

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

Regional Bench COURT-2.

Service Tax Appeal No. 20343 of 2017

[Arising out of the Order-in-Original No. BLR-EXCUS-004-COM-025-2016-17
dated 08.12.2016 passed by the Commissioner of Central excise & Service
Tax, Bangalore]

Oracle India Pvt Ltd.

Oracle Technology Park
Bannerghatta Road
Dharmaram College,
Bengaluru,
Karnataka – 560029

.....Appellant

VERSUS

**Commissioner of Central Excise &
Service Tax, Bangalore -IV**

HMT Bhawan, Bellary Road
Bengaluru Urban,
Karnataka – 560032

..... Respondent

Appearance:

Shri. Bharat Raichandani, Advocate for Appellant

Shri Rajiv Kumar Agarwal, Authorized Representative for Respondent

Coram:

Hon'ble P.A. Augustian, Member (Judicial)

Hon'ble Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 21154 of 2024

Date of Hearing: 03.05.2024

Date of Decision: 29.10.2024

Per: P.A. Augustian

The issues involved in present appeal are whether the reimbursement of Rs. 2,79,58,760/- received by the appellant is a consideration towards provision of taxable service, whether the CENVAT credit of Rs. 63,71,672/-, availed by the Appellant on the basis of the debit notes is admissible, whether CENVAT credit of Rs. 74,160/-

availed on the invoices issued for out of pocket expenses is admissible, whether interest is payable on CENVAT credit availed but not utilized.

2. The brief facts of the case are appellant is registered with Respondent under various service categories and was paying service tax as per the declarations made by the Appellant. During the course of Audit for the period from October 2009 to March 2011, it is observed that the Appellant; received an amount of Rs. 27,14,44,272/- as reimbursement expenses from other companies, which are leviable to service tax under the category of BAS/BSS and the service tax liability was Rs. 2,79,58,760/-; availed service tax credit on the basis of debit notes issued by various service providers amounting to Rs. 63,71,692/-; availed input service tax credit on various input services alleged to have no direct nexus with their output services to the extent of Rs. 4,17,47,810/-; availed service tax credit of Rs. 74,160/- on invoice issued by M/s. Deloitte for Rs. 6,74,160/- for out of pocket expenses; availed input service tax credit of Rs. 1,24,65,080/- under the category of 'Management and Repair' service, however, the description of the service as per input invoices was showing as housekeeping, pest control, outdoor catering service, etc., which do not have any nexus with their output services; availed Cenvat credit of Rs. 3,38,19,233/- on maintenance charges, car parking charges, fit out charges of immovable property, which do not have any nexus with their output services; appellant paid goodwill amounts to certain parties on which an amount of Rs. 2,69,66,352/- is leviable as service tax under 'Business Auxiliary Service'; availed irregular input service credit of Rs. 8,94,148/- plus cess on banquet charges, hotel bills, concierge services etc., paid an amount of Rs. 47,77,09,539/- in foreign currency for the

services received from outside India, hence, the service tax of Rs. 4,92,04,083/- under Reverse Charge Mechanism (RCM) under the provisions of Section 66A of Finance Act, 1994 is payable; Based on the above and other observations of the Audit a Show Cause Notice was issued to the appellant.

3. After considering the issues in detail, the Adjudicating authority as per the impugned order; confirmed the demand on reimbursement expenses of Rs. 2,79,58,760/- from other companies, under the category of Business Auxiliary Services/Business Support Services along with interest and imposed penalty under section 78 of the Finance Act, 1994; confirmed the service tax liability on the Cenvat credit availed of Rs.63,71,672/- based on debit notes along with interest, confirmed the demand of ineligible CENVAT credit Rs. 74,160/- along with interest and imposed penalties under Rule 15A and 15(3) of CCR, 2004 r/w section 77 & 78(1) of the Finance Act, 1994; the demand of interest on wrongly availed credit of Rs. 9,04,222/- and reversed was confirmed; the demand of service tax of Rs. 4,92,04,083/- and Rs. 2,69,66,352/- were dropped; the demand of Rs. 4,17,47,810/- alleged to be the ineligible credit was dropped as the same was held to be eligible to the appellant; the demand on irregular Cenvat credit of Rs. 1,24,65,080/- and Rs. 3,38,19,233/- was held regular and dropped the demands. Aggrieved by the said order, present appeal is filed by the appellant before this Tribunal.

