CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

COURT HALL NO.1

Appeal(s) Involved:

ST/20154/2016-DB

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-27-28-2015-16 dated 17/10/2015 passed by Commissioner Of Customs, Central Excise and Service Tax , COCHIN]

Inditrade Derivatives And Commodities Ltd
Xxxvi/202,j.j Complex,diary Methanam Road,
Edappally, Kochi
COCHIN KERALA – 682 024

Appellant(s)

Versus

C.C.,C.E.& S.T-Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Respondent(s)

AND

ST/20911/2018-DB

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-38-2018 dated 26/02/2018 passed by Commissioner Of Central Taxes & Central Excise(Appeals), COCHIN]

C.C.,C.E.& S.T-Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN,
KERALA
682018

Appellant(s)

Versus

Inditrade Derivatives And Commodities Ltd
Xxxvi/202,j.j Complex,diary Methanam Road,
Edappally, Kochi
COCHIN KERALA – 682 024

Respondent(s)

Appearance:

Shri Jose Jacob, Advocate
JRS ASSOCIATES, ADVOCATES & CONSULTANTS
#41/3787,1ST FLOOR,
CARAMEL CENTRE BANR=ERJI ROAD
COCHIN
KERALA
682018

For the Assessee

Shri P. Gopakumar, Jt. Commissioner(AR)

For the Revenue

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 23/07/2019
Date of Decision:22/11/2019

Final Order No. 21026-21027 / 2019

Per : S.S. GARG

This order will dispose of two appeals, one filed by the assessee (ST/20154/2016) and another by the Department (ST/20911/2018). Since the issue involved in both the appeals is identically, both the appeals are taken up together for discussion and disposal. For the sake of convenience, we take up the facts of the assessee's appeal first, in which impugned order dt. 17/10/2015 was passed disposing of two show-cause notices.

2. Briefly the facts of the present case are the appellant/assessee, previously known as M/s. J.R.G. Wealth Management Ltd., is a limited company engaged in providing services in relation to 'Forward Contract' and are registered with the Service Tax authorities. On verification of the financial records of the assessee by the audit party of the Central Excise Department, it was observed that the assessee and their sister concerns viz. M/s. JRG Securities Ltd., M/s. Inditrade Business Consultants Ltd. and M/s. JRG Fincorp Ltd. are having branches all over India; that in most of these branches one or more or even all of these sister concerns are functioning; that Head Officers of the assessee and their sister

concerns are also functioning commonly (with common staff and management); that the input services provided to aforesaid branches and head officers, by services providers, are commonly used by all the four entities and that these services include telephone charges, net connectivity charges (other than leased lines), rent, payroll outsourced agency, house keeping, courier, banking, recruitment charges, maintenance & repair etc. it was also seen that there are input services which are exclusively used by the assessee, these being, sub-brokerage commission, transaction charges in NCDX and NMCE, leased line (V-SAT-VPN) and MPLS charges, SMS services to commodity clients, exchange annual subscription- MCX, NCDEX etc. On verification, it was observed that, for the branches and HO of the assessee, the input service providers raise bills in the name of the assessee which are paid by the assessee along with service tax payable; that the same practice is followed by other sister concerns also and that the protion of service tax paid on input services used by the four units (including the assessee) are calculated periodically by their audit team and respective portion of credit is taken/availed by each unit, based on inter-unit documents, as their share of input service credit. The assessee has stated that such apportionment between the units commenced from April 2012 onwards and that they have not taken service tax registration under the category 'Input Service Distributor (ISD, for short)' in respect of any of their office. Even though the apportionment between the units is said to have commenced only from April, 2012, the assessee has been benefited from such sharing from September 2011 onwards. The Department entertained the view that the assessee/appellant are not entitled to CENVAT credit on shared service expenses based on the debit notes issued by the sister concerns. The appellant had availed cenvat credit amounting to Rs.1,64,06,571/- based on the debit notes issued by the sister concerns with respect of sharing of certain common input services. Further the allegation of the Department is that the appellants have availed credit amounting to Rs.33,47,354/- on input services which are received by the sister concerns and the appellant and entire credit was availed by the appellant on the basis of invoices issued by the service provider to the assessee. On these allegations, two show-cause notices No.198/2014/ST dt. 02/09/2014 and No.29/2015/ST dt. 03/03/2015 were issued and after giving opportunity of hearing to the appellant, the Commissioner confirmed both the demands by disallowing the cenvat credit of Rs.1,15,61,301/- and also imposed penalty of Rs.1,15,61,301/- in SCN dt. 02/09/2014 and disallowed the cenvat credit of Rs.81,92,624/- in SCN dt. 03/03/2015 and also demanded appropriate interest under Section75 of the Finance Act, 1994. The Commissioner also imposed penalty of Rs.10 lakhs on the appellant/assessee under Rule 15(1) of the CENVAT Credit Rules, 2004 (CCR). Aggrieved by the said order, the appellant/assessee has filed the appeal No.ST/20154/2016.

3. Heard both sides and perused the material on record.

4.1. The learned counsel for the appellant/assessee submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law. He further submitted that the primary dispute in the present case is regarding the availment of CENVAT credit on shared service expenses based on the debit notes issued by the sister concerns. Appellants had availed the CENVAT credit based on the debit notes issued by the sister concerns with respect to sharing of certain common expenses but the Revenue was of the view that the input services were provided by other service providers and not by any of the sister concerns and therefore the availment of cenvat credit based on debit notes issued by the sister concerns is incorrect. The Revenue further alleged that the distribution of expenses among group companies is a business model adopted by the group of companies for better utilization of resources and for minimizing expenses and such mechanism is not covered under the provisions of CCR. The learned counsel further submitted that when the service tax has been discharged by the sister concerns by way of raising debit notes, it can be inferred that they have provided services to the appellant. Further when there is no objection with regard to payment of service tax on reimbursement of expenses at the end of the service provider and after having accepted the tax as well as the returns, denial of cenvat credit of service tax paid by the service recipient is not justified. He also submitted that the second issue in the present case is regarding availment of credit amounting to Rs.33,47,354/- on input services which are received by the sister concern and the appellant and the entire credit was availed by the appellant on the basis of invoices issued by the service provider to the assessee. To counter this issue, the appellant submitted that since they have incurred expenses for input services which are shared with the sister concerns, the appellants have initially availed the entire credit based on the invoices issued by the service providers and thereafter the respective share of expenses from the other sister concerns has been recouped by way of issuing debit notes charging service tax. He also submitted that there is no revenue loss to the Government and each entity has only availed credit attributable to them. He also submitted that during the hearing, the Tribunal has raised the following queries: (a). whether cenvat credit availed by the appellant based on the debit notes issued by sister concerns matches with the tax paid by the sister concern on debit notes raised on the appellant; (b). the tax paid on debit notes issued by the appellant on sister concerns does not exceed the tax credit availed by the appellants on services which are shared. To satisfy the queries raised by the Tribunal, the appellant has enclosed a certificate issued by the independent Chartered Accountant certifying that credit received by the appellants from sister concerns matches with the tax paid by the sister concern on debit notes raised on the appellants and tax paid on debit notes raised by the appellants on sister concerns does not exceed the tax credit availed by appellant on services which are shared.

4.2. He further argued during the course of hearing, Revenue argued that the credit on input services distributed by the sister concerns cannot be availed by the appellants when former was not registered as ISD. In reply to this, the learned counsel submitted that it is well settled that registration is not compulsory for availing cenvat credit. For this submission, he relied upon the decision in the case of State Bank of Patiala Vs. CCE, Chandigarh [2014(34) STR 85 (Tri. Del.)] wherein it was held that while registration is one of the requirements for admissibility of credit, the documentary evidence in support of the claim is also equally to be considered in all material particulars to consider admissibility of cenvat credit. It was also held that when the documents produced in support of claim for cenvat credit were credible evidence, the claim of cenvat credit cannot be denied. He also relied upon the decision in the case of Fraser and Ross Deloitte Centre, Anchorage-II vs. CST-I [2017(6) TMI 911 – CESTAT Bangalore], which was passed on identical issues, wherein the Tribunal held that it is admitted fact that the input services have suffered service tax and cenvat credit can be availed by the appellants and registration is not a mandatory requirement for claiming cenvat credit. He further submitted that registration is merely a procedural requirement and procedural infirmities are no bar on substantial benefit available under law. It is his further submission that the respondent has not levelled any specific allegation against the appellant regarding committing fraud, collusion, suppression of fact with intent to evade payment of tax and in the absence of any specific allegation, Department cannot mechanically impose penalty under Section 78 of the Finance Act read with Rule 15(3) of CCR. Learned counsel has also submitted that invocation of extended period of limitation is not justified in the present case as the appellant have not contravened the provisions of CCR at all. Learned counsel also submitted that it has been settled by various decisions that cenvat credit can be availed on the basis of debit notes issued by the sister concern. For this he relied upon the following decisions:-

i. Dhananjay Industrial Engineer (P) Ltd. Vs. CCE, Mumbai-II [2017(52) STR 320 (Tri. Mumbai)]
ii. Missionpharma Logistics (I) Pvt. Ltd. [2012(27) STR 60]
iii. CCE&C, Daman Vs. Jalram Plastic Pack [2014(34) STR 66 (Tri. Ahmd.)]
iv. CCE, Indore Vs. Grasim Industries Ltd. [2011(24) STR 691 (Tri. Del.)]

4.3. He also relies upon the decision of CESTAT, Hyderabad in the case of Amara Raja Electronics Ltd. Vs. CCE, Tirupathi [2016(43) STR 601 (Tri. Hyd.)] wherein it was held that in case of sharing of common expenses by the group companies, credit cannot be denied at the service recipients' end alleging that no services has been received.

5. On the other hand, the learned AR defended the impugned order and submitted that there is no provision in the CCR, 2004 for sharing or distribution of input services and cenvat credit among sister concerns. The rules provide a mechanism for distribution of input credit among branches of the same unit only. He further submitted that the business model adopted by the appellant is not covered under the provisions of CCR because the mechanism for distribution of credit is provided only through ISD, which will be applicable for the main company registered centrally and the branch companies coming under that and in the present case, this is not the case. He also submitted that the appellant has declared the cenvat credit as "credit taken as input services received from ISD" in the service tax returns filed by the appellants/assessee, which is a misdeclaration. He further submitted that there is no provision in the CCR for availment of cenvat credit on the basis of documents issued

by another person other than input service provider or ISD. Input service has to be used fully by the person availing cenvat credit and can be availed and utilized only as per the provisions contained in the CCR, even if the assessee has paid service tax on the shared portion of the input service. He also referred to the definition of ISD defined under Rule 2(m) of CCR and also referred to Rule 7 and Rule 9(g) of the CCR which deal with the concept of ISD. He also referred to the Circular No.97/8/2007 dt. 23/08/2007 and also relied upon the following decisions:

i. Sunbell Alloys Co. of India Vs. CCE and C, Belapur [2014(34) STR 597 (Tri. Mum.)]
ii. Mangalore Refinery & Petrochemicals Vs. CCE, Mangalore [2013(30) STR 475 (Tri. Bang.)]
iii. CCE,C&ST, tirupati Vs. Amara Raja Electronics Ltd. [2016(341) ELT 369 (Tri. Hyd.)]
iv. Aztec Auto Ltd. Vs. CCE, Madurai [2018(15) GSTL 363 (Tri. Chennai)]

6.1. After considering the submissions of both the parties and perusal of the material on record as well as the decisions relied upon by both the parties, we find that the issues raised in the impugned order are in relation to the availment of cenvat credit with respect to the shared services which is summarized as (i). input services which are received by the sister concern and the appellants and credit was partially availed by the appellants on the basis of inter-unit documents (debit notes) issued by the sister concerns and (ii). Input services which are received by the sister concern and the appellants and entire credit was availed by the appellants on the basis of invoices issued by the service provider to the assessee. Further we find that in the present case, the appellants are separate legal entity having centralized service tax registration and they have entered into an agreement with their sister concerns with respect to sharing of certain common input service expenses. The agreements are on record and as per the agreement, one of the entities incur expenses for all the sister concerns and makes payment to the service provider and thereafter, the sister concern who incurs expenditure collects the respective share of expenses from the other sister concerns along with service tax by way of issuing debit notes. We also find that at the time of issuance of debit notes, which are also on record, service tax is separately charged on the amount recouped from other entities and the service tax so collected has been discharged under the category of business support service and the same is reflected in the relevant service tax returns. We also find that the debit note contains all the prescribed details under the CENVAT Credit Rules, 2004 and based on such debit notes issued by the sister concerns, the appellants have availed cenvat credit. We further find that the learned Commissioner denied the CENVAT credit alleging that sister concerns have not provided any input service to the appellants and the distribution of expenses among group companies is a business model adopted by the group of companies for better utilization of resource and for minimizing expense and such mechanism is not covered under the provisions of CCR. This finding, according to us, is not tenable in law in view of various decisions relied upon by the appellant cited supra. Further we find that when the service tax has been discharged by the sister concerns by way of raising the debit notes, then we can infer that they have provided the services to the appellant and when there is no objection with regard to payment of service tax on reimbursement of expenses at the end of the service provider and after having accepted the tax as well as the returns, denial of cenvat credit of service tax paid by the service recipient is not justified. We also find that the other objection of the Revenue that the appellants have availed the credit of Rs.33,47,354/- on input services which are received by the sister concerns and the appellant and the entire credit was availed by the appellant. in fact, the appellants have incurred expenses for input services and have initially availed the entire credit based on the invoices issued by the service provider and thereafter the respective share of expenses from the other sister concerns has been recouped by way of issuing debit notes charging service tax. Further during the course of argument, we asked the learned counsel for the appellant, the following questions:

a. whether cenvat credit availed by the appellant based on the debit notes issued by sister concerns matches with the tax paid by the sister concern on debit notes raised on the appellant;

b. whether the tax paid on debit notes issued by the appellant on sister concerns does not exceed the tax credit availed by the appellants on services which are shared.

6.2. To satisfy the Tribunal, the appellant produced certificate before us issued by an independent Chartered Account certifying that credit received by the appellant from sister concerns matches with the tax paid by the sister concern on debit notes raised on the appellant and tax paid on debit notes raised by the appellants on sister concerns does not exceed the tax credit availed by appellant on services which are shared.

6.3. As far as the objection of the Revenue that expenses can be shared only by ISD and in the present case, the sister concerns as well as appellants were not registered as ISD and therefore they cannot share the expenses, this objection of the Revenue has no force because the registration is not mandatory to avail the cenvat credit and secondly in the present case each unit is a separate legal entity and therefore the provision of ISD is not applicable in the present case. Further we find that the Revenue's objection that the appellant have declared the cenvat credit as 'credit taken as input services received from ISD' in service tax returns filed by the appellant, the learned counsel for the appellant in reply to the objection of the

Revenue has submitted that the appellant had inadvertently declared the entire cenvat credit availed by the appellant during the course of October 2009 to March 2012 under heading 'credit taken as input services received from ISD'. On being pointed out by the internal audit, the appellant had rightly classified the credit under the heading"1.3.2.2.3- on input services received directly from April 2012 onwards. Since the appellant have rectified the bona fide mistake on being pointed out by the audit, we do not find any mala fide intention that the appellant have suppressed the facts. Further we find that in view of the various decision relied upon by the appellant cited supra, it has been consistently held by the Tribunal that debit note issued by the sister concerns is a valid document under Rule 9 of CCR to avail cenvat credit if it contains all the details of the service as well as tax amount as required under rule 9. We also note that on identical facts, the Tribunal at Hyderabad in the case of Amara Raja Electronics Ltd. Vs. CCE, Tirupathi cited supra in para 7 has observed as under:-

> ***7.****When ARBL and MPPL have paid service tax under the category of BAS/BSS, the strong inference that can be drawn is that they have provided services as per the invoices raised by them. Revenue has not been able to adduce any evidence that there is no service rendered. The said issue, whether the transactions are services or not, should be agitated by the department against service providers viz. ARBL and MPPL, from whom the service tax has been collected. Credit cannot be denied at the service recipient's end, alleging that no service has been provided.*

6.4. In view of our discussion above, we are of the considered view that the impugned order denying the cenvat credit on shared expenses is not legally sustainable and therefore we set aside the impugned order by allowing the appeal of the appellant.

7. Revenue has also filed appeal (ST/20911/2018) against the order passed by the Commissioner(Appeals) for subsequent period , where the Commissioner(Appeals) has allowed the CENVAT credit on

shared services for the period from April 2014 to March 2015, amounting to Rs.21,08,061/-. The Revenue has filed the appeal on the ground that there is no provision under the CCR for allowing the credit of the service tax paid on any input service by the sister concerns. Further the Revenue has also raised the ground that debit notes are not proper documents under Rule 9 for taking the cenvat credit and the Revenue has raised the objection that the sister concerns have not provided any support service to the assessee and therefore the CENVAT credit taken by the assessee is not sustainable in law. Since we have discussed the issues in detail in assessee's appeal No.ST/20154/2016 and we have held that the assessee is entitled to the cenvat credit on the basis of debit notes and registration is not necessary for availing the cenvat credit, we are of the considered opinion that there is no infirmity in the Order-in-Appeal dt. 26/02/2018 passed by learned Commissioner(Appeals). Accordingly, we uphold the Order-in-Appeal by dismissing the appeal of the Revenue.

8. In the result, assessee's appeal is allowed and Revenue's appeal is dismissed.

(Order pronounced on 22/11/2019)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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