CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 801 of 2009-DB

[Arising out of Order-in-Original No. 06/2009 dated 26/06/2009 passed by the Commissioner of Central Excise, Mangalore]

Syndicate Bank Central Accounts Dept.-Tax Cell, Head Office, Manipat-576104	**Appellant(s)**

VERSUS

The Commissioner of Central Excise, 7th Floor, Trade Center, Bunts Hotel Road, Mangalore-575 003, Karnataka	**Respondent(s)**

Appearance:

Mr. Ananthan, CA & Mrs. Lalitha, CA Abarna & Ananthan, CA, #643, 1st Main, 7th Block, 11 Phase, Bsk Iii Stage, Bangalore Karnataka 560085	For the Appellant
Mr. S. Devarajan, Dy. Commr.(AR)	For the Respondent

Date of Hearing: 18/02/2020
Date of Decision: 18/02/2020

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20268/2020

Per : P. ANJANI KUMAR

The appellants M/s. Syndicate Bank are providing services of Banking and other financial services, the Business Auxiliary Services, Renting of Immovable Property Services etc., and are registered with Central Excise Department. On verification of the ST-3 returns filed by the appellant for the period 2007-2008, Department observed that the appellants have wrongfully utilized CENVAT Credit of Rs.11,19,86,083/- in contravention of Rules 9(1) & 9(6) of CENVAT Credit Rules, 2004; that the appellants have utilized a credit Rs.2,38,55,544/- in excess of 20% as provided under Rule 6(3) of CENVAT Credit Rules, 2004, in respect of Taxable and non-taxable services and that the appellants did not pay applicable service tax on various services. A show-cause notice dated 21/10/2008 has been issued to the appellants, Commissioner of Central Excise, Mangalore, and vide order no. 6/2009 dated 26/06/2009 confirmed the demand equal to the credit of Rs.5,09,85,560/-, wrongfully availed and utilized by the appellants; confirmed service tax of Rs. 51,77,19,571/- and appropriated the tax of Rs.39,51,99,505/- already paid by the appellants. He also imposed penalty under Section 76 of Finance Act, 1994 and Rule 15(3) of CENVT Credit Rules. Hence, this appeal.

2. Learned counsel for the appellants submits that learned commissioner erred in holding that various input services are not directly or indirectly related to the output services provided by the appellants; Commissioner has travelled beyond the show-cause notice in disallowing CENVAT Credit; whereas the SCN sought to disallow CENVAT Credit on the ground of absence of documents and procedure, Commissioner sought to disallow the

credit on the co-relation between input and output services; learned Commissioner erred in including an amount of Rs.60,29,237/- in the value of taxable services as the services were rendered by the Branches of appellant situated in Jammu and Kashmir; Commissioner erred in including an amount of Rs. 02,06,56,304/- in the value of taxable service though tax has already been paid by their credit card Division; Commissioner erred including an amount of Rs.44,29,37,535/- being Commission received in advance without appreciating the facts that, the commission received in advance, is not liable to service tax and the fact that liability to pay service tax would arise only on provision of service; Commissioner erred in including an amount of Rs.87,869/- in the value of taxable services and that the learned Commissioner erred in imposing penalty and interest.

3. Learned counsel submits that, the allegation of not having proper documents and having no records has been made in the show-cause notice. However, a detailed reply has been submitted to the adjudicating authority giving details of the credit availed. In the annexure-A to the reply to the show-cause notice they have categorically made mention of a circular no.132/2006-BC-ACC, dated 21/06/2006, issued by the Bank in respect of revised procedure for accounting. It can be seen from the circular that individual branches were directed to maintain registers in the prescribed format for each type of payment which are regular in nature and a consolidated register for other type of payments; it can also be seen that the branches have been directed to transfer the service tax payable on half yearly basis to their respective GMOs/Ros who in turn shall submit the consolidated Cr IBA along with a certificate. Learned counsel submits that in view of the above, it cannot be said that the appellants did not

have necessary documents and did not follow proper procedure as per Rule 9 of CENVAT Credit Rules, 2004. Learned counsel submits that the duty paying documents would be large in number, spread across various branches and showing the same at a place will be humanly impossible. The Department was well within its right to go into documents, in case of specific doubt instead of alleging that Rule 9 has been contravened. They have submitted region wise details of CENVAT Credit in respect of services like telephone, courier, AMC, others etc., and the supporting documents for the same. Therefore, it cannot be alleged that proper records have not been maintained and that the appellant are not in possession of duty paying documents.

4. Learned counsel for the appellants further submits that, the Commissioner had passed an order 11/2007, on a show-cause notice covering a period October 2005 to March 2006, and has taken a similar view, however, the said order was agitated before this bench, who vide Final Order No.461/2010 dated 13/01/2010 have remanded the case back to learned Commissioner with the following observations:

> *"5.5. As regards the CENVAT Credit availed by the appellant on the service tax paid on the services received, we find that the appellant today produced a certified copy of the statutory auditors, indicating that, on verification of the records it was found that said service tax liability has been paid by the appellant to the service provider. We are of the considered view that once a statutory auditor gives a certificate, the said certificate should be considered as an evidence of substantiation to the claim for eligibility to CENVET credit. Since, this certificate was produced before us for the first time, we are of the view that this point needs to be considered by the Adjudicating Authority. In view of this, we set aside the demand of reversal of*

> *CENVAT Credit and remit the matter back to the Adjudicating Authority to arrive at a conclusion on this point only and to reconsider the issue afresh based upon the certificate issued by the statutory auditors of the appellant. Needless to say that the Adjudicating Authority will come to a conclusion after following the principles of natural justice."*

5. Learned counsel further submits that, in the remand proceedings, learned Commissioner though held that the documents like Chartered Accountant Certificates can be accepted as held by the Tribunal and as clarified by the Board vide Circular No.7/08 Customs dated 28/05/2008, proceeded to deny credit of Rs.36,04,329/- holding that the category of services utilized do not qualify to be input services for the output services rendered by the appellant. He further submits that on a further appeal filed by the appellants, Tribunal vide Final Order No. 20140/2015 dated 12/01/2015 have allowed the credit holding that it was not open to the Adjudicating Authority to travel beyond the allegations made in the show-cause notice and to deny credit based on altogether new ground. The Tribunal has also observed that in view of the judgment of various Courts, credit in respect of disputed services is held to be admissible.

6. Learned counsel for the appellants further submits that in view of the following decisions various input services which were disputed in the impugned show-cause notice and order, have been since held to be admissible as shown below:

Sl. No.	**Input Service held to be**	**Remarks**
1.	E-filling	Allowed by CESTAT in Final Order No.20140/2015 dated 12/01/2015

2.	Rent	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
3.	Generator/Contract payment	Allowed by CESTAT in Final Order No. 20140/2015 dated 12/01/2015
4.	Publicity/Advertisement	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
5.	Currency/Reuter Charges	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
6.	Lease Line Fees	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
7.	Car Jeep Charges	
8.	Misc.	Allowed by CESTAT in Final Order No.20140/2015 dated 12/01/2015
9.	IT Services	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
10.	Insurance	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
11.	Travelling charges	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
12.	Professional fee	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
13.	Printing charges	Allowed by CESTAT in Final Order No.20140/2015 dated 12/01/2015
14.	Audit Expenses	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
15.	Share Expenses	Allowed by CESTAT in Final Order No.20140/2015 dated 12/01/2015
16.	Post Expenses	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
17.	Club Membership	
18.	Hotel Charges	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
19.	Food Credit	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
20.	Bond Demat Charges	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010

21.	STP charges	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
22.	CSD on Telephone & Courier	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
23.	SWD on Health Insurance premiums	Allowed in the proceedings for the period October 2005 to September 2006 vide OIO 11/2007 and OIO 12/2010
24.	Others	Allowed by CESTAT in Final Order No.20140/2015 dated 12/01/2015
25.	MICR	OIO no.12/2010 dated 09/08/2010 passed in remand

6.1 Further he submits that in view of the above and in view of the judgments in the case of ***Millipore India Pvt. Ltd., 2011 16 Taxmann.com 363(KAR) and Toyota Kirloskar Motor Pvt. Ltd., 2011-TIOL-941-HC-KAR-ST*** *all of the disputed items are now held to be admissible for input credit.*

7. Learned counsel further relies upon the following cases to submit that the commission received in advance cannot be included in the value of taxable services as the liability to service tax arises only on rendering of the service. He relies upon the following cases:

(i). Schott Glass India Pvt. Ltd., (2009) 21 STT 111 (GUJ)

(ii). Association of Leasing & Financial Service Company 2010-TIOL-87-SC-ST-LB

(iii). Sudhesh Sharma 2009-TIOL-2081-CESTAT-DEL

(iv). Ashok Singh Academy 2009-TIOL-1737-CESTAT-DEL

(v). Consulting Engineering Service (I) Pvt. Ltd., 2013-TIOL-1737-CESTAT-DEL.

8. Learned AR for the Department relies upon the findings in OIO.

9. Heard both the sides and perused the records of the case. We find that as contented by the learned counsel the impugned order travelled beyond the scope of show-cause notice. Whereas the show-cause notice is issued for disallowance of credit for contravening of the provisions of Rule 9 of CENVAT Credit Rules, 2004, the learned commissioner proceeds to deny the credit on co-relation between input service and output service. Therefore, the impugned order is not legally sustainable. Anyway, we find in view of the judgments in the cases of *Millipore India Pvt. Ltd., 2011 16 Taxmann.com 363(KAR) and Toyota Kirloskar Motor Pvt. Ltd., 2011-TIOL-941-HC-KAR-ST,* we find that the input services claimed by the appellants are admissible for credit for rendering output services, we find that Hon'ble High Court of Karnataka has observed that –

> *"There cannot be any quarrel regarding the said proposition of law. As stated therein, the definition of input service is more exhaustive than input. Whether it is input or output service there should be nexus or integral connection with the manufacture of final products as well as the business activity. At the same time, because of the exhaustive definition of input service, the scope of nexus or integral connection is also explained and in fact is specifically provided. Therefore to find out whether there is a nexus or integral connection with the manufacturer of final products. We have to keep in mind the exhaustive definition contained in input service and then the word used therein, that is, the activities relating to business and then decide whether any particular service would constitute input*

service. The real test is, whether there is a nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product. In the case of the other facilities to the workmen is treated as input service. The State function arranged once in a year, for the welfare of the employees of the industry and in order to protect and preserve the culture of the State the said function cannot be separated from the business of manufacture of final product. In order to run the industry without any problem from the insiders or from outsiders, incurring of such expenses has unfortunately become a part of running the establishment. If a Multi National Company celebrates the 1st November as a Karnataka Rajyostava Day and spends lavishly for their employees and also sought participation in the said function by the jurisdictional police and on that momentous occasion, the expenses incurred for taking photography or providing Shamiyana service and inaugural of police station it cannot be said that such expenses have no nexus or integral connection with the manufacture of final product as well as business of manufacture of final products. Keeping in view the sentiments of the particular State the problems which are faced in ail these establishment in a Linguistic State and as a reasonable employer if he wants to satisfy the aspirations of the people in a lawful manner, he cannot be found fault with."

10 In view of the above we have no hesitation in holding that the services which are utilized by the appellants have nexus with the output services provided by them. Therefore, credit is also admissible.

11. Regarding the other issues such as inclusion of the value of the services rendered by the branches situated in Jammu & Kashmir in the total taxable value of the appellants; demand of service tax on the commission received in advance, we find that the submissions of the appellants are acceptable in view of the case laws cited by the learned counsel.

12. In view of the above, the appeal is allowed with consequential relief if any, as per law.

(Operative portion of the Order was pronounced
in Open Court on **18/02/2020**.)

(ANIL CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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