

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, ALLAHABAD**

REGIONAL BENCH : COURT NO.I

Service Tax Appeal No.70759 of 2017

(Arising out of Order-in-Original No.06/COMMISSIONER/NOIDA/2017-18 dated 16.08.2017 passed by Commissioner of Service Tax, Noida.)

M/s. Cyquator Meida Services P.Ltd.

(FC-19, Sector 16-A,
Noida, Uttar Pradesh (201301))

...Appellant

VERSUS

Commr., Central Goods & Servie Tax,Noida

(C-56/42, Renu Tower, Sector 62,
Noida, Uttar Pradesh (201309))

...Respondent

APPEARANCE

S/Shri A.R.Madhav Rao (Advocate), Nishant Mishra (Advocate) & Mihir Gupte (Advocate) for the Appellant (s)

Shri Gyanendra Kumar Tripathi (Dy.Commr.) (A.R.) for the Revenue

CORAM:

**MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)**

FINAL ORDER NO : 71061 / 2019

DATE OF HEARING : 14 May 2019

DATE OF DECISION : 14 May 2019

MRS. ARCHANA WADHWA :

After hearing both sides we find that the appellant is engaged in providing 'call centre services' from their registered address as at A-

94/7, Sector 58, Noida. They are discharging their Service Tax liability, after availing the benefit of Cenvat credit of Service Tax paid on various input services.

2. The dispute in the present appeal relates to the Cenvat credit of around Rs.20.22 Crores availed by the appellant during the period 2011-2014, which stands raised against them by way show cause notice dated 05.10.2016, by invoking the longer period of limitation. The notice proposed denial of credit is on three different grounds. First that the invoices of the service provider are in the name of call centre, whereas the same should have been in the name of their head office located at Sector 16A, Noida. Further a part of the credit is sought to be denied on the ground that the invoices are not in the appellant's name and as such cannot be held to be eligible documents. Further part of the demand was proposed to be upheld by denying the benefit of the Cenvat credit of Service Tax availed during the period prior to taking the registration.

3. The said show cause notice stand culminated into the impugned order passed by Commissioner confirming the demands and imposing penalties upon them. Hence the present appeal.

4. After hearing both sides duly represented by Shri A.R.Madhav Rao, learned Advocate for the appellant and Shri Gyanendra Kumar Tripathi, learned A.R. for the Revenue, we note that the credit amount of around Rs.18.35 Crores stand denied to the appellant on the sole ground that the invoices were in the name of their call centre whereas the same should have been in the address of the head office, which is the registered premises with the Service Tax department. Learned Advocate explains that appellant is running only one call centre located in Sector 58 of Noida and for the purposes of maintenance of records/accounts etc., they have their head office in sector 16A. Inasmuch as the orders were being placed from the call centre, all the invoices of the service providers were issued by them at the address of the call centre. He explains that all the activities are undertaken at their call centre from Sector 58 and the output services are also being provided

from the said premises. As such the address shown in the invoices, being that of the actual place of service provider are all eligible documents in the eyes of law. He submits that there is no requirement under the Cenvat Credit Rules that the address should be that of the head office. For the above proposition he has referred to the various decisions of the Tribunal.

5. We note that the adjudicating authority has not disputed the factum of receipt of various input services, their utilization for providing output services and the factum of any nexus between the input services and the output services. We also find favour with the assessee's contention that inasmuch as output services were being provided from Sector 58 Call Centre and the services were being received at the said premises, the invoices showing the address of sector 58 i.e. the place of actual receipt of the inputs services and their consumption for providing output services, is appropriate. No reference stand made by the adjudicating authority to any provision of law requiring the invoices to be in the name of the head office.

Learned Advocate has also brought to our notice an earlier decision of the Commissioner being Order dated 03.11.2015 for which the earlier demand raised on the identical issue for the earlier period stands dropped by him. As per the information of the learned Advocate, the said order of the Commissioner has not been appealed against by the Revenue and as such stands accepted by them. In such a scenario also, it was not proper for the present Commissioner to confirm the demand.

Otherwise also we note that the issue stand decided by various decisions of the Tribunal. Learned Advocate has referred to the following case law:-

- a. Manipal Advertising Services Pvt.Ltd. v. CCE, Mangalore 2010,
[(19) STR 506 (Tri-Bang.)]
- b. Ramgarh Chini Mills v. CCE
[1998 (103) ELT 65 (Tri.)]
- c. Chrome Chemical Industries v. CCE
[2001 (135) ELT 405 (Tri.-Kol)]
- d. Two Brothers vs. CCE, [2001 (129) ELT 236 (Tri.-Del)]

- e. Recold Appliances Ltd. v. CCE,
[2003 (159) ELT 321 (Tri.-Mum)]
- f. General Electric Int'l Inc. v. CST
[2006 (4) STR 90 (Tri.-Del)]

Reference also stands placed to the following set of precedent decisions in support of his plea that credit cannot be denied on technical grounds:-

- a. C.C.E. Vapi v. Jindal Photo Ltd.
[2009 TIOL 359 (Tri-Ahm)]
- b. Zinc-O-India v. CCE
[1996 (88) ELT 373]
- c. Mangalore Chemicals and Fertilizers vs. D.C.
[(1991) 55 ELT 437 (SC)]

6. It stands held in all the above decisions that in the absence of any dispute about the availability of Cenvat credit, the receipt of the input services and use of the same for providing output services, the denial of the credit on the hyper technical ground of the address being different than the one given in the invoices, the denial is neither justified nor proper. It is well settled that substantial benefits cannot be denied on the basis of some procedural lapses. Otherwise also the defect pointed out by the Revenue in the invoices, if any, are rectifiable defects and the denial on the said basis cannot be allowed. Accordingly we hold on the said issue in favour of the assessee.

7. Further a part of the demand to the extent of around Rs.89.00 Lakhs stands denied on the ground that some of the invoices were not even in the name of the assessee, though the address in the invoices matches with the address of the assessee. The appellant during the course of adjudication explained that earlier the appellant was known as M/s.Integrated Subscriber Management Services Ltd., which became M/s.ESSEL Business Process Ltd. in June 2011. The said M/s.ESSEL Business Process Ltd. got merged with the present appellant in December 2011. The invoices in question pertained to an in-between period when the process of change in names and the merging proceedings were going on before the Hon'ble Bombay High Court. It is only with the order dated 02.12.2011 of the Hon'ble Bombay High

Court that the two companies merged. The invoices in question were issued by the input suppliers under the name of the previous companies, as the orders were placed prior to the date of merger, which could not be intimated and changed in the name of the freshly situated merged company. This is only for a limited period and thereafter all the invoices were issued in the name of the present appellant.

8. We again note here that the Revenue is not disputing the above factual position as also the fact of receipt and utilization of input services. The invoices under dispute and issued in the name of the erstwhile name of the company, related to the input services which were actually received by the appellant at their call centre premises and were used for output services. The denial of the credit on the said ground is not justified. Support is drawn from the earlier decisions of the Tribunal in the case of CCE, Jaipur v. Shree Cement [2002 (147) E.L.T. 1031] as also to another decision of the Tribunal in the case of M/s.Showal India (P) Ltd. v. C.C.E. [2012 (25) S.T.R. 152 (Tri.Delhi)].

9. Further Cenvat Credit to the extent of Rs.98.00 Lakhs stand denied on the ground that the same was availed prior to the registration. The said issue is no longer *res integra* and stands settled by the Hon'ble Karnataka High Court in the case of mPortal India Wireless Solutions Pvt.Ltd. v. C.S.T., Bangalore reported at 2012 (27) S.T.R. 134 (Kar.). The same stands followed by various decisions of the Tribunal. Some reference can be made to (i) J.P.Kenny Ltd. v. CCE reported at [2015 (1) TMI 1199 –CESTAT New Delhi], (ii) Reliance Ports and Terminals Ltd. v. CCE [2013-TIOL-388-CESTAT-Mum], (iii) Commissioner of Central Excise v. Curadev Pharma (P) Ltd. [2017 (7) G.S.T.L. 269 (All.)].

10. The credit availed prior to the actual date of registration for providing output services has been held to be admissible inasmuch as there is no requirement in the Cenvat Credit Rules by an assessee to be registered for availing credit. As such on this ground also the impugned order cannot be upheld.

10. In view of the foregoing, we set aside the impugned order confirming demand and imposing penalties and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in the open Court.)

Sd/-
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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