CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. E/3541/2010-EX[DB]

(Arising out of Order-in-Original No. 87/CE/CHD-I/2010 dated 30.07.2010 passed by the Commissioner of Central Excise, Chandigarh)

Quark City India Pvt Ltd. **......Appellant**
(A-40A, Industrial Area, Phase VIII-B, Mohali)

VERSUS

Commissioner of C.E., Chandigarh-I **......Respondent**
(Plot No. 19, Central Revenue Building, Sector 17C, Chandigarh)

with

Appeal No. E/3960/2010-EX[DB]

(Arising out of Order-in-Original No. 87/CE/CHD-I/2010 dated 30.07.2010 passed by the Commissioner of Central Excise, Chandigarh)

Commissioner of C.E., Chandigarh-I **......Appellant**
(Plot No. 19, Central Revenue Building, Sector 17C, Chandigarh)

VERSUS

Quark City India Pvt Ltd. **......Respondent**
(A-40A, Industrial Area, Phase VIII-B, Mohali)

APPEARANCE:

Mr. B.L. Narsimhan & Ms. Krati Somani, Advs. for the Appellant/Respondent

Mr. Harvinder Singh, A.R. for the Respondent/Appellant

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60792-60793/2019

DATE OF HEARING: 02.04.2019

DATE OF DECISION: 01.10.2019

PER C.L. MAHAR:

The above mentioned two appeals have been filed against the same impugned order by the assessee and the Revenue respectively; therefore, both the appeals are being taken together for decision.

2. The facts of the matter are that the assessee is registered with the department for providing Goods Transport Agency (GTA) service, Maintenance & Repair of Immovable Property service and Renting of Immovable Property service. During the audit of the financial records, it has been observed by the department that the assessee has availed Cenvat credit on input services during the period January 2005 to March 2008 in respect of various services, which do not qualify to be as input services for Goods Transport Agency (GTA) service, Maintenance & Repair of Immovable Property service and Renting of Immovable Property service. The department on scrutiny of their ST-3 returns and Cenvat credit documents for the above period i.e. from January 2005 to March 2008 has observed that the assessee has availed Service Tax credit of Rs. 1,23,92,818/- on the basis of invoices relating to the following different categories of services :-

S. No.	Category of Service
1	Erection (dismantling/fabrication of batching plant)
2	Fabrication/erection/dismantling of poles
3	Installation and Commissioning (Installation of fire protection system and installation of roofing)
4	Maintenance & repair
5	Testing (Soil testing at Mauli Jagran for School)
6	Manpower Supply (Selection of workers and supervision)
7	Architect
8	Job work service (Galvanized of cup lock system)
9	Labour contract (electrical work in earthing)
10	Tent services (Tent, Tables , Curtains)
11	Chartered Accountant (CA) charges.
12	AMC of Laptop
13	Advertisement
14	Technical Consultancy(Consultancy in fire safety and storage of petroleum)
15	Clearing and forwarding charges
16	GTA (S.Tax charged by the transporter as well as S.Tax deposited by the assessee in respect of inward freight.)
17	Consultancy (Fire safety/Engineering/Erection & commissioning/ plumbing/for selection of candidate/updating of computers).
18	Chartered Accountant (CA) Charges.

19	Testing of water/Soil/Structural steel & cubes/lifting equipment.
20	Testing & certification.
21	Testing of water in respect of new Borewell.
22	Mobile/telephone being commonly used for SEZ as well as non SEZ.
23	Exhibition Services.
24	Maintenance & Repair (Photocopier).
25	Architectural fee for F1(A-45) and F3(A-40) as well as for housing project (R7 & R8 in the building at A-45).
26	HR Services (Consultancy).
27	AC System Design.
28	Pest control.
29	Courier.
30	Tent services.
31	CHA Services.
32	Staff training regarding IT(Professional Fee).
33	Manpower consultancy.
34	Rent-a-cab.
35	Inward freight charged by the transporter.
36	Professional charges for fixed assets verification and valuation.
37	Consultancy for productivity assessment Audit.
38	Calibration services.
39	Installation of CC TV.
40	EPABX rental charges.
41	Testing charges for residential as well as commercial area.
42	Security Services.
43	Testing of cranes.
44	Testing of plywood and equipments.
45	Internet services and port charges.
46	Cable dressing.
47	Manpower supply /contacting labour providing.
48	Ground rent charges.
49	CHA charges for import.
50	Clearing charges.
51	Integration of computer parts and support charges.
52	Subscription charges regarding books purchased through internet.
53	Repair charges of tyres.
54	AMC for weighing Bridge and computers.
55	Scanners assembly service charges.
56	Income tax incidental expenses charges by the CA.
57	Management consultant.
58	Insurance services (Insurance of persons going abroad/ Group insurance of employees, money insurance, insurance of towers crane and FASSI crane/ group mediclaim insurance of employees/ Insurance of furniture / Insurance of Pvt. Cars and tractor/marine cargo insurance / insurance of non electrical appliances / Group insurance of company for Real Estate and software / Group personal accidental insurance/ Insurance of building and other assets.
59	Rent of warehouse for SEZ
60	GTA (S. tax charged by the transporter as well as Service tax paid by the assesses in respect of inward freight).

The department has entertained a view that the credit taken by the assessee on these input services either has not been used in providing output service or these cannot be input services for the output services provided by the appellant. It has further been observed by the department that the assessee during the period 01.01.2005 to 15.06.2005 was registered for payment of service tax only for GTA service, which does not constitute an output service of the assessee to make them eligible for input service credit. As per the contention of the department, the provisions of Rule 2(1) of Cenvat Credit Rules, 2004 provide that the inputs service means that services which are used in or in relation to providing the output service. The services on which the assessee has availed the credit, have no nexus directly or indirectly with the output service namely GTA service. It has further been impressed by the department that for GTA service, the assessee is not the service provider as in case of GTA service recipient pays service tax and hence, this service does not constitute an output service for the assessee, because the recipient of the service only pays the service tax under the reverse charge basis.

3. Similarly, on scrutiny of the service tax payment records of the assessee, it has been observed by the department that during the period June 2005, they have received an amount of Rs. 19,71,635/- against the invoice dt. 01.06.2005 from M/s Quark Media House Pvt Ltd, A-45, Industrial Area, Phase VIII-B, Mohali. It has been pointed out that since the bill for the services provided by the assessee has not raised on 01.06.2005 where the service became taxable only from 16.06.2005 and therefore, the service tax should have been paid from the relevant period on prorata basis. A show cause notice dt. 24.09.2009 came to be issued to the assessee demanding a Cenvat credit reversal of Rs. 1,02,73,109/- under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73(1) of Finance Act, 1994 by invoking the extended period of limitation. The department has also demanded appropriation of the amount of Rs. 88,70,434/- deposited vide Challan Nos. 24 dated 26.03.2009 and 36 dated 29.07.2009. Similarly an amount of Rs. 14,02,675/- of the Cenvat credit deposited vide Challan No. 36 dated 29.07.2009, which have also been charged

the appropriation. The provisions for interest under Section 76 and Section 78 have also been demanded. A service tax of Rs. 1,00,553/- and Rs. 42,368/- has also been demanded under Section 73 of the Finance Act, 1994. Interest and penalty provisions have also been invoked.

4. The ld. Commissioner, being the adjudicating authority, had decided the show cause notice vide Order-in-Original No. 87/CE/CHD-I/2010 dated 30.07.2010 wherein all the charges have been confirmed except that the Commissioner has confirmed the amount of service tax under Section 73(1) of the Act, however, no penalty under Sections 76 and 78 of the Act have been invoked as demanded in the show cause notice. Against this order, both the parties have filed their appeals before us.

5. The ld. advocate appearing on behalf of the assessee has assailed the findings of the Order-in-Original and has contended that they are eligible for taking the Cenvat credit on the input services as provided under Rule 3 of Cenvat Credit Rules, 2004. It has been further submitted that the services used for constructing the building and for making the same functioning, which was further rented out, qualify as 'input service' for providing renting of immovable property service etc which have been provided by the assessee at A-40A. The services provided by the assessee at A-40A are exempt as per Notification No. 4/2004-ST dt. 31.03.2004, however, the assessee is still entitled to Cenvat credit of the services used for construction of the building at A-40A by virtue of Rule 6(6A) inserted vide Finance Act, 2012 made effective from 10.02.2006. The relevant portion is extracted as under:

> *"(6A) The provisions of sub-rules (1), (2) and (4) shall not be applicable in case of the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorized operations."*

The ld. advocate relied upon the following case laws in support of his contention:-

(i) CST vs. Fedco Paints and Contracts – 2017 (3) GSTL 364 (Tri. Mumbai) maintained by Supreme Court – 2018 (10) GSTL J207 (SC)

(ii) CCE vs Fortune Metals Ltd – 2016 (340) ELT 575 (Tri. Chan.)

(iii) CCE vs. Sai Sahmita Storages P Ltd – 2011 (23) STR 341 (AP)

(iv) Maharashtra Cricket Association vs. CCE – 2016 (41) STR 833 (Tri. Mumbai)

6. The ld. A.R. for the Revenue has supported the findings given in the impugned order.

7. Having heard both the sides, we find that so far as the demand of service tax amounting to Rs. 1,00,553/- for the period from 16.06.2005 to 30.06.2005 in respect of Maintenance & Repair of Immovable Property service and for the service tax demand amounting to Rs. 42,368/- on GTA service, no denial of this demand has been made by the assessee on any legal ground. Further, we find that the entire demand of service tax of Rs. 1,00,553/- and Rs. 42,368/- has been deposited by the assessee along with the interest on 26.03.2009. So far, as the demand of reversal of the Cenvat credit of Rs. 1,02,73,109/-, we find that w.e.f. 19.04.2006 after explanation proviso to Rule 2(v) of the Service Tax Rules, 1994, it has been made clear that the input services in respect of GTA services are not admissible even prior to 19.04.2006. It has been made very clear that the Cenvat Credit Rules are applicable only to manufacture of excisable goods or the provider of the taxable output service. It has further been clarified from the provision of Rule 68(2) that the person providing GTA service is neither the provider of the output service nor the manufacturer of final product as required under Cenvat Credit Rules, 2004. It has further been clarified that the recipient of the taxable services, even if, they discharge their service tax liability under Rule 68(2) are not entitled to avail the credit of service tax paid on taxable services received by the them as per Cenvat Credit Rules, 2004. From the above clarification there remain no doubt that credit on input services in respect of GTA services are not admissible even for the period prior to 19.04.2006.

So no credit of input service is admissible for payment of service tax in respect of output service of GTA provided by the assessee.

8. With regard to the credit of service tax paid in respect of other input services, we find that the assessee has availed the credit of input services used by them for providing output service of Maintenance & Repair of Immovable Property situated at plot no. A-45, Phase VII B, Mohali and that of Renting of property again for the said building. We further find that the services for the input service credit has been availed by the assessee have actually not gone into providing any output service of Maintenance & Repair of the building or for service of Renting the property. The show cause notice as well as order-in-original mentioned that the services, which have been claimed by the assessee to have been used as input service for Maintenance & Repair of Immovable Property and Renting of property have actually being used by them for construction of building on SEZ and some residential flats and therefore same cannot be input services for their registered output services..

9. All the judgments, which have been relied upon by the ld. advocate become irrelevant in view of the fact that the assessee has not used the input services for the purpose for which they are registered with the department i.e. Maintenance & Repair of Immovable Property service and Renting of Immovable Property service. It is pertinent to note that the assessee had started paying service tax w.e.f. 16.06.2005, the date on which the service tax became payable for the service of Maintenance & Repair of Immovable Property. The service of Maintenance & Repair was meant for the building situated at plot no. A-45, Phase VII B, Mohali. It is a matter of record that the building situated at plot no. A-45, Phase VII B, Mohali has already been fully constructed and under occupation and given on rent to various entities before 16.06.2005. Once the building was ready on 16.06.2005, it is very difficult for us to believe that input services such like erection, installation, fabrication, architect etc have been have been used by the assessee after the building has been constructed. We also find that renting of immovable property service came into effect from 01.07.2007 and therefore, no credit is admissible in respect of input services like

erection, installation, fabrication, architect etc, which have might been used by the assessee for other purposes towards providing renting of the immovable property service, which came into effect only from 01.07.2007.

10. We also find that the assessee has also used the input service credit on the strength on the invoices which are in the name of some other legal entities. It is beyond our imagination that how an assessee can avail the credit of services which have been availed by the other legal entities. We find that findings of the order under challenge are based on facts and we find no legal infirmity in the same.

11. We also find that the assessee has agreed to demand of service tax as raised in the show cause notice and confirmed by the order-in-original and had already deposited the entire amount during the course of investigation and thereafter.

12. In view of entire above discussion, we feel that the order-in-original is legal and correct. Therefore, we do not find any ground to interface with the findings in order-in-original. Thus, we uphold the same and dismiss the appeal filed by the assessee.

13. We also find that since the assessee's appeal as per above discussion stands dismissed. We also do not find any merit in the appeal filed by the department and same also stand dismissed in view of entire above discussions.

(Order pronounced in the court on 01.10.2019)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

RA_Saifi