4. The Learned Counsel during the hearing drew our attention to the Show cause notice issued by Respondent and submitted that the findings of the Adjudication Authority in the impugned order are beyond the allegations in the Show Cause Notice.

5. The learned counsel submitted that; the Appellant has carried out business through two divisions i.e. Sales and Distribution Division (IN Division) and Development Division (IDC Division); they are two limbs of Appellant's company i.e. IN and IDC Divisions and they do not represent two different entities. However, the Adjudication Authority has presumed that the two Divisions of the Appellant are two different companies, and such finding is factually incorrect; the amount alleged as reimbursement of expenses is in fact the closing balance of an expense ledger; the impugned order confirmed a demand of service tax amounting to Rs 27,958,760 /-based on the incorrect assumption that the said amount of Rs 271,444,272/- pertains to reimbursement of expenses from other companies; this amount represents the office space that was reallocated from one division of the Appellant (the IN division) to another (the IDC division); the disputed amount of Rs. 271,444,272/- is not attributable to any value of reimbursement of expenses or a consideration received from other companies as assumed in the impugned Order; the amount alleged as reimbursement of expense is the closing (debit) balance of one expense ledger account for office rent; there could be instances where a benefit arising out of a business expenditure incurred by the Appellant (either by IN or IDC) is jointly enjoyed by both divisions; the cost gets allocated between the two divisions; however, in case due to some internal reallocation of resources from IN to IDC division, the proportionate cost incurred by the IN division is reclassified to IDC division by passing a Credit entry of the proportionate cost in the relevant ledger of IN division and by making a corresponding debit entry to this effect in the relevant ledger for IDC division; the Debit entries in the General Ledger pertain to the

expenses booked in it and the Credit entries pertain to a reduction in the expenses on account of reversal or transfer/re-classification of expenses. The closing balance of the ledger account is arrived by deducting the value of credit entries from the total value of the Debit entries; that is to say that the closing balance of Rs 271,444,272/- equal to Debit Balance - Credit Balance is a result to reclassification of entries from IN to IDC division and not on account any provision of service; the underlying accounting transactions are cost allocations between two divisions of same entity (i.e. Appellant) and do not constitute a service; in the absence of provision of a taxable service, there are no service tax implications on such transactions; this can be further substantiated on the basis of the Balance sheet of the Appellant for FY11; the amount of Rs 271,444,272/- forms part of the operating expenses in the Profit and Loss account of the Appellant.

6. The Learned Counsel furnished details of the transaction and accounting procedure carried out by the Appellant and submitted that the transactions of the Appellant are classified and accounted either under IN Division or under IDC division depending on the nature of the transaction. The accounting is carried out in this manner for internal control purpose, only. Thus, it cannot be considered as reimbursable expenses. These two divisions are created to facilitate operational efficiency and for the purpose of internal control of the business of the Oracle India. Since these two are the two limbs of the Appellant, the finding given by the Adjudication authority is factually incorrect and unsustainable. The Learned Counsel further submitted that the books of accounts are maintained by the Appellant on accrual basis of accounting by following the accounting standards. The Learned Counsel also relied

on the decision of the Hon'ble High Court in the matter of **M/s Firm Foundation Vs. Principal Commissioner (MANU/TN/1734/2018)**, wherein the Hon'ble High Court held that service tax liability cannot be determined based on the profit and loss accounts.

7. The Learned Counsel further submitted that Service Tax is to be levied on the value of services provided by the service provider. The term "charged" under Section 67 coupled with "such service" has to be read in context and in tandem with each other. In this case there is no sum charged by the appellant to the service recipient for provision of any service. In the absence of any service recipient in the present case, there is no consideration received by the Appellant for providing services and the transaction is in the nature of reallocation/reclassification or cost allocation between two divisions of same entity and there is no consideration for providing the services between these two entities. Thus, considering these two divisions of the Appellant separately and to consider it as reimbursement and to deny the CENVAT credit is unsustainable.

8. The learned Counsel further submitted that as per the impugned order it was held that debit notes do not contain all the particulars mentioned under Rule 4A of Service Tax Rules, 1994 read with Rule 9 of CENVAT Credit Rules, 2004 and the debit notes have not been accounted in the books of account of the Appellant. The learned Counsel submitted that this was never the case of the Department in the SCN. The Learned Counsel drew our attention to the finding of the judgment of Hon'ble Supreme Court in the matter of **M/s Prince Khadi Woollen Handloom Prod Coop Indl Society Vs. CCE - 1996 (88) E.L.T 637 (SC)**, wherein it is held that Tribunal's decision denying relief to the

Appellant on a ground never taken by Revenue is impermissible. The Learned Counsel also relied on catena of decisions including in the matter of **M/s Reckitt & Colman of India Pvt Ltd. Vs. Collector of Central Excise – 1996 (88) ELT 641 (SC); CCE Vs. Ballarpur Industries Limited – 2007 (215) ELT 489 (SC); Caprihans India Ltd Vs. CCE – 2015 (325) ELT 632 (SC); CC Vs. Toyo Engineering India Ltd – 2006 (201) ELT 513 (SC); CCE & C, Surat Vs. Sun Pharmaceuticals Industries Ltd. 2015 (326) ELT 3(SC).**

9. The Learned Counsel drew our attention to large number of debit notes issued by them as part of the appeal memorandum and submitted that the entire facts regarding the details of service provider, service tax registration number, PAN card etc., of the service provider with amount and other details are available on record and facts being so doubting the credibility of debit notes without ascertaining the above facts is factually incorrect.

10. As regards, the demand of Rs. 63,71,672/- on the ground that the Appellant had wrongly availed CENVAT credit on the basis of debit notes. The Learned Counsel submitted that as per the SCN, it is alleged that debit notes are not valid documents to avail credit in terms of Cenvat Credit Rules, 2004 and when the appellant challenged the same, the Adjudication authority admitted that debit note can be an eligible document to avail the CENVAT credit. However, without making any objection regarding the details furnished in the debit notes, it was held that the assessee has not argued that the debit note contains all the prescribed details as per the provision of Act and Rules. The Adjudication authority denied the admissibility of the debit note on the ground that vital information with regard to value, nature of service,

payment of service tax are not made available in the debit notes and due to these reasons, same cannot be treated as eligible documents under Rule 9 of Cenvat Credit Rules, 2004. However, on bare perusal of the documents, it is evident that the entire details are available in the debit notes and facts being so, denial of the same is unsustainable.

11. The Learned Counsel further submitted that once the Appellant have produced receipts for the service and payment is made to the service provider, Appellant has complied with substantial condition for availing credit and cannot be disputed. The Learned Counsel in this regard relied on the decision of **M/s Pharma Lab Process Equipment Vs. CCE -2009 (242) E.L.T 467 and CCE Vs. M/s Gwalior Chemicals Industries, Ltd -2011-TIOL-1635-(CESTAT Del) and CCE Vs. M/s Grasim Industries Ltd - 2011 TIOL-1660 CESTAT Del.** In this regard, the Learned Counsel also submitted that the finding of the Adjudication authority that the debit notes have not been accounted in the books of accounts is factually incorrect. There is no evidence adduced either in the SCN or in the impugned order to reach such a conclusion. The debit notes are properly accounted in the books of account.

12. As regards denial of credit of Rs. 74,160/- availed on the invoice of M/s Deloitte Touche Consultant India Pvt., Ltd, the learned counsel submitted that the findings of the Adjudication authority that these expenses are out of pocket expenses are also unsustainable. The Appellant had paid the said amount to the consultant M/s Deloitte & Touche Consultant India, for submission of future process documents, completion of CRPs and submission of Technical Design Documents for interface. Facts being so, it cannot be considered as the invoice raised

was for out of pocket expenses. The Learned Counsel for the Appellant to support the same drew our attention to the invoice and from the invoice it is evident that the Appellant had been charged separately in relation to the above service and paid the consideration along with the service tax amounting to Rs. 74,160/-. Further Appellant had produced certificate from the service provider to this effect. Thus, once original invoices are issued, Appellant is eligible to claim CENVAT credit against the same.

