ble Supreme Court observed that the scheme of amalgamation would not take effect on and from the date of the order sanctioning the scheme but would relate back to the transfer date as presented in the amalgamation scheme. The business carried out by the subsidiary company should be deemed to have been carried on and for on behalf of the transferee company. As such, by taking into account the other facts and circumstances of the case, the Court observed that subsequent to the sanction of the scheme, formalities of filing certified copies of the order before the Registrar of the companies, the allotment share etc. may take some time but the date of amalgamation would be the date as presented in the scheme.

10. *The law declared by the Apex Court is binding and is required to be followed. The submission of the learned DR that the ratio of the above judgment given in the context of income tax would not be applicable to the facts of the present case as there is no specific provision to that effect under the Central Excise Act or under the Chapter V of the Finance Act, 1994 cannot be appreciated inasmuch as the law declared by the Supreme Court is binding on all the Courts, in terms of the Article 141 of the Indian Constitution. The Hon'ble High Court of Delhi and the Kolkata having held the date of amalgamation as 1-4-2004 has to be considered as the correct date of amalgamation. If that be so, admittedly, the appellant cannot be held to be providing services to itself. The Tribunal in the case of Precot Mills - 2006-TIOL-818-CESTAT-BANG. = [2006 \(2\) S.T.R. 495](#) (Tri.-Bang.), has held that for levability of service tax, there should be a service provider and a service receiver. No one renders service oneself, as such, there can be no question of levability of service tax. Having held that the amalgamation is effective from 1-4-2004, the service provided by the respondent has to be considered as provided to himself, in which case, no service tax would arise against them. The order of the Commissioner cannot be faulted upon on this ground. At this stage, we may take into consideration the learned DR's reference to clause 7 of the scheme of amalgamation which is as follows :*

"7. Savings of concluded Transactions : The transfer of the undertaking of the Transferor Companies under clause 4 above, the

continuance of the proceedings under clause 5 above and the effectiveness of contacts and deeds under clause 6 above, shall not effect any transaction or the proceeding already concluded by the transferor companies on or before the effective date and shall be deemed to have been done and executed on behalf of the Transferee Company.”

By referring to the above clause, the contention of the learned DR is that any transaction or proceeding conducted by the transferor company on or before the effective date will not be affected by the scheme of amalgamation. However, we find that such clause stands incorrectly interpreted by the learned DR. A reading of the above clause is reflective of the fact that the action of the transferor company on or before the effective date shall be deemed to have been done and executed on behalf of the transferee company. As such, it is clear that the said clause supports the respondent’s stand that any business conducted by the respondents is to be held as having been conducted on behalf of the transferee company. As such, the service tax provided to the ITC Ltd. and Ansal Hotels Ltd. have to be considered as having been provided on behalf of the transferee company viz. ITC. Ltd., in which case, no service tax liability would arise against the service provider.”

4.1 In view of the above observations of Tribunal, it can be concluded that the two entities namely JK Environ-tech LTD (JKETL) and the appellants are to be treated as one w.e.f 01.04.2013. It is not in dispute that the appellant themselves were manufacturer of excisable goods at the material time and therefore would have been entitled to availed Cenvat Credit of GTA services. In this background the services received by JK Environ-tech LTD (JKETL) after the appointed dated, i.e. 01.04.2013, are to be treated as services received by the appellants.

5. In view of the above the impugned order is set aside and appeal is allowed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)