

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

SOUTH ZONAL BENCH

BANGALORE

Appeal(s) Involved:

ST/21649/2017-SM, ST/21650/2017-SM,
ST/21651/2017-SM

[Arising out of Order-in-Appeal No. 168-170/2017 dated
28/08/2017 passed by Commissioner of Central Tax,
BANGALORE-II(Appeal)]

M/s. Nvidia Graphics Pvt. Ltd.

C1 Jacaranda Wing A Manyata Embassy Business Park
Outer Ring Road

BANGALORE - 560045

KARNATAKA

Appellant(s)

Versus

The Commissioner of Service Tax

Bangalore-IV Commissionerate

49, HMT Bhavan, Bellary Road, Bangalore 560 032.

Respondent(s)

Appearance:

Mr. Deepak Jain, CA

DEEPAK KHIVANSARA & ASSOCIATES

GREEN APPLE, NO 16, 1ST FLOOR,

MURPHY ROAD

BANGALORE - 560008

Karnataka

For the Appellant

Mr. Pakshirajan, AR

For the Respondent

Date of Hearing: 02/01/2018

Date of Decision: 02/01/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20015-20017 / 2018

Per : S.S GARG

The appellant has filed these three appeals against the common impugned order dated 28.8.2017 passed by the Commissioner (A) whereby the Commissioner (A) has partly allowed the appeal of the appellant and modified the Order-in-Original.

2. Since the issue involved in all the three appeals is identical, therefore, all the three appeals are being disposed of by this common order. The details of all the three appeals are given herein below:

Appeal No.

ST/21651/2017

ST/21650/2017

ST/21649/2017

Total

Particulars

July 2010 to September 2010

October 2010 to December 2010

January 2011 to March 2011

Renting of Immovable Property Service

Rs. 5,57,322/-

Rs. 5,74,434/-

Rs. 5,55,902/-

Rs. 16,87,658/-

Outdoor Catering Service

Rs. 1,52,763/-

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Rs. 1,52,763/-

Event Management Service

Rs. 15,871/-

Rs. 16,809/-

Rs. 51,827/-

Rs. 84,507/-

Air Travel Agency Service

Rs. 4,928/-

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Rs. 4,928/-

Total rejected (de novo)

Rs. 7,30,884/-

Rs. 5,91,243/-

Rs. 6,07,729/-

Rs. 19,29,8566/-

3. Briefly the facts of the present case are that the appellants are engaged in providing Information Technology Software Service and Business Auxiliary Services. They filed refund claims seeking refund of unutilized CENVAT credit paid on input services used for the services exported by them during the impugned period under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 5/2006-CE dated 14.3.2006. The Original authority after following the due process of law has sanctioned refund partly on certain eligible input services and rejected amounts claimed relating to ineligible input services. Aggrieved by the said order, on rejected portion of the claim, the assessee went in appeal before the Commissioner (A), who vide Order-in-Appeal No. 756-758/2014 dated 10.11.2014 held certain services to be eligible and others as ineligible and accordingly, remanded the cases to the original authority to allow the refund with directions to examine the documents i.e., invoices, etc. Thereafter, the original authority after following the de novo adjudication process, sanctioned portion of the amount

involved while rejecting the balance amount as shown in the table above. Aggrieved by the said order, the appellant filed the appeals before the Commissioner (A), who also modified the Orders-in-Original; hence, the present appeals.

4. Heard both the parties and perused the records.

5. Learned consultant for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly considering the definition of input service as contained in Rule 2(l) of CCR, 2004. He further submitted that the impugned order has been passed ignoring the judicial precedents. Learned counsel has given a list of services for which refund has been rejected and its nexus and the case laws by which the said services has been held to be input services which is reproduced herein below:

Classification of Service

Amount

Case law reference

Renting of Immovable Property Service

Rs. 16,87,658/-

CST, Bangalore vs. Mercedes Benz Research & Development India (P) Ltd.: 2013 (30) STR 257 (Tri.-Bang.)

Nuware Systems Pvt. Ltd.: 2015 (39) STR 134 (Tri.-Bang.)

Even Management Service

Rs. 84,507/-

Castrol India Ltd. vs. CCE, Vapi: 2013 (291) ELT 469 (Tri.-Ahmd.)

JP Morgan Service (I) Pvt. Ltd. vs. CST, Mumbai: 2016 (42) STR 196 (Tri.-Mum.)

HCL Technologies Ltd. vs. CCE, Noida: 2015 (40) STR 369 (Tri.-Del.)

Toyota Kirlosakr Motor Pvt. Ltd. vs. CCE: 2011 (24) STR 645 (Tri.-Bang.)

Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad: 2013 (32) STR 95 (Tri.-Mum.)

Outdoor Catering service

Rs. 1,52,763/-

Commissioner of Service Tax, Bangalore v. Jubilant Biosys Ltd., reported at 2016 (42) S.T.R. 729 (Tri.- Bang.)

Air Travel Agency service

Rs. 4,928/-

Commissioner of Service Tax, Bangalore v. Jubilant Biosys Ltd., reported at 2016 (42) S.T.R. 729 (Tri.- Bang.)

Final Order Nos. 26721-26723/2016 dated 09.10.2013

5.1 The learned consultant submitted that the Commissioner (A) has rejected the refund on Outdoor Catering and Air Travel Agency services by holding that the sufficient documents have not been produced with the explanation.

5.2 The learned consultant further submitted that all these services have been used for rendering output services. He further submitted that renting of immovable property services has been specifically covered in the judgments cited supra. He also submitted that in the appellants own case for the prior period, this Tribunal vide Final Order No. 20050-20057/2017 dated 13.1.2017 has allowed the refund on renting of immovable property service.

5.3 He further submitted that vide the above referred final order dated 13.1.2017, this Tribunal has allowed the refund

on Event Management Service also. He further submitted that the Event Management Service fall under the definition of input service as the same is related to the business of the company.

5.4 As far as Outdoor Catering Service is concerned, the learned consultant referred to the Policy of the Company, which is on record vide which it provides that the catering service will be provided free of cost to its employees and the company will not charge any amount for the Outdoor Catering Service to its employees. The learned Commissioner (A) has rejected the refund on these services only on the ground that the appellant has not proved that they have not recovered any charges from the employees for providing Outdoor Catering Service.

5.5 Further, with regard to Air Travel Agency service, the Commissioner (A) has rejected the credit on the ground of non-production of any document to prove that the Air Travel Services were availed for official purpose. The learned consultant further submitted that all the services fall in the definition of input services even after the amendment in the definition of input service w.e.f. 1.4.2011. He also submitted that for the subsequent period, in appellants own case the department has allowed the refund on these services and he has attached certain orders where the Department has allowed the refund on these input services by holding the same as input service.

6. On the other hand, the learned AR reiterated the findings of the impugned order.

7. After considering the submissions of both the parties, I find that the impugned order is not sustainable in law denying the refund on input services on account of lack of nexus. In view of definition of input service as contained in Rule 2(l) of CENVAT Credit Rules, all these input services on which refund has been denied are related to the provisions of Export of Service. Further, for the subsequent period, the Department itself has allowed the refund on certain services and this Tribunal in the appellants own case also vide Final Order No. 20050- 20057/2017 dated 13.1.2017 has allowed

the refund on Renting of Immovable Property service and Event Management Service. In view of the decisions cited supra, I am of the considered view that all these services fall in the definition of input service and the appellants are entitled to claim refund subject to verification of documents. The original authority will verify the documents and then sanction the refund. Accordingly, I allow all the three appeals.

Operative portion of the Order was pronounced in Open Court on 02/01/2018)

S.S GARG

JUDICIAL MEMBER