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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Service Tax Appeal No. 25339 of 2013

(Arising out of OIA No. 47/2011 (H-I) CE dt.30.09.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Hyderabad)

Mentor Graphics India Pvt Ltd
Sri Ram Towers, Somajiguda,
Hyderabad, AP – 500 082 **......Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad - GST
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004 **......Respondent**

Appearance
Shri Vishal Kumar, Advocate for the Appellant.
Shri B.S. Rao, AR for the Respondent.
Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30220/2023

Date of Hearing: 10.07.2023
Date of Decision: 28.08.2023

[Order per: A.K. JYOTISHI]

The Appellants are exporters of "Information Technology Software Services", who filed a refund claim under Rule 5 of Cenvat Credit Rules (CCR), 2004 read with Sec 11B of Central Excise Act read with Export of Service Rules, 2005, read with Notification No. 09/2005-ST dated 03.03.2005 and Notification No. 05/2006-CE (NT) dated 14.03.2006, for an amount of Rs.28,91,197/-. The period under dispute is from October, 2010 to December, 2010.

2. The Adjudicating Authority, after applying the formula prescribed in the Notification No. 05/2006, sanctioned the refund claim of Rs. 16,07,026/- while rejecting the refund claim of Rs. 12,43,758/- on three grounds viz.,
(i) Rs.5,77,851/-, which was availed on basis of invoices in respect of import of services and the said Invoice No. 100040328 dated 25.10.2010 was not submitted along with the refund claim.
(ii) Whereas, another Invoice No. 190012 dated 18.07.2010 where Service Tax was paid on 06.08.2010, did not pertain to the period in dispute.

3. The remaining Rs.6,65,907/- was rejected on account of the fact that the Adjudicating Authority did not find such input services as eligible for refund on the grounds that the nexus could not be established between services rendered

and the business carried out by the Assessee. He relied on, *inter alia*, the judgment of the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd vs Commissioner [2009 (240) ELT 641 (SC)], which was also applied by the Coordinate Bench in the case of Kbace Tech Pvt Ltd vs CCE & ST, Bangalore [2010 (18) STR 281 (Tri-Bang.)] in relation to taxable service.

4. The Assessee went in Appeal before Commissioner (Appeals) with respect to the rejected amount of the refund. The Commissioner (Appeals), decided the eligibility or otherwise in respect of the rejected refund claim. The Commissioner (Appeals) relied on certain judgments, whether in the facts of the case, Appellants were entitled to claim Cenvat credit on the Service Tax paid in respect of services relating to various services viz., Rent-a-Cab, Renting of Immovable Property, Courier service, Chartered Accountant service, Outdoor Catering service, General Insurance service, Management or Business Consulting service and Manpower Supply service.

5. After taking into consideration the case laws, as well as the definition of 'input service' as laid down in Rule 2(l) of CCR, 2004, Commissioner (Appeals) allowed credit in respect of Rent-a-Cab and also on Renting of Immovable Property services. However, with regard to other services, relying on various judgments, mainly on Maruti Suzuki Ltd (supra), upheld that part of the Order of the Lower Authority which denied the credit in respect of input services as mentioned above viz., Courier service, Chartered Accountant service, Outdoor Catering service, General Insurance service, Management or Business Consulting service and Manpower Supply service.

6. As regards the invoice dated 18.07.2010, it was observed that as the Appellant had already filed refund claim for quarter ending September, 2010, and therefore, impugned invoice does not merit for inclusion for subsequent period of refund and that such invoice was not a valid document for claiming refund of input service credit. Being aggrieved, Appellant/Assessee is before this Tribunal.

7. Learned Advocate for the Appellant has mainly relied on the definition of 'input service' under CCR and various case laws in their support - that there is no need to establish nexus between input service and service exported. They have also canvassed that the Maruti Suzuki Ltd (supra) is not applicable in the case of input services. In addition, for each of the input services denied by the Commissioner (Appeals), they have relied on various judgments in their support

that it was an eligible input service and therefore it cannot be denied and hence refunds to that extent was admissible to them, which are as follows:

i) Alliance Global Services IT India (P) Ltd vs CCE & ST, Hyderabad-IV [2016 (44) STR 113 (Tri-Hyd)]
ii) Commissioner vs Apar Industries Ltd [2011 (23) STR J194 (Guj)]
iii) Meghachem Industries vs CCE, Ahmedabad [2011 (23) STR 472 (Tri-Ahm)]
iv) CC & CE, Raipur vs HEG Ltd [2010 (18) STR 446 (Tri-Del)]
v) Conveyors India Services P Ltd vs CST, New Delhi [2012 (25) STR 251 (Tri-Del)]
vi) CCE, Meerut-II vs Hindustan Coca-Cola Beverages Ltd [2011 (23) STR 268 (Tri-Del)]
vii) Utopia India Pvt Ltd vs CST, Bangalore [2011 (23) STR 25 (Tri-Bang)]
viii) ABB Ltd vs CCE & ST, Bangalore [2009 (19) STR 23 (Tri-LB)]
ix) Dr. Reddy's Lab vs CCE, Hyderabad [2010 (19) STR 71 (Tri-Bang)]
x) Jaypee Rewa Plant vs CCE, Bhopal [2010 (17) STR 519 (Tri-Del)]
xi) Hindustan Zinc Ltd vs CCE, Jaipur [2015 (37) STR 608 (Tri-Del)]
xii) Oudh Sugar Mills Ltd vs CCE, Lucknow [2012 (282) ELT 541 (Tri-Del)]
xiii) Finolex Cables Ltd vs CCE, Pune-I [2009 (14) STR 303 (Tri-Mum)]
xiv) Heartland Bangalore Transcription Ser (P) Ltd vs CST, Bangalore [2011 (21) STR 430 (Tri-Bang)]
xv) CCE, Nagpur vs Ultratech Cement Ltd [2010 (20) STR 577 (Bom)]
xvi) CCE, Mumbai-V vs GTC Industries Ltd [2008 (12) STR 468 (Tri-LB)]
xvii) Victor Gaskets India Ltd vs CCE, Pune-I [2008 (10) STR 369]
xviii) Semco Electrical Pvt Ltd vs CCE, Pune [2010 (19) STR 177 (Tri-Mum)]
xix) Cadila Pharmaceuticals Ltd vs CCE, Ahmedabad [2010 (17) STR 31 (Tri-Ahm)]

8. Learned DR reiterates the grounds taken by the learned Adjudicating Authority and Commissioner (Appeals) in denying the refund in part. He submitted that the core issues are not to be decided in this matter before considering whether in the facts of the case and the extent covered by the Rules under CCR, the disputed input services are eligible service for the purpose of providing output service or otherwise.

9. Rule 3(1) of CCR entitles the provider of taxable service to take Cenvat credit. The relevant portion is as under:

"(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of –

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;
(ii) …………
(iii) …………
(iv) ……………
……………………
(ix) the service tax leviable under section 66 of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and

(xa) the secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and
(xi) ………………………
paid on-

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004"

10. The definition of 'input service' provided under Rule 2(l) during the disputed period is as under:

*"**2(l)** —input service‖ means any service, -*

(i) used by a provider of [output service] for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

11. Considering the rival contentions - The main contention of the Appellant is that the 'inclusive clause' is independent of 'means clause' and therefore, both parts of the definition have to be considered harmoniously. He also emphasizes that wherever the term "such as" is used, it would be merely illustrative and not exhaustive. He further submits that the term "business" as used in inclusive part of definition is an integrated activity and therefore, activities in relation to business cover all the activities that are related to the functioning of a business and therefore, the term "business" cannot be given a

restrictive definition. In their case, business is an integrated activity, comprising of development of software, entering into export agreement, export of software, etc. He also relied on a certain judgment in Income Tax case, where the expenditure incurred on expenses such as Practicing Chartered Accountant services, Air Travel Agent services, General Insurance services, Practicing Company Secretary Services, Outdoor Catering services, Erection, Commissioning and Installation service etc., have been allowed as business expenditure. He also relied on Tribunal's Judgment in the case of Force Motors Ltd vs CCE, Pune [2009 (23) STT 160 (Tri-Mum)], where the Tribunal has, *inter alia*, held that the definition of 'input service' under CCR would cover an activity other than those illustrated but related to business also.

12. The Appellants have also given the uses of various services like Courier, Practicing Chartered Accountant, Outdoor Catering, Practicing Company Secretary, Air Travel Agent, General Insurance, Erection & Commissioning, and Business Auxiliary Services in relation to their business in their grounds of Appeal and have also relied on various judgments. Barring in case of Outdoor Catering services, where the same has been specifically excluded from the definition of input service with effect from 01.04.2011, the same would still be available. He agreed that the Appellants have been able to establish that the said input services were used in relation to the business of the Appellant.

13. We find much force in the arguments that definition of input service under CCR, 2004, as it existed prior to 01.04.2011, includes services used in relation to activities relating to business. We also find that the activities relating to business have been further amplified by describing each of these services such as accounting, auditing, financing, computer networking, credit rating, security, etc., used in relation to the business. Therefore, the definition of input service covers both services used by the provider of taxable service for providing output service as well as services used in relation to, *inter alia*, activities relating to business as long as it is not specifically excluded from the definition of input service. Admittedly, none of these services were specifically excluded.

14. There is also force in the argument that the ratio of Maruti Suzuki Ltd (supra) in respect of input service is not appropriate in as much as it was primarily in the context of input(s) and not any input service. In the case of Alliance Global Services IT India (supra), the Coordinate Bench of the Tribunal, in the case of service provider/exporter of ITSS, held various input services

including Courier service, Management, Maintenance & Repair service, Manpower Recruitment service, Renting of Immovable Property service, etc., as having nexus with the exported service. The Tribunal also, *inter alia*, observed that Maruti Suzuki Ltd (supra) heavily relied upon by the Revenue was wrongly applied. The relevant Para of observation of the Tribunal is as under:

> *"4. It is seen that the authorities below have denied the refund laying thrust on the judgment rendered in Maruthi Suzuki Ltd. v. CCE, Delhi-III - 2009 (240) E.L.T. 641 (S.C.). In the said case, the Hon'ble Apex Court was dealing with interpretation of the definition of "inputs" and not "input services". Therefore, the said case has been wrongly applied by the authorities below to hold that appellant is not eligible for refund. Further, it needs to be stated that the interpretation of "inputs" laid in Maruthi Suzuki Ltd. case was referred to the Larger Bench of Supreme Court, in the case of Ramala Sahkari Chini Mills Ltd., UP v. CCE, Meerut - 2010 (260) E.L.T. 321 (S.C.) while considering the admissibility of credit on welding electrodes used in repair and maintenance. The Hon'ble Larger Bench of Apex Court held that the word "include" in the statutory definition of 'input' is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction."*

15. The learned Advocate has also invited attention to another Order in their own case passed by this Bench vide Final Order No. A/31199/2016 dated 02.12.2016. In this Order, the dispute relates to part rejection of refund claim for the period July, 2011 to September, 2011. After placing reliance on various judgments, it was held that services like Courier service, Chartered Accountant service, Air Travel Agent service, Management, Maintenance & Repair service, Commercial Training or Coaching service, Business Support service, Management or Business Consulting service, Business Auxiliary service and cleaning service were eligible input services for the Appellant and they were therefore, eligible for taking credit.

16. In view of the case laws cited and the explanations given by the Appellant explaining the nature of these services vis-à-vis their business in the Appeal Memorandum, as also cited case laws, supra, these services are held clearly relatable to the business of the Appellant and therefore, are eligible for taking credit as input service.

17. There is another issue of allowing credit in respect of invoice by the Commissioner (Appeals) on the grounds that the relevant quarter was already over and therefore, it cannot be considered. The learned Counsel has relied on Board Circular dated 19.01.2010. In Para 3.3 it was observed and clarified as follows:

"3.3 <u>Quarterly refund claims</u>:

As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an exporter may avail of Rs.1 crore as input credit in the April – June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs.50 lakh and domestic clearances of Rs.25 lakh are made. The exporter should be permitted a refund of Rs.66 lakh (as his export turnover is 66% of the total turnover in the quarter) from the Cenvat credit of Rs.1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of CENVAT credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services, and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him."

18. In so far as its merit is concerned, the service was in the nature of 'Business Auxiliary Service' and the service has been held to be otherwise an eligible service in respect of their company, by this Tribunal vide Final Order dated 02.12.2016. Therefore, on both counts, this is eligible service for the purpose of taking credit. In the light of the said clarification, the credit claimed in the subsequent quarter for refund, even if pertaining to earlier quarter, has to be considered, if the same has not been availed or claimed as refund subsequently in another refund matter(s). This needs to be ascertained by the Lower Authority. In view of the discussions and observations, Appeal is allowed and Order of Commissioner (Appeals) is modified with consequential relief. However, a part of refund rejected i.e., Rs.5,77851/- is remanded to Original Authority to verify the facts in view of Board's clarification and allow the same if found in order.

(Pronounced in the Open Court on 28.08.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda