

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

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 85117 of 2019

(Arising out of Order-in-Appeal No. NA/GST & CX/A-III/MUM/6664/17-18 dated 02/08/2018 passed by the Commissioner GST & CX (Appeals-III), Mumbai)

M/s Mediacom Media India Pvt. Ltd.

.....Appellant

7th/8th/9th Floor Commerz
International Business Park Oberoi
Garden City Off Western Express
Highway, Goregaon East
Mumbai, Maharashtra-400063

VERSUS

C.C.G.ST., Mumbai East

.....Respondent

Null 9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

APPEARANCE:

Shri Mohit Rawal, Advocate for the Appellant
Shri S.B. Mane, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86729 / 2019

Date of Hearing: 25.06.2019

Date of Decision: 27.09.2019

PER: AJAY SHARMA

The instant appeal has been filed by the Appellant assailing the order dated 02/08/2018 passed by the Commissioner GST & CX (Appeals-III), Mumbai in Order-in-Appeal No. NA/GST & CX/A-III/MUM/6664/17-18.

2. The Appellants are providing output service of advertising agency and in relation to the said service the appellant procures various input service including outdoor catering service and rent a cab service. They claimed Cenvat credit on the aforesaid input services but the same was rejected by the authorities below being inadmissible on the ground that it has no nexus with the output service of the Appellant. The period in dispute is April, 2007 to March, 2010 and the amount is Rs.75,355/- under the head *Outdoor Catering Service* and Rs.19,166/- under *Rent-a-cab Service*.

3. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the records of the case including the written note submitted by the learned counsel during the course of hearing. According to learned counsel, the input services viz. *outdoor catering service* and *rent-a-cab service* are integral to the business operations of the appellant and are required by the appellant in order to provide its output service of advertising. The learned counsel submitted that the appellant has availed outdoor catering service for the clients who visit its office for business meetings during business hours. According to him, the appellant is in the business of advertising which is employee driven industry and therefore the said service is also availed for the employees, but only during business hours and not for the personal use of the employees. So far as rent-a-cab service is concerned, the learned counsel submits that the appellant's client are locate on various locations and the employees of the appellants have to approach them at the client's offices and since they have to reach on

every location on time therefore the appellant has availed cab service for those employees for business meetings only and the said service has a clear nexus with the business activity of the appellant. According to learned Counsel these expenses in relation to business being incurred by the Appellant for efficient running of the business for which they are entitled to avail Cenvat Credit. As per the learned counsel, the Cenvat Credit on both the above input service is available to the Appellant. Per contra the learned Authorised Representation reiterated the findings recorded in the impugned order and prayed for dismissal of the Appeal. According to learned Authorised Representative it is not clear from the record as to who has travelled and for what purpose. It is also not clear whether it was in relation to the output service or not.

4. Rule 2(l) of the Cenvat Credit Rules, 2004 defines input service. This definition is couched in means and includes the expression. The definition "input service" would mean, any service used by the provider of output service, or used by the manufacturer directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal, and would include various services specified in the said definition. In view of such broad definition, this is to be seen whether the authorities below are justified in rejecting the claim of Cenvat Credit raised by the Appellant. The definition of *input service* is very wide and it also includes various services used in relation to the business. The only condition precedent is that it should be the activity relating to business. The Appellant has enclosed the excel sheet alongwith

Memo of Appeal giving details of *Outdoor catering service* alongwith the invoice numbers. I have gone through same and am of the opinion that the services of outdoor catering are used by the appellant for its business activity during office hours and not as a personal or welfare measure for its employees nor it's a perk/perquisite provided by the appellant to its employees. The Appellant is also not recovering the cost of the same from its employees. The said service has been debited to P&L A/c of the Appellant, as a business expenses. So far as *rent-a-cab* service is concerned, it is the case of the appellant that the said cab service is utilized for providing facilities to the appellant's employees for travelling from office to client's place for business purpose. The said service is not being used for the personal use of the employees. Alongwith the Memo of Appeal, the Appellants have filed details of 75-100 invoices to establish the nexus between the aforesaid input service with the output service. *Rent-a-cab* service has been excluded from the definition of *input* service by the 2011 amendment w.e.f. 1.4.2011 and prior to that it was within the definition of input service. My attention has been drawn to the circular No.943/04/2011-CX dated 29.4.2011 by which a clarification is issued by the department providing that the credit on rent-a-cab service shall be available if its provision had been completed before 1.4.2011. There is no dispute that the services have been availed during the period prior to 1.4.2011. It is an expenditure in relation to business being incurred by the Appellant for its efficient running. Input Services are not only those services used directly or indirectly in the provision of output

service, but it also includes services that relate to the business activities of the assessee. Therefore in my view the services of *outdoor catering service* as well as *rent-a-cab* service are in relation to the business activity undertaken by the Appellant and the Appellant is eligible for Cenvat Credit of the aforesaid input services. The submission of the Revenue that input services do not have direct nexus to the business activity of the Appellant is not sustainable. Accordingly the Appeal is allowed with consequential relief, if any.

(Order pronounced in the open Court on 27.09.2019)

(Ajay Sharma)
Member (Judicial)

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