

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SCO 147-148, Sector 17-C,**

CHANDIGARH

COURT NO. I

DATE OF HEARING : 10/08/2016.

DATE OF DECISION : 10/08/2016.

**Service Tax Appeal Nos. 362 of 2010, 1507, 1718 of 2011 and
198-205 of 2012**

[Arising out of the Review Order No. 07/COMM (A)/S. Tax/2010 dated 09/03/2010, 29/COMM (A) S.Tax/2011 dated 05/10/11, 30/COMM (A) S.Tax/2011 dated 17/11/11, 01/COMM (A) S.Tax/2011 dated 13/01/12, passed by The Committee of Commissioners, Service Tax, Delhi V, Rohtak, Committee of Commissioners, Service Tax, New Delhi and Central Excise, Panchkula.]

For Approval and signature :

Honble Shri Ashok Jindal, Member (Judicial)

Honble Shri B. Ravichandran, 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 would 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 :
Department Authorities?

CCE, Delhi

Appellant

Versus

M/s Convergys India Services Pvt. Ltd.

Respondent

Appearance

Shri V. Gupta, Authorized Representative (DR) for the appellant.

Shri Anil Sood, Advocate for the Respondent.

CORAM: Honble Shri Ashok Jindal, Member (Judicial)
Honble Shri B. Ravichandran, Member (Technical)

Final Order No. 61117-61127/2016 Dated : 10/08/2016

Per. B. Ravichandran :-

These are 11 appeals filed by the Revenue against various impugned orders. As the issue involved in all these appeals are similar and the respondent is same, we take up all these appeals together for disposal. The respondents are registered with the Department for service tax purposes. They have filed refund claims under Rule 5 of Cenvat Credit Rules, 2004 readwith Notification No. 5/2006-CE (NT) dated 14/3/2006. The Original Authority examined these claims and partially allowed the same disallowing the claim in respect of certain input services and on certain documents as they have not satisfied the conditions prescribed under Cenvat Credit Rules, 2004. On appeal, the learned Commissioner (Appeals) allowed the respondent's appeal for sanction of remaining amount of the claims. Aggrieved by these orders, the Revenue is in appeal.

2. We have heard both the sides and examined the appeal records. The cenvat credit availed on various input services like Mandap Keeper, Outdoor catering, event management, interior decorator, storage and warehousing, technical testing and analysis, erection commissioning and installation, Pandal and Shamiana, photography, cable services and renting of immovable property were of subject matter of dispute. We have perused the impugned orders and the grounds of appeal by the Revenue.

3. Provisions of Rule 2 (I) defined input service as any service , -

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

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization, 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, activities relating to business, such as accounting, auditing financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal

The definition has a main clause which states services used by provider of taxable service for providing an output service and further in the inclusion clause various specific services used by the output service provider. The admitted facts are that the respondent did avail these various input services and discharged service tax on them. The dispute is eligibility of such credit for the purpose of refund under Rule 5. First of all, we note that the eligibility of certain input services for credit purposes is being disputed and denied by the Original Authority during the course of processing the refund claim under Rule 5. The correct course of action would be to decide the eligibility of various input services for credit and thereafter in the refund proceeding decide the correctness of the claim in terms of the provisions of Rule 5 readwith the relevant notification. We find that such process has not been followed in the present cases. In any case, we are examining the respondents eligibility for these credits as upheld by the Appellate Authority.

4. The outdoor catering service is availed by the respondents for the catering facility rendered to the employees in order to provide round the clock uninterrupted export service to the foreign recipients. In such scenario, it is necessary to examine the context of input service and its nexus with the output service. The respondents are engaged in providing service to clients located in different countries and different time zones. In such situation we find that in a continuous operation as undertaken by the appellant relating to IT enabled services such employee related services are to be considered as eligible for credit. Similarly, Mandap Keepr service is in connection with recruitment of manpower in various cities. This has direct nexus to the activity of provisions of output service by the respondent. The event management service are in connection with business activities. The employees are brought in one platform for interaction. The interior decorator service is

availed to modernize and design the office premises engaged in providing output services, as such, they have direct nexus with the output service. The erection commissioning service is with reference to installation of IT equipments and maintenance of infrastructure which are very essential for providing IT enabled services by the respondents. We also note that Board vide its circular dated 19/1/10 clarified that there cannot be two yard sticks, one for availing credit and another for granting refunds. One way to interpret the eligibility of credit is to check whether the absence of such input services would adversely impact the quality and efficiency of the exported service. If the answer is in affirmative the input service should be held as eligible for credit. On perusal of the impugned orders, we find learned Commissioner (Appeals) examined each one of the input services and recorded his finding about their eligibility. We find in the grounds of appeal, the Revenue contended that services like outdoor catering, Mandap Keeper, interior decoration are not connected to export of services and the link is farfetched. The appeal filed by the Revenue further states that the reliance placed by the Commissioner (Appeals) on the CESTAT final order dated 15/5/09 is not appropriate as the said order has not reached the finality. We find such reasoning cannot be legally sustainable. The Revenue has not placed any evidence or case law in support of their contention that the services in dispute are not falling within the scope of input services and as such are not eligible for refund. We also note that the Hon'ble Punjab & Haryana High Court in respondent's own case reported in 2010 (20) S.T.R. 166 (P&H) upheld the Appellate Authority's order to the effect that "Any service cannot be disqualified on the basis that the same has only peripheral connection with the output service as long as it is proven the same has been used in providing export services. Once it is established that the said services have been used for providing the output service, rebate claim becomes admissible subject to verification of the payment of service tax on the said services .

5. Considering the detailed findings recorded by the learned Commissioner (Appeals) regarding the eligibility of refunds in respect of various input services and in the absence of any contrary evidence submitted by the Revenue, we find that the impugned orders cannot be interfered with.

6. There are other miscellaneous matters which were also agitated in these appeals. The Commissioner (Appeals) held interest is payable on delayed sanction of refund. We find no reason to differ with such findings. Regarding denial of credit availed on the basis of certain documents which did not contain full particulars we note that if the documents contained basic details of service availed, tax paid, the details of service provider and service recipient, the credit cannot be denied on certain procedural grounds. The fact that the service have been utilized and tax on such services have been paid is the basic issue

to be satisfied. If there is no dispute on these requirements, denial of credit on certain technicalities cannot be sustained.

7. Considering the above discussion and analysis, we find that the impugned orders passed by the lower Authority cannot be interfered with. The appeals filed by the Revenue against such orders are dismissed.

(Operative part of the order pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(B. Ravichandran)
Member (Technical)