13. As regards the interest on the wrongly availed CENVAT credit, the Appellant submitted that amendment to Rule 14 of the CENVAT Credit Rules vide **Notification No. 18/2012-CE (N.T) dated 17.03.2012** clearly establish the intent of legislation to levy interest only in cases where wrongfully availed credit is used. It is a well-established legal principle that curative amendments shall have retrospective effect. Since Appellant has not utilized the CENVAT credit, no interest is payable.

14. The learned counsel submitted that in order to give effect to the manifest intent of the legislature and to cure the apparent defect in Rule 14 of the Cenvat Credit Rules, an amendment was made to the Rule vide **Notification 18/2012-CE (N.T) dated 17.03.2012**, wherein the phrase 'taken and utilized wrongly' was substituted for 'taken or utilized wrongly'. The Hon'ble Supreme Court in **ITW Signode India Ltd v CCE 2003 (158) E.L.T 403 (S.C)**, explaining the effect of a curative legislation held that; "statute, it is trite, must be read as a whole. The plenary power of legislation of the Parliament or the State Legislature in relation to the legislative fields specified under Seventh Schedule of the Constitution of India is not disputed. A statutory act

may be enacted prospectively or retrospectively. A retrospective effect indisputably can be given in case of curative and validating statute. In fact, curative statutes by their very nature are intended to operate upon and affect past transaction having regard to the fact that they operate on conditions already existing. However, the scope of the Validating Act may vary from case to case." The learned counsel submitted that the period involved in this case is October 2009 to March 2011, therefore in the light of the above, no interest is payable on the amount of Cenvat credit reversed prior to utilization.

15. The Learned Counsel also challenged the impugned order on the grounds of limitation. There is no reason or justification to invoke the extended period of limitation and due to that reason, penalty and interest cannot be demanded from the Appellant.

16. The Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submitted that the CENVAT credit is denied on the debit notes since the debit notes are not issued in compliance with Rule 9(2) of the Cenvat Credit Rules, 2004. As regards the service tax availed on invoices of the consultant, it is disallowed since the invoice does not show the actual service provider, who has raised the bill. As regarding the interest on CENVAT credit, since they have 'taken or utilized' the credit wrongly, they are liable to pay interest.

17. The Learned AR also drew our attention to the judgment of Hon'ble High Court of Madras in the matter of **CCE, Mysore Vs. M/s Sree Kumaran Alloys Pvt Ltd - 2019 (365) ELT (305)**, wherein it is held that;

"8. This Civil Miscellaneous Appeal has been filed by the Revenue raising the following substantial questions of law.

(i) Whether the Hon'ble Tribunal has committed substantial error in law by waivering the demand of interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11 AB of the Central Excise Act when the legal position is settled by the Hon'ble Supreme Court in the case of Union of India Vs. Ind-Swift Laboratories Ltd. in Civil Appeal NO. 1976 of 2011 [2011 (265) ELT 3 (SC), dated 21-02-2011, the word 'OR' in between the expression 'taken or utilized wrongly' or has been erroneously refunded as the word "AND" on the happening of any of the three circumstances such credit became recoverable along with interest?

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18. For all the above reasons, the first substantial question of law, as framed above, is answered in favour of the Revenue and against the assessee. However, for the reasons assigned by us in the preceding paragraphs and the discussions contained therein, we dismiss the appeal of the Revenue and confirm the order of the Tribunal for the reasons stated therein and decide the question of law in favour of the Revenue."

18. Learned AR also relied on the judgment of the Apex Court in the matter of **M/s Bombay Dying - 2007 (215) E.L.T 3 (SC)**. and also relied on the decision of the Tribunal in the matter of **CCE, Surat Vs. M/s Atul Ltd. - 2017 (358) E.L.T 825**, wherein the Hon'ble Tribunal held that; in these circumstances, I do not find merit in the contentions raised in the respective appeals that mere availment of CENVAT credit without its utilization of the same will not attract interest at appropriate rate under Rule 14 of Cenvat Credit Rules, 2004 as was in force during the relevant time.

19. As regards invoking the extended period of limitation, Ld. AR submitted that the Appellant had availed ineligible credit and also failed

to reflect proper credit details in the ST-3 returns. Following the judgment of the Hon'ble Supreme Court in the matter of **M/s Rajasthan Spinning & Weaving Mills-2008 (238) ELT 3 (SC)**, the Adjudication authority rightly invoked the extended period of limitation.

20. As a rejoinder the learned counsel, as regards the interest on the Cenvat credit, which was availed but duly reversed before utilization submitted that the demand is made mechanically without considering Rule 14 of Cenvat Credit Rules, 2004. Moreover, the issue is settled by the judgment of Hon'ble Supreme Court in the matter of **CC Vs. Bombay Dyeing and Manufacturing Co. Ltd. - 2007 (215) ELT 3**, wherein it is held that Cenvat credit reversed before utilization thereof would be tantamount to credit not having been availed. The said principle has also been accepted by CBEC as per Circular no. 858/16/2007-CX dated 08.11.2007.

21. Heard both sides and perused the records.

22. As regards, the demand of service tax alleging transaction as reimbursement of expenses from other companies, we find that there is no service provided and it is shown only for the accounting purpose between two Divisions of the Appellant. Therefore, service tax cannot be demanded on the ground that they are expenses reimbursed by the other companies.

23. As regards, availing CENVAT credit based on the debit notes issued by the service providers, we find that the services were received by the appellant and the payment for the services are also made to the service providers. We find that the debit notes contain the essential particulars as required under Rule 9(2) of the Cenvat Credit Rules, 2004. Further, these debit notes are accounted in the books of accounts

of the appellant. Therefore, we find that the appellant has fulfilled the requirements under Rule 4A of Service Tax Rules, 1994 and Rule 4(7) and 9(2) of CCR, 2004. Therefore, the denial of Cenvat credit on the debit notes is unsustainable.

24. As regards the denial of CENVAT credit alleging out of pocket expenses, we have gone through the invoice produced by the Appellant and also the certificate issued by the consultant specifying the details of the services provided. The invoice produced by the Appellant also clearly shows that it is for the purpose of completion of various activities. Facts being so, there is no justification in denying the CENVAT credit against the above invoices once it is paid with applicable service tax.

25. As regards invoking the extended period of limitation, the issue involved in the present appeal is in the nature of interpretation and considering the fact that Appellant has been paying service tax and filing ST-3 returns in time and there is no allegation that the Appellant had made a deliberate attempt to evade payment of tax, following the decisions in **M/s Reckitt & Colman of India Pvt Ltd. Vs. Collector of Central Excise (Supra) Ballarpur Industries Limited – (Supra) Caprihans India Ltd Vs. CCE – (Supra), CC Vs. Toyo Engineering India Ltd – (Supra), CCE & C, Surat Vs. Sun Pharmaceuticals Industries Ltd. (Supra)**, we find that the extended period for demand of service tax is not sustainable.

26. As regards the interest on CENVAT credit availed but duly reversed before utilization, the demand is made without considering the extant Rule 14 of the Cenvat Credit Rules, 2004. Moreover, the issue is settled by the judgment of the Hon'ble Supreme Court in the matter of

CCE Vs. Bombay Dyeing and Manufacturing Company Ltd - 2007

(251) E.L.T 3, wherein it is held that where CENVAT credit is reversed before utilization thereof, it would be tantamount to credit not having been availed. The said decision has also been accepted by CBEC as per **Circular No. 858/16/2007-CX dated 08.11.2007**. However, in the facts and circumstances of the case, since we find that the appellants are eligible to avail Cenvat credit on the debit notes and the service received from M/s Deloitte, the demand of interest on the CENVAT credit availed but not utilized by the Appellant does not arise.

27. In view of the above discussion, and the decisions of the Hon'ble Apex Court and the Tribunal on the issues involved, the appeal filed is sustainable and needs to be allowed.

28. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 29.10.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar