

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87734 of 2019

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/76/2019-20 dated 29.05.2019 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai – III)

M/s Kantar IMRB

3rd Floor, The ORB, Bay 99, JW Marriot Coumpound,
Airport Road, Andheri (E), Mumbai – 400099.

Versus

.... Appellant**Commissioner of CGST & Central Excise
Mumbai Central**

4th Floor, C. Ex. Building, Churchgate,
Mumbai – 400020.

.... Respondent

Appearance:

Shri A. R. Krishnan, Chartered Accountant for the Appellant

Shri S. B. P. Sinha, Auth. Representative for the Respondent

CORAM:**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85170 / 2023**

Date of Hearing: 08.02.2023

Date of Decision: 08.02.2023

Per: Anil G. Shakkarwar

Present appeal is arising out of Order-in-Appeal No. NA/GST/A-III/MUM/76/2019-20 dated 29.05.2019 passed by the Commissioner (Appeals)-III GST and Central Excise, Mumbai.

2. Brief facts of the case are that the appellant are providing Market Research Agency Service and are holders of Centralized Service Tax registration at Mumbai. Revenue issued a show cause notice to the appellant denying credit of service tax paid on hotel

halls booked for business activity and hotel stay expenses. The appellant stated to the original authority that they are a market research company and they invite participants and book hall in the hotels for the business activity and the service tax paid on the hall charges in hotels and service tax paid on hotel rooms engaged for the moderators invited for conducting activities of participants for the purpose of market research are claimed by them as service tax credit. The original authority through this order dated 31.03.2018 held as follows.-

"7.4 However, while going through the documents submitted, it is not forthcoming to prove that all the aforesaid expenses were incurred for the activities as claimed by them. In the absence of the same, their defence submission cannot be accepted and consequently. I cannot allow the Cenvat Credit. I disallow Cenvat credit of Rs. 44,39,668/- availed during the period 2015-16 as demanded in this SCN/NO.06/AC/ST/III/DNIV/2016-17 dated 07.11.2016."

Aggrieved by the said order, appellant has preferred appeal before Learned Commissioner (Appeals). Learned Commissioner (Appeals) through his order dated 29.05.2019 held as follows.-

*"9. The appellants have attempted to make out a case that hotel accommodation has a direct nexus with the output service of market research provided by them. This claim, however, has not been substantiated by them in as much as no evidence of a particular hotel stay with specific market research activity has been furnished. By virtue of exclusion clause provided in the definition of input service, the said claimed input services do not form an integral part for market research and no sufficient nexus is established. I find that CBEC Circular dated 19.01.2010 has also specifically clarified that Accommodation service, event management service, Hotel, Inn, Club and Guest House Service, Restaurant Service, mandap keepers provided to the employees are in the nature of welfare activities and the same cannot have impact on the efficiency and quality of the output service. If the stay in hotel was in direct relation to providing taxable services, then only the cenvat credit is admissible. Therefore, the credit in respect of Short Term Accommodation in Hotels service in the instant case is **not allowable**. I find that the*

case laws cited by the appellants are either pertaining to the definition of "input service" as existed prior to 01.04.2011 and/or the facts are therein are different from the one in the instant case as their service does not involve any sales promotion. Therefore, none of the case laws are applicable in the instant case."

Aggrieved by the said order, appellant has preferred appeal before this Tribunal.

3. Heard the Learned Chartered Accountant on behalf of the appellant. He has submitted that the appellant had paid rent on halls hired in the hotels where the halls were hired for interviews with the respondents and all the expenses were reimbursed by their clients on actual basis. He further stated that for conducting market research, employees have to travel and stay in hotels and such hotel stay expenses are essential part of activity for output services and therefore, service tax paid on hotel stay expenses were availed by them as CENVAT Credit. Further, he stated that both the said activities are essential input activities for providing output service of market research on which they have paid service tax. He has claimed that the said service tax credit is admissible to them.

4. Learned AR has submitted that original authority held that there is no nexus between above said two activities and the services provided by the appellant are not eligible for availment of credit.

5. I carefully gone through the record of the case and submissions made. I find that the show cause notice was issued by Revenue for denial of CENVAT Credit on above stated input services. Since, the show cause notice was issued by Revenue,

burden of proof was on Revenue to establish that the hiring of halls and hotel rooms had no nexus with the output services. Whereas the finding as recorded by both the original and appellate authorities did not indicate that the burden of proof is discharged by Revenue. I, therefore, hold that both the Order-in-Original and Order-in-Appeal in the present matter are not sustainable. I, therefore, set aside the impugned order and hold that above stated two activities are input services for the appellant for providing output services of market research and, therefore, service tax paid on above stated input services is admissible to the appellant for CENVAT Credit.

6. Appeal is allowed in above terms.

(Order dictated in open court)

(Anil G. Shakkwar)
Member (Technical)

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