CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
~~~~~

REGIONAL BENCH – E-hearing

Service Tax Appeal No. 60388 Of 2020

[Arising out of OIA No. 01/ST/CGST-Appeal-Gurugram/SG/2020-21 dated 21.04.2020 passed by the Commissioner (Appeals) of Central Excise, Goods and Service Tax, Gurugram, Haryana]

M/s Convergys India Services Pvt. Ltd. : Appellant (s)
Plot No. 243, SP Infocity, Tower A, Ground, 1st, 3rd, 4th
& 5th Floors Udyog Vihar, Dundahera, Gurgaon, Haryana-122016

Vs

CCE & ST- Gurgaon-I : Respondent (s)
Plot No. 36-37, Sector 32, Gurugram, Haryana

APPEARANCE:
Shri Sankalp Chaturvedi, Advocate for the Appellant
Shri Vijay Gupta, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No. A/60416 / 2020

Date of Hearing:08/12/2020

Date of Decision:08/12/2020

Per : Mr. Ashok Jindal

The appellant filed this appeal against the impugned order wherein the refund claim filed by them for the quarter January 2017 to March 2017 under Rule 5 of CCR, 2004 has been rejected.

2. The facts of the case are that the appellant is engaged in providing the Business Auxiliary Service to their clients located in India as well as overseas entities. The appellant claim refund of unutilized cenvat credit for the quarter Jan - Mar, 2017 under Rule 5 of CCR, 2004 readwith Notification No. 27/2012 dated 18.06.2012. The refund claim was rejected on the ground that there is no nexus
~~~~~

between input service and output service. Moreover, some of the services, the appellant was not entitled to avail cenvat credit as they do not qualify as 'Input Service' in terms of Rule 2(*l*) of CCR, 2004. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that it was not questioned at the time of availing the cenvat credit on the input services in question; therefore, at the time of filing the refund claim, the admissibility of cenvat credit cannot be questioned. Moreover, there is no requirement of nexus of input services and output services provided by the appellant. The appellant is only required to show that the input services in question have been used in providing output services.

4. On the other hand, the Ld. AR opposed the contention of the Ld. Counsel and submits that as the Ld. Counsel has not raised the issue of admissibility of cenvat credit of their appeal, therefore, the same cannot be argued at this moment. Moreover, the services in question on which the refund claim is filed are not input services. Therefore, the refund claim was rightly rejected.

5. Heard the parties and considered the submissions.

6. On going through the records placed before me, I find that it is fact on record that at the time of claiming the cenvat credit it was not objected at any moment of time with regard to admissibility of cenvat credit. The same is a legal issue and can be raised any moment of time. Moreover, in the impugned order also, the Ld. Commissioner (Appeals) has discussed the issue and it can be contested any stage of time as admissibility of cenvat credit has not been agitated at the time of availment of cenvat credit, therefore, the same cannot be

disputed at the time of filing refund claim as held by this Tribunal in the case of ***M/s Verisign Services India Pvt. Ltd. vs. Commissioner of Service Tax, Bangalore*** ***2018-TIOL-1473-CESTAT-BANG*** wherein this Tribunal observed as under:-

> *"5. I find that the refund claims have been rejected only on the premise that the services in question are not 'Input Service' as per Rule 2(l) of the Cenvat Credit Rules, 2004. I find that the Renting of Immovable Property for parking space is a part of the output service as without that space the persons visit to the office of the appellant cannot reach to the office and for that purpose, the parking space is required. Therefore, these parking space is necessary for providing the output services of the appellant. In that circumstances, Renting of Immovable Property for Parking Space is entitled to cenvat credit.*
>
> *6. Another issue for Supply of Tangible Goods for Cafeteria, I find that the employees of an output service provider are required to avail the services of the cafeteria which is essential for the employees. If cafeteria services have not been provided to the employees, the efficiency of the employees shall come down as they have to go outside the premises for cafeteria and they will not able to work in their full capacity. Therefore, tangible goods supplied to the cafeteria is entitled for cenvat credit as per Rule 2(l) of the Cenvat Credit Rules, 2004.*
>
> *7. Further, I observed that at the time of availment of these services, it was not questioned to the appellant that these are not 'input services' therefore they are not entitled to avail cenvat credit. The issue has been raised at the time of filing of refund claim under Rule 5 of Cenvat Credit Rules 2004 by the appellant. Availment of cenvat credit cannot be disputed on the later stage. In that circumstances by relying on the decision Technip India Ltd. - 2017-TIOL-3708-CESTAT-MUM , I hold that refund claim cannot be denied merely on the premise that services in question on which cenvat credit remained unutilized in cenvat credit are not 'Input Services'. In view of the above analysis, I hold that appellants are entitled for refund claim filed under Rule 5 of Cenvat Credit Rules, 2004. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any."*

Further, in the case of ***Commissioner of Service Tax, Mumbai – II vs. M/s Technip India Pvt. Ltd.*** ***2017-TIOL-3708-CESTAT-MUM*** , this Tribunal has taken the same view and has recorded as under:-

> *"8. Having considered the rival contentions I find that so far the first issue is concerned, as to whether or not the services in question qualify as input services for the business of the respondent assessee in terms of rule 2 (l) of the CCR 2004, I have already observed that some of the services in question are already specified in rule 2 (l), and I find that each of the service is required by the respondent assessee in providing its output*

service. The disallowance of input credit in part is also bad and without jurisdiction in absence of notice under Rule 14 of CCR, 2004. As regards the next issue with respect to remuneration paid to Mr. Pooran Tripathi, I find that the very essential fact is absent in the findings of the Adjudicating Authority. wherein the facts stated by the assessee that the said person is not its employee, have not been found to be untrue. As such I hold that the learned Commissioner (Appeals) rightly allowed the Cenvat credit in respect of the remuneration paid to Mr. Tripathi."

7. In view of the above precedent decisions of this Tribunal and the argument advanced by both sides, I find that no merit in the impugned order. Accordingly, the same is set-aside.

8. In result, the appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.