

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 11070 of 2015

[Arising out of Order-in-Appeal No-VLD-EXCUS-000-COM-0013-14-15 dated-19/02/2015
passed by Commissioner of Central Excise, Customs and Service Tax-Valsad]

Krupa Trading Company

.... Appellant

Plot No. 107 & 108,
New Gidc, Gundlav,
VALSAD,
GUJARAT

VERSUS

C.C.E. & S.T.-Valsad

....Respondent

Third Floor, Adarashdham Building, Vapi-Daman
Road, Vapi, Gujarat
396191

APPEARANCE :

Shri S. Suriyanaranan, Advocate for the Appellant
Shri Sanjiv Kinker, Superintendent (Authorised Representative) for the
Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

FINAL ORDER NO. A/10872/ 2020

DATE OF HEARING : 26.11.2019

DATE OF DECISION:20.03.2020

RAMESH NAIR

The short issue involved in the present case is that whether the denial of Cenvat Credit by the Adjudicating Authority for the reason that invoices of input service bear handwritten serial number is correct or otherwise.

2. Shri S. Suriyanarayanan, learned counsel appearing on behalf of the appellant at the outset submits that the identical case in the appellant's own case in appeal no. E/11069/2015 was heard by this bench on 03/10/2019 and order was reserved. He prays that the order in that appeal may be followed for deciding the present appeal.

3. Shri Sanjiv Kinker, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have heard both sides and perused the records. We find that in the appellant's own earlier case a show cause notice F.no. V(CH.70) 3-31/DEM/10-11 dated 30/05/2011 was issued on the same issue that whether the appellant is entitled for Cenvat Credit on the invoice issued by the service provider which bears handwritten serial number. That case was travelled up to this Tribunal in appeal no. E/11069/2015. This Tribunal vide order no. A/10424/2019 dated 07/02/2019 decided the matter in appellant's favour. The relevant part of the said order is reproduced below:

"5. On careful reading of the impugned order, we find that the entire finding is on the basis of interpretation of Rule 11 of Central Excise Rules, 2002, Rule 9 of the Cenvat Credit Rules, 2004, Rule 4(A) of Service Tax Rules, 1994, chapter 4 of Central Excise minor (CPEC/ and Supplementary Instructions), rule 4(A) of Service Tax Rules, 1994 and erstwhile rule 52(A)(6) of Central Excise Rules, 1944. In this regard, for the better appreciation of the provision, we reproduce the said relevant Rules:-

Rule 4A(1) of the Service Tax Rules, 1994 4A.

Taxable service to be provided or credit to be distributed on invoice, bill or challan.- (1) Every person providing taxable service shall issue, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or as the case may be, challan shall be serially numbered and shall contain the following, namely

- (i) The name, address and the registration number of such person*
- (ii) The name and address of the person receiving taxable service*
- (iii) Description classification and value of taxable service provided or to be provided and*
- (iv) The service tax payable thereon.*

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, providing service to a customer in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule.

Rules 11 of the Central Excise Rules, 2002

. • RULE 11. Goods to be removed on invoice.-

(1) No excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorized agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory:

*[**Provided** that a manufacturer of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 or readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act may remove the said goods under a proforma invoice signed by him or his authorised agent. The provisions of sub-rules (2) to (5) shall apply to the proforma invoice except that the said invoice shall not contain the details of the duty payable. The manufacturer shall, within five working days from the issuance of the proforma invoice prepare the invoice in terms of this rule after making adjustments in respect of the goods rejected and returned by the buyer. The proforma invoice and the invoice issued in terms of this sub-rule shall have cross reference to each other by way of their serial numbers:]*

***Provided** further that the said period of five working days, as referred to in the first proviso, may be extended upto a period not exceeding twenty-one days, inclusive of the said period of five working days, by the Commissioner of Central Excise, on receipt of a request from the said manufacturer.*

[(2) The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon.]

*[**Provided** that in case of a proprietary concern or a business owned by Hindu Undivided Family, the name of the proprietor or Hindu Undivided Family, as the case may be, shall also be mentioned in the invoice.]*

5.1. From the reading of the above rule it is clear that the invoice should bear serial numbers, however, there is no mention in the rules that the invoice should bear Pre-printed Serial Numbers. Therefore, we are of the clear view that the invoice should be "Serially Numbered" irrespective, whether, it is hand written or Pre-printed. Therefore, the Learned Commissioners finding that the invoice should bear Pre-Printed Serial Numbers is not flowing from the above cited provision. As regard nonmention of service tax registration or it is over written on the invoice the same is only procedural lapse, so long, there is no dispute regarding payment of service tax by the service provider. At the most, if the department has any doubt about the authenticity of the invoices due to the said discrepancies the department is free to carry out the verification of invoices at the service providers' end to ensure that with reference to the

invoices on which credit was availed, proper service tax was paid. We also observed that at the time of audit whereby the same objection was raised a report was sought from the service providers' end and it was found that the service tax was paid. We also observed that the appellant in their reply dated 20.06.2011 submitted regarding the verification of invoices with reference to audit objection and the same was recorded by the adjudicating authority in the impugned order which is reproduced below:-

(v) That, their above unit was first audited by the Audit Party under the provisions of EA-2000 for the period July, 2005 to February, 2009 in the month of Feb/March, 2009. (Vi) That above said unit was second time audited by the audit Party under the provisions of EA-2000 for the period March, 2009 to September, 2010 during the period November & December, 2010. The audit party has raised objection on availment of CENVAT Credit of Service Tax on invoices, issued by service provider, bearing had written serial number. During the courtse of audit, they showed their ledger regarding payment of value of input service including service tax and all the TR-6 / GAR-7 Challans of the service provider to the audit party of the relevant periods and that TR-6 / GAR-7 challans were verified by the Audit Party from the Bills / Invoices raised by the service provider on which credit service tax was taken which shows that service tax collected from them is paid by service provider. (vii) that, on 29-01-2011, they have been provided a copy of the Audit report issued under F.No. V (a) / EA-2000/ Gr-xx / KTC (100% EOU) / 2010-11 dated 28-01-2011 alsong with letter dated 29-01-2011 of Superintendent of Central Excise Range-Valsad, Wherein they have been asked to furnish the reply of the audit part's raid by audit party in above said audit report. (viii) that, they submitted their detailed submissions about para's raised by the audit party in the above said audit report vide their letter dated 08-02-2011 to the Superintendent of Central Excise, Range-Valsad. Thereafter, Range Superintendent of Central Excise, Valsad verified all hand written serial numbered invoices of service provider with TR-6 /GAR-7 challans of the service provider through which service tax was paid by service provider and submitter his detailed report to the Deputy Commissioner of Central Excise, Division- Valsad. Thereafter, Deputy Commisioner of Central Excise, Division- Valsad submitted his detailed report to the Deputy Commissioner of Central Excise, Customs & Service Tax (Audit), Daman Commissionerate vide their letter dated 10.03.2011 about the para taken in audit report. Thereafter, being satisfied by the report of the Deputy Commissioner of Central Excise, Division- Valsad, the Deputy Commissioner of Central Excise, Customs & Service Tax (Audit), Daman Commissionerate dropped the para. The copy of the leter dated 10.03.2011 of the Deputy Commissioner of Central Excise, Valsad enclosed as ANNEXURE-C of the their submission. that, therefore, the issue being dropped by the Audit and Higher authorities taking into account the facts and legal position should not have been raised by issue of show cause notice without taking into consideration all aspects of the case.

5.2 From the above submission of the appellant recorded by the adjudicating authority, it is prima facie clear that there is no dispute as regard genuineness of the invoices and payment of service tax against said invoices. However, the Learned Commissioner even after considering the aforesaid factual position proceeded to disallow the credit solely on the ground that the invoices do not bear the Pre-printed Serial Number and the Registration Number is not mention in the invoice or it is over written.

6. We are of the view that merely for the for the said discrepancies cenvat credit cannot be denied as held in catena of judgments, some of which cited by the Learned Counsel, so long it is not under dispute that the

service tax was paid by the service provider. However, since, Learned Commissioner has not given any finding on the submission of the appellant made in para (v) and (viii) of the impugned order, We are of the view that the matter needs to be re-considered only on the aspect that on the disputed invoices, the service providers have paid the service tax.

7. We, therefore, set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order taking into account our above observation."

The reason for denial of the Cenvat Credit in the above decision of the Tribunal and in the present case is absolutely identical. Since the issue in the appellant's own case has already been decided vide order dated 07/02/2020, there is nothing more to discuss on the issue in hand. Accordingly, following the decision of this bench in above cited order dated 07/02/2020, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on 20.03.2020)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha