

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 55319 of 2013

[Arising out of Order-in-Original No. 153/ST/PKJ/ADJ/2012 dated 10.09.2012 passed by the Commissioner of C.E. & S.T. (Adj), Delhi]

SBI Cards And Payments Services Pvt LtdAppellant
10th to 12th Floor DLF Infinity Tower C, Block 2,
Building 3, DLF Cyber City, Gurgaon, Haryana

VERSUS

Commissioner of Service Tax, DelhiRespondent
M G Marg, 17-B IAEA House, I P Estate,
Delhi 110002

with

Service Tax Appeal No. 50192 of 2015

[Arising out of Order-in-Original No. 42-43/AKJ/CST/2014 dated 30.09.2014 passed by the Commissioner of S.T., Delhi]

SBI Cards And Payments Services Pvt LtdAppellant
10th to 12th Floor DLF Infinity Tower C, Block 2,
Building 3, DLF Cyber City, Gurgaon, Haryana

VERSUS

Commissioner of Service Tax, DelhiRespondent
M G Marg, 17-B IAEA House, I P Estate,
Delhi 110002

APPEARANCE:

Present for the Appellant: Sh. B.L. Narasimhan, Ms. Krati Singh, Ms.

Priyanka Singla, Advocates

Present for the Respondent: Sh. H. S. Brar, A.R.

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

FINAL ORDER NO. 60011-60012/2022

DATE OF HEARING: 04.01.2022

DATE OF DECISION: 04.01.2022

PER ASHOK JINDAL:

These two appeals have been filed by the appellant against the impugned orders for the period April 2009 to March 2012 confirming the demand for reversal of cenvat credit on the amount written off as bad debts and on advertisement & sales promotion services.

2. The facts of the case are that the appellant is engaged in providing banking and other financial services, credit card, debit card etc. and business support services. The appellant received various input services for providing their output services and availed cenvat credit thereon. In some cases, the appellant could not recover certain payments from their customers and wrote them off as bad debts in their financial records. The appellant also entered into a co-brand credit card agreement dated 14.10.2005 with Indian Railway Catering and Tourism Corporation Limited ("IRCTC") to launch co-brand credit card. The appellant paid fixed charges to IRCTC for every subscriber of credit card and in turn IRCTC agreed to promote the credit card by modifying its website, through press advertisements and related collaterals. IRCTC raised invoices on the appellant for the said purpose and the appellant availed the cenvat credit of service tax paid thereon.

3. Two show cause notices were issued to the appellant for reversal of cenvat credit availed on input services attributable to the

amount written off as irrecoverable dues; reversal of cenvat credit where service tax was paid under reverse charge basis; reversal of cenvat credit availed on advertisement, catering and event management services. Impugned orders were passed by confirming the demands holding that the amount written off as bad debts, the appellant is not entitled to avail cenvat credit of input services attributable to the amounts written off and denial of cenvat credit on input services received from IRCTC by classifying them as catering services. Against the said orders, the appellant is before us.

4.1 The Id. Counsel appearing on behalf of the appellant submits that the similar issue has been decided in their favour by the adjudicating authority in their own case for the period April 2004 to March 2009 and April 2012 to March 2015 vide *Order-in-Original No. DLI-SVTAX-004-COM-119-16-17 dated 31.03.2017*, wherein it has been held that the services received by the appellant were used in provision of taxable output service, therefore, condition of Rule 2(I) of the Cenvat Credit Rules, 2004 was satisfied and there is no provision in Cenvat Credit Rules, 2004 which provides for reversal of credit in the event of non-payment of service tax as a result of non-receipt of consideration, therefore, the said credit is not required to be reversed.

4.2 He further submitted that the credit availed on the input services received from IRCTC was also allowed. The said order has been accepted by the Department, therefore, the Department cannot take contrary view. Apart from this, he submitted that the appellant

is entitled to avail cenvat credit on input services even if the payment is not recovered from the customers.

4.3 He further submitted that prior to 01.04.2011, the appellant was required to pay service tax on received of consideration for the service provided, but there was no bar on availment of cenvat credit on input services. It is his submission that Rule 3 of Cenvat Credit Rules, 2004 deals the availment of cenvat credit which provides that any input service received by the provider of output service, is entitled to take cenvat credit. Undisputedly, the appellant received the services which are input services as per Rule 2(I) of the Cenvat Credit Rules, 2004 and provided output services. These are not in dispute. The only problem is that the appellant did not receive consideration for the service provided and written off the same. Prior to 01.04.2011, the appellant was required to pay service tax on received of consideration from the service recipient, but it does not mean that the appellant is not entitled to take cenvat credit on taxable services. As the appellant has provided taxable services, therefore, they are entitled to take cenvat credit. He relied on the decision of this Tribunal in the case of *Vodafone Cellular Ltd vs. CCE & ST – 2017 (10) TMI 973 CESTAT Bangalore*.

4.4 He further submitted that with effect from 01.04.2011, the appellant was required to pay service tax at the time of providing the services and after 01.04.2011, whatever service provided by the appellant, the appellant has paid the service tax thereon on the basis

of consideration received from the customers. Therefore, the demand for the period post 01.04.2011 is unsustainable.

4.5 He further submitted that the denial of cenvat credit availed on advertisement services received from IRCTC is incorrect as the adjudicating authority has held that the appellant has not furnished any proof of advertisement in nature of services received from IRCTC. However, the appellant provided the invoices raised by IRCTC and the Certificate dated 15.07.2014 issued by IRCTC clarified that the agreement was for new registration, renewal, redemption and transaction of co-brand credit cards. These documents clearly establish that IRCTC provides advertisement services by displaying appellant's credit cards on its website, advertisements etc and was accordingly receiving a consideration. Nowhere in any communication/invoice for agreement mentioned that the appellant is receiving catering service from IRCTC. The demand was confirmed only on the basis of assumption and presumption which is not sustainable. He also submitted that demand of interest is not sustainable and penalty is also not imposable.

5.1 On the other hand, the Id. A.R. supported that impugned order and submitted that the order dt. 31.03.2017, relied upon by the Id. Counsel for the appellant, covers the period prior to 31.03.2009 and the appellant had also made the pre-deposit of service tax for recoveries made against bad debts written off initially, therefore, the said order is not applicable to the facts of this case.

5.2 It is his further submission that on recoveries made during 2011 to 2017, the appellant had deposited Rs. 42.31 crores. Relying on these facts, the said order was issued and demands were dropped. But there is no evidence to that effect that the above amounts covered bad debts written off during the impugned periods in question. Neither have copies of the intimations referred to the said order, placed on record during the subject proceedings. Therefore, even though the said order holds that no credit is reversible, it cannot be said to have been passed solely on the merits of admissibility of the same in first place; therefore, the same cannot be applied to this case.

5.3 It is his further submission that during the impugned period, the claim of the appellant that certain payments could not be recovered from the customers, hence, income was written off/derecognized by the appellant in the books of accounts, in compliance of the "Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007" issued by the RBI. It is his submission that the said norms prescribed all recoverable dues pending for more than 180 days should be declared as NPA. Till June 2011, the appellant was required to pay service tax on receipt. The bills were raised after the closure of billing cycle and the service recipient was allowed at least 15 days to clear the bills. The period of 180 days would be calculated from the said due date, which would be mid August. Thus, only those dues which were unpaid till mid February 2012, would be due for

write off and service tax on such amounts would be payable on receipt basis. Therefore, almost whole of the bad debts written off up to March 2012 would be covering the period on which payment of service tax was on receipt basis.

5.4 He further submitted that Rule 3(5C) of Cenvat Credit Rules prescribes reversal of cenvat credit on the goods on which remission of duty has been allowed under Rule 21 of the Central Excise Rules, 2002. Under the said Rule 21 remission is allowed only in cases where goods were destroyed due to causes beyond human control, meaning thereby that in remaining cases, the assessee would be liable to pay central excise duty even if the same has not yet been cleared as the duty is on manufacture. Under service tax, the tax was leviable on rendering of service but payable on receipt of consideration whether before or after or during rendering of the same. However, there was no provision for remission of service tax as there could normally be no situation of destruction of service, which is intangible in nature and accordingly, there was no specific provision for reversal of cenvat credit. The remission, so to speak, was suo moto, on non receipt of consideration, therefore, the reversal of cenvat credit is not marred by absence of specific provision. Further, no cenvat credit would be admissible on services which are rendered without consideration, even though the same would be taxable in as much as they fall under one of the sub-clauses of Section 65(105) of the Finance Act, 1994. Then, how can credit be

allowed to be retained on services on which no consideration has been received in the subject case.

5.5 He further submitted that the cenvat credit is Government money, temporarily entrusted to an assessee on the assurance and for the sole purpose of utilizing the same for discharging Central Excise duty or Service Tax which accrues to the Government. The assessee becomes eligible to keep it in its books of accounts after meeting a wide variety of conditions and maintaining/retaining the records/documents. Still, the same remains Government's money in temporary custody of the assessee. This is very clearly brought out when we examine Rule 11 of the Central Credit Rules, 2004 which allows credit on only that much quantity of inputs, which are available in stock on the day they cross the exemption limit, even though they may have cenvatable invoices for larger quantity. More importantly, on the day they opt to again avail exemption, they are required to reverse credit on the closing stock of the said date.

6. Heard the parties and considered the submissions.

7.1 On examination of the records placed before us and arguments advanced by both the sides, we find that in this case it is not disputed by either or the sides that the appellant is engaged in providing output services. The only dispute arises is that the appellant has written off certain amounts for consideration of services, they have not received. Prior to 01.04.2011, the appellant was required to pay service tax on receipt of consideration for the service provided, which means that if the appellant is failed to received consideration qua

service provided, the appellant is not required to pay service tax; which does not mean that the appellant has provided exempted/non-taxable service. Rule 3 of the Centvat Credit Rules, 2004 deals with the situation for entitlement of the cenvat credit, which prescribes that a provider of the output service shall be allowed to take cenvat credit of any input service received by the provider of output service on or after 10th day of September, 2004. Admittedly, the services on which the appellant has taken cenvat credit are 'input services' in terms of Rule 2(I) of the Cenvat Credit Rules, 2004 and is a provider of output service. Therefore, in terms of Rule 3 of the Cenvat Credit Rules, 2004, we hold that the appellant is entitled to avail cenvat credit on input services in question. Further, we hold that there is no such provision in the Cenvat Credit Rules, 2004 or in the Finance Act, 1994 for reversal of cenvat credit for the services provided for which no consideration for service provided is received by an assessee. Therefore, we hold that the appellant has correctly availed the cenvat credit on input services although the amount of non-recoverable taxable service has been written off by the appellant for the period prior to 01.04.2011. The appellant has admitted at bar that they have paid service tax on all the taxable services provided by them after 01.04.2011 at the time of provision of service. Therefore, if it is so, the appellant cannot be liable for reversal of cenvat credit for the services provided after 01.04.2011 on which the appellant has paid service tax.

7.2 With regard to denial of the cenvat credit on the invoices issued by IRCTC, we have examined the invoices provided by the appellant during the course of hearing. A sample invoice is extracted herein below:

इंडियन रेलवे कैंटरिंग एण्ड टूरिज्म कॉर्पोरेशन लिमिटेड
(भारत सरकार का उद्यम)
INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A Govt. of India Enterprise)

Date : 26-May-2009

SBI Cards & Payment Services Pvt Ltd
2nd Floor, DLF Infinity Towers, Tower B
Block 2, Building 3, DLF Cyber City
Gurgaon 122002, Haryana, India
Phone: 0124 - 3987339

Sub: Invoice for D & F Type Cards Renewed at SBI end -Apr 2009

Sr / Madam

Please find enclosed the list of D & F Type Cards Renewed at SBI and Amount not debited in IRCTC Account.

Month	No. of Cards	Description	Rate /Unit	Total
Apr-09	1238	SBI Co-Branded Card Registered at SBI	Rs. 300.00	Rs. 371400.00
		Service Tax @ 10%		Rs. 37140.00
		CESS @3% on SC		Rs. 1114.20
		Total		409654.20

The Total Amount Payable by you for the month of Apr- 2009 is Rs. 409654 (Rupees Four Laks Nine Thousand