CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 58537 of 2013

[Arising out of Order-in-Appeal No. 48/CE/APPL/CHD-I/13 dated 12.03.2013 passed by the Commissioner (Appeals) Customs, Service Tax and Central Excise, Chandigarh-I]

M/s Integrated Global Solutions Private Limited ......**Appellant**
C/o Mr. Gopal Singh Negi, Directorglobal Knowledge Park, Plot No. 19a, and 19b, Sector 125, Noida, U.P. 201301

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh - I ......**Respondent**
Central Revenue Building Sector 17-C, Chandigarh-160017

<u>APPEARANCE:</u>

Present for the Appellant: Shri Bimal Jain, C.A. and Shri Keshva Jatwani, Advocate

Present for the Respondent: Shri Shivam Syal, Authorized Representative

<u>CORAM:</u> HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60521 /2024

DATE OF HEARING: 16.05.2024
DATE OF DECISION: 11 .09.2024

PER S. S. GARG

The present appeal is directed against the impugned order in appeal no. ST/58537/2013 dated 12.03.2013 whereby the Commissioner has confirmed the recovery of Cenvat credit amounting to Rs. 37,39,517/- as per Rule 14 of the Cenvat Credit Rules read with Section 73 of the Finance Act along with interest under Section 75 of the Finance Act and also imposed equal penalty under rule 15 of the Cenvat Credit Rules, 2004.

2. Briefly the facts of the present case are that the appellant is engaged in providing customer care service to M/s Spice Communications Limited as per the agreement dated 01.07.2004. The appellant has paid the service tax on the entire consideration after claiming cenvat credit on the input services and filed the returns as per the provisions of the Finance Act, 1994. The Department entertained the view that the part of the said service rendered by the appellant would fall under Call Centre Service, which is exempt and thereby, issued show cause notice for restricting the Cenvat credit utilization up to 20% on the ground that the appellant was providing taxable as well as exempted services. After following the due process, original authority confirmed the demand. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who also upheld the Order-in-Original and dismissed the appeal of the appellant. Hence, the present appeal.

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

4. Shri Bimal Jain, Ld. Consultant submits that the impugned order is not sustainable in law and the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on the identical issue. He further

submits that the Ld. Commissioner has not considered the appellant's submissions that its customer services were not for the purpose of sales, telemarketing or payments and therefore it cannot be described as call centre as defined under Notification No. 8/2003-ST dated 20.06.2003 w.e.f. 10.09.2004. He further submits that the appellant's service under agreement dated 01.07.2004 with M/s Spice Communications Limited is taxable as a business auxiliary service and therefore, the appellant had correctly paid the service tax on the entire consideration received under said agreement and the provisions of Rule 6(3) of the Cenvat Credit Rules are not applicable in the present case.

4.1 He further submits that the Commissioner (Appeals) has overlooked the provisions of Finance Act, 1994 under which it is not obligatory to avail the benefit of exemption notification under law, service provider is free to claim the benefit of notification or to pay service tax on the same. He further submits that it has been consistently held by the Tribunal that credit on inputs is not required to be reversed when duty has been paid wrongly on the final product. Ld. Consultant further submits that the appellant is providing customer care service under BAS by providing Call Support Service as per the scope of the service as stated in the agreement and further a portion of the service supplied cannot be vivisected and considered as a separate call centre service. He further submits that this issue is no more *res integra* and is covered by the decision of Bangalore Bench of CESTAT in the case of ***Phoenix IT Solutions*** *Ltd. Vs. Commr. Of C. Ex., Visakhapatnam [2011 (22) S.T.R. 400 (Tri.-Bang.)* wherein it was held that assessee providing call centre service on behalf of the client would fall under BAS within the purview of Service Tax. He also relied upon the decision in the case of ***IBM Daksh Business Process Services (P) Ltd. Vs. CCE., Delhi-III [2015 (37) S.T.R. 833 (Tri. Delhi]***, wherein it was held that the Call Centre Service provided on behalf of the Client would fall within the purview of Business Auxiliary services. He further relied upon the decision in the case of ***Commissioner of Central Excise Vs. Federal Mogul TPR India Ltd. reported in 2016 (42) S.T.R. 427 (Kar.)*** wherein the Hon'ble Karnataka High Court held that service tax exemption to job-work activity/services is optional and not mandatory and therefore, job-worker may decide not to avail of exemption under Notification 8/2005-ST and pay service tax.

4.2 He also cited the decision of ***Crown Products Pvt. Ltd. Vs CCE, 2012 (28) S.T.R. 406 (Tri.)*** wherein the Tribunal has examined the position of the law and held that Section 5A(1A) of the Excise Act, is not applicable to the Finance Act and therefore, there is no clause barring a service provider from paying tax on exempted services. He also relied upon the decision in the case of ***CCE Vs. Narayan Polyplast, 2005 (179) E.L.T. 20 (S.C.)*** wherein the assessee, instead of availing exemption available to final products under a particular notification, took credit of duty paid on inputs and paid duty on the final product utilizing the credit and the Revenge sought to deny credit based on Rule 57C of the Central Excise Rules stipulating that credit is not admissible of duty paid on inputs used in the manufacture of exempted product, the Supreme Court held that the credit availed and duty paid is identical and hence the issue is Revenue neutral and accordingly dismissed the appeal of the Revenue.

4.3 Ld. Consultant also submits that Cenvat Credit of Rs. 2,63,407/- has wrongly been denied on management consultant's Service, Security Agency, and maintenance or Repair service which has been held to be an input service in the case of ***Adani Port and Special Economic Zone Ltd. Vs. Commissioner of Service Tax, Ahmedabad- 2016 (42) S.T.R. 1010 (Tri.-Ahmd.)***. Ld. Consultant further submits that the entire demand is barred by limitation as the Department was fully aware of the activities of the appellant prior as far back as 16.11.2005, when the Department was conducted the audit of the appellant. The Department also conducted the audit on 08 to 10.01.2007 and further through their letter dated 22.03.2006 and 17.07.2007, the jurisdictional Assistant Commissioner had asked the appellant to deposit Rs. 24,41,467/- and Rs. 12,67,703/- for the period July, 2004 to September, 2005 and October, 2005 to February, 2006, respectively on the basis of the details provided by the appellant. As per the Ld. Consultant, these facts clearly established that there was no suppression of facts by the appellant; the appellant had paid Rs. 1,44,96,116/- as service tax on the alleged exempted service, which is more than the demand made for wrongly taken credit and it cannot be alleged that the appellant had any intention to evade payment of service tax, therefore, the entire demand is barred by limitation. In this regard, Ld. Consultant relied upon the following decisions:

M/s Birla Corporation Limited Vs. Commissioner, CGST & Central Excise, Jabalpur (M.P.) – 2023 (3) TMI 1067-CESTAT, New Delhi.

Golden Laminates Ltd. Vs. Collector of C.Ex. Delhi-III – 2001 (136) E.L.T. 1063 (Tri.-Del.). Ld. Consultant further submits that the question of interest and penalty does not arise when the demand itself sustainable in law.

5. On the other hand, Ld. AR reiterated the findings of the impugned order.

6. We have considered the submissions made by both the parties and has gone through various judgments relied upon by both the parties. We find as per the appellant, the service rendered by him were not for the purpose of sale or telemarketing and therefore, the same cannot be described as service by a call centre for the purpose of said exemption Notification No. 08/03-ST dated 20.06.2003, this notification exempts the service provided by a call centre from payment of service tax, whereas, the Department it is a call centre service which is exempted service and therefore credit utilization is restricted up to 20%. We further find that as per the terms of the agreement entered into by the appellant with M/s Spice

Communications Limited. The appellant is supplying the customer care service under BAS by providing call support service and it has been held in the case of ***Phoenix IT Solutions Ltd. cited (Supra***) wherein it has been held that assessee providing call centre service on behalf of the client would fall under BAS within the purview of Service Tax, the relevant para of the judgment is reproduced here in below:

"12. According to the Notification No. 8/2003-ST., Call Centre means a commercial concern which provides assistance, help or information through telephone on behalf of another person whereas one of the activities covered by Business Auxiliary Service is provision of service on behalf of the client and service incidental to that service. When we look at the agreement between the companies in this case, role of call centre is to receive complaints, record the nature of the complaints, date and time of complaint. Call centre is required to help maintain a database of telephone numbers of Fuse off call centre/distribution section offices sub-division offices/division offices/circle offices etc. and the complaints are required to be referred to concerned persons. The software is required to help in monitoring of complaints till the same are resolved. In this case, it can be seen that the nature of work performed by the so called electricity call centres, can be said to be registration of complaint on behalf of the electricity board and monitoring of the same till the complaints are resolved. The Electricity Call Centre is a place of generation of report indicating the details of the complaints received and resolved. When we look at the nature of services, it is covered by Clause (vi) under the definition of Business Auxiliary Service as defined in Finance Act, 1994 and [11:26 am, 10/09/2024] K.v: management of the complaints and resolution is

covered by item/Clouse (vii) of the definition. The role of call centre according to the definition is to provide assistance, help or information through telephone on behalf of another person. In this case, the Electricity Call Centre is not providing any assistance excepting registering complaints which is basically a service to be provided by electricity company and it is also not required to provide any help or information. We are unable to see any of the three roles-assistance, help or information - in the details of work to be performed by the appellant as per the agreement. Further, if we look at the activities relating to Computerized Collection Centre, it is basically collecting amounts due from the customers and account for the same. Customer service, in reality, is nothing but collection of amounts and computerize the same and maintain a proper data-base, This aspect of work of the contract is clearly covered under Business Auxiliary Service which is covered under item/clause (ii) which is customer care service provided on behalf of the client or can be covered under the item/clause (vi) as provision to service on behalf of the client. Service is collection of amount on behalf of the electricity company and maintenance of accounts and remittance as listed in the item/clause (vii) of the definition of Business Auxiliary Service. In fact, Business Auxiliary Service covers billing, collection of the recovery of cheques, payments and maintenance of accounts and remittance on behalf of the client. After a detailed consideration of the definition of call centre as provided in the notification and the definition of Business Auxiliary Service as per Finance Act, 1994, different activities of Electricity Call Centre are definitely covered by Business Auxiliary Service. The activities of registration of complaints/monitoring of complaints, collection of payments, accounting for the same and management of accounts and complaints cannot be called as call centre activities.

Before we conclude, it is necessary to examine whether this service is appropriately classifiable under SSBC. SSBC covers customer relationship management service, accounting and processing of transactions, infrastructure support service and other transaction processes. It is to be noted that SSBC is the service provided in relation to business or commerce whereas Business Auxiliary Service is service provided on behalf of the client. Therefore, what is required to be seen is whether the services are provided to the customer or to electricity company/department.

When complaints are registered and amounts are collected, in reality, the appellant is acting on behalf of the electricity company/department as far as the customers are concerned, having a direct interaction with the customer. In case of SSBC, that would not be the case. The interaction would be between the service receiver and service provider and the customer would not be dealing with the service provider at all. Once the appellants deal with the customer, he is acting on behalf of the electricity company/department and therefore classification of services provided by the appellant is appropriately to be classified under Business Auxiliary Service and not under SSBC."

7. Further, we find that in the case of ***IBM Daksh Business Process Services (P), cited (Supra***), wherein it was held that call centre service provided on behalf of the client would fall within the purview of Business Auxiliary Service and the relevant para of the said judgment is reproduced here in below:

> *"7. So far as the Call Centre Service is concerned, there is no dispute that this being a service provided on behalf of the clients is covered by the definition of Business Auxiliary Service as given*

in Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994. There is also no dispute that during the period of dispute, this service was fully and unconditionally exempt from service tax under Notification No. 8/2003-S.T., As regards the BPO service, the same involved processing of mediclaims and transaction processing for the appellant's clients. Though the appellant plead that this service was also classifiable as Business Auxiliary Service during the period of dispute, we do not agree with this plea of the appellant, as these activities are specifically covered by the definition of Business Support Service as given in Section 65(105)(zzzq) read with Section 65(104c) of the Finance Act, 1994 which came into force w.e.f. 1-5-2006. It is well settled law that when a new service is brought within tax net by introducing a new clause in Section 65(105) of the Finance Act, 1994, it has to be presumed that that service was not covered by any other clauses of Section 65(105). Therefore, we hold that BPO service involving transaction processing and processing of mediclaims etc. became taxable w.e.f/1-5-2006 and as such, the same was not taxable during the period of dispute. The question now arises as to whether the appellant would be eligible for Cenvat credit of the service tax paid on the input services used in or in relation to the providing of these services which had been provided to their overseas clients and, thus, had been exported in terms of the provisions of Export of Services Rules, 2005."

8. We also find that in the case of ***Commissioner of Central Excise Vs. Federal Mogul TPR India Ltd cite (Supra)*** the Hon'ble Karnataka High Court has held as under:

"11. Section 5A(1A) of the Central Excise Act provides for power to grant exemption from duty of excise. Section SA(1A) of the Central Excise Act specifically provides that "for the removal of doubts, it is hereby declared that where an exemption under Sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable therean has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods",

12. The words "shall not pay" enumerated in the said provision specifically denotes that it is the mandatory requirement on the manufacturer of such excisable goods not to pay the duty of excise on such goods in respect of which an exemption under Section 5A(1A) has been granted absolutely. Such a mandatory requirement of "not to pay" the duty of excise on goods exempted under Sub-section (1) of Section 5(A) is not found in Section 93 of the Service Tax Act. Section 83 of the Service Tax Act provides for application of certain provisions of Central Excise Act, 1944 in relation to service tax under Finance Act, 1994. Absence of Section 5A of Central Excise Act, in Section 83 of the Finance Act, 1994, indicates that the provisions of Section 5A of Central Excise Act, is not applicable to the Finance Act, 1994".

9. We also find that the affairs of the appellant were in the knowledge of the Department as the Department conducted

audit on 16.11.2005 and 08 to 10.01.2007, whereas, the show cause notice was issued on 26.03.2010 after a considerable delay of three years which is beyond the period of limitation. Further, we find that the extended period of limitation can be invoked where any service tax has not been paid or short paid by reason of –

"(a) fraud; or

(b) Collusion; or

(c) willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules thereunder with intent to evade payment of service tax".

Whereas, in this case the Department has failed to establish any of the ingredients which is required for invoking the extended period of limitation as held in the case of ***Birla Corporation Limited*** cited (Supra), the Hon'ble CESTAT held that when several rounds of audit was conducted by the respondent, it is the duty of the respondent officer to point out the wrong assessment done by the assessee while scrutinizing the returns and issue the show cause notice within the required period of time.

10. Further, in the case of ***Golden Laminates Ltd cited (Supra),*** the Tribunal held that when the facts are already

known to the Department, it cannot be alleged that the appellant had suppressed or mis-declared any material facts with intention to wrongly avail the benefit of exemption from duty resulting in evasion of payment of duty.

11. In view of our above discussion, we are of the considered view that the impugned order is not sustainable in law on merits as we as on limitation, therefore, we set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any as per law.

(Order pronounced in the open court on 11.09.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash