IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77839 of 2018

(Arising out of Order-in-Appeal No.269/S.Tax-II/KOL/2018 dated 14.02.2018 passed by Additional Director General (Vig.), CVO-Eastern Zone, Kolkata.)

M/s. Visa Resources India Limited
(Visa House, 8/10, Alipore Road, Kolkata-700027.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

.....Respondent
(GST Bhawan, 180, Rajdanga Main Road, Shantipally, Kolkata-700107.)

APPEARANCE

Shri Satyanarayan Gupta, Chartered Accountant for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75451/2022

DATE OF HEARING : 25 April 2022
DATE OF DECISION : 10 August 2022

P.K.CHOUDHARY :

The present Appeal has been preferred by the Appellant against the Order passed by the First Appellate Authority dated 14/02/2018 covering the period from April 2010 to March 2013 by which a demand of Cenvat Credit of Rs.20,89,464/- and Service Tax of Rs.23,622/- has been confirmed along with interest and imposition of penalty.

2. The brief facts of the case are that during audit of the records of the Appellant, it was contented by the Department that debit notes are not valid documents for availment of Cenvat credit of Service Tax and thus had disallowed the same to the extent of Rs.20.89,464/- availed by the Appellant on debit notes issued by Visa Infrastructure Ltd. for 'business support' and 'management consultancy services'. Also a

demand of Rs.23,622/- was made under import of services under Reverse Charge Mechanism, which was paid by the Appellant along with interest of Rs.12,670/- before issuance of the Show cause notice on 12.03.2015 and 23.04.2015.

3. A Show Cause Notice (SCN) dated 09.10.2015 was issued by the Department for the above issues which came to be adjudicated vide order dated 23.01.2017 wherein the demand as proposed in the SCN was confirmed along with interest and penalty. The First Appellate authority also has confirmed the said demand and thus the present appeal before the Tribunal.

4. Heard both sides and perused the appeal records.

5. I find that the first issue to be decided is whether Cenvat credit of Service Tax can be availed on debit notes under the scheme of the Cenvat Credit Rules, 2004. In this regard, Rule 9 of the CenvatCredit Rules, 2004 provides as follows:

> ***RULE 9. Documents and accounts.*** *—(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-*
>
> *(a) an invoice issued by -*
>
> *(i) [a manufacturer or a service provider for clearance of -]*
>
> *(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;*
>
> *(II) inputs or capital goods as such;*
>
> *(ii) an importer;*
>
> *(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;*

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. *- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or*

[(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; [or, as the case

may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,]

[(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

[(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or]

(g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994 :

*[**Provided** that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]*

[(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

***Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]*

6. From the above stated Rule it is seen that as per clause (f) supra, an invoice issued by a provider of input service is a valid document for availment of Cenvat credit. In the present case of the Appellant, the heading of the document as seen from sample copies attached with the appeal paper book though are nomenclated as debit notes but they contain all the disclosures as required in a tax invoice as per Rule 4A of the Service Tax Rules, 1994.

7. Further it is not in dispute that the services have not been consumed/utilised by the Appellant and no such allegation had been made out in the SCN issued. Thus, considering the above factual aspect, I am of the view that Cenvat credit cannot be denied to the Appellants and thus the appeal succeeds to that extent and the demand is quashed.

8. As regards service tax liability under RCM, since the amount has been paid with interest before issuance of the SCN itself, no penalty under section 78 can be imposed in the present case of the Appellant, being a settled jurisprudence.

Thus, the appeal is allowed in the above terms.

(Order pronounced in the open court on 10 August 2022.)

Sd/

(P.K.CHOUDHARY)

MEMBER (JUDICIAL)

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