

IN THE ,CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH, FKCCI COMPLEX, K.G. ROAD,  
BANGALORE 56009.

Court No. II  
DATE OF HEARING : 10/8/2012  
DATE OF DECISION : 10/8/2012

Service Tax Appeals Nos. 361 & 308 of 2009

(Arising out of the Order-in-Appeal No. 322/2008 dated 28.11.2008,  
passed by the Commissioner of Central Excise (Appeals-II), Bangalore)

For approval and signature:

Honble Shri M. Veeraiyan, Member (Technical)

1 Whether Press Reporters may be allowed to see the Order for  
publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the CESTAT  
(Procedure) Rules, 1982 for publication in any authoritative report or  
not ?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

M/s C. Cubed Solutions Pvt. Ltd. Appellant

Versus

Commissioner of Central Excise,  
Respondent/appellant  
Bangalore.

Versus

M/s C. Cubed Solutions Pvt. Ltd. Respondent

Appearance

Ms. Manju George, Consultant for appellant/assessee  
Mr. N. Jagdish, Superintendent (AR) for respondent/appellant

CORAM : Honble Shri M. Veeraiyan, Member (Technical)

## ORDER

1. Appeal No. 361/2009 is filed by M/s. C. Cubed Solutions Pvt. Ltd. against the order of the Commissioner (Appeals) No. 322/2008 dated 28-11-2008.

1.2 Appeal No. 308/2009 is by the department against the same order of the Commissioner (Appeals).

1.3 Since both appeals are arising out of a common order and involve common issues, they are being disposed of by this common order.

2. Heard both sides extensively.

3. The relevant facts are that the appellant- assessee is a 100% EOU under STPI Scheme and is engaged in providing IT enabled services. They preferred refund claim of unutilised accumulated credit on input services used in the export of taxable services under Notifications Nos. 12/2005 and 5/2006-C.E. (N.T.), dated 14-3-2006 issued under Rule 5 of the Cenvat Credit Rules, 2004. The original authority sanctioned refund of Rs. 1,96,349/- out of a claim of Rs. 2,30,125/- and rejected the balance claim for Rs. 33,776/.

4. The appellant- assessee filed appeal to the Commissioner (Appeals) against the rejection of Rs. 33,776/- under the category of Advertisement, Housekeeping service, Annual Maintenance Contract service, Clearing & Forwarding service, Chartered Accountant services, Manpower Recruitment or Supply service and Security Agency service. The Commissioner (Appeals) by the impugned order allowed credit in respect of chartered accountancy, manpower recruitment and supply service and security agency service. Against this portion of the order, the department is in appeal.

5. The Commissioner (Appeals), however, upheld the order of the original authority in so far as the same related to rejection of refund of credit on advertisement, housekeeping service, hiring of furniture and clearing and forwarding service. Against this portion of the order, the appellant-assessee is in appeal.

6. The learned Superintendent (AR) referring to the grounds of appeal submits that in respect of manpower recruitment or supply service and security agency service, the assessee "has not even attempted to explain how exactly the said services are used in providing output taxable service which has been exported, except in the way of resorting to generalities and vague expressions of justification". In respect of other services, she reiterates the findings and reasoning given by the Commissioner (Appeals).

7. The learned consultant appearing for the assessee submits that the assessee is involved in export of services. The entire input services utilized by them relate to manpower employed by them and computer related facilities. To recruit manpower, they have given advertisement and the same should be considered as input services. They have also hired some furniture for use in their office and the same should be treated as input service. Similarly, the housekeeping service is part and parcel of the business activity and the same should be treated as input service in relation to the service exported by them. An amount of Rs. 153/- relates to clearing and forwarding service which was used in relation to import of computer and computer related equipments. The learned consultant relied on the judgment of Karnataka High Court in the case of *Toyota Kirloskar Motor (P.) Ltd. v. CCE* [2012] 35 STT 303.

8. I have carefully considered the submissions made by both sides and perused the records. As regards the department's appeal allowing refund of credit on 'manpower recruitment service' and 'security agency service', I find that the ground raised by them is not valid. The appellant being an IT related service provider, undisputedly, the recruitment of manpower was, obviously for rendering those services and what further details were required by the department are not forthcoming. Similarly, the 'security agency services' are used for securing their office premises. Therefore, there is no justification for interfering with the order of the Commissioner (Appeals) allowing refund of credit in respect of these services.

9. As regards, the upholding the denial of credit by the Commissioner (Appeals), in respect of advertisement, I find that the same had been used for the purpose of advertisement for recruiting manpower. There is no justification for disallowing this credit. Similarly, 'hiring of furniture' has been for use in their office and 'housekeeping services' related to the running of the office. Therefore, the credit should have been allowed for these services. Inasmuch as the 'clearing and forwarding services' were used in relation to import of equipments by the assessee, the same also should be treated as input service. In view of the above, the order of the Commissioner (Appeals) in disallowing the refund of the credit in respect of these services cannot be upheld.

10. In view of the above, the appeal by the department is rejected and the appeal of the assessee is allowed with consequential relief as per law.

(Pronounced and dictated in the open court)

(M. Veeraiyan)  
Member (Technical)

/vc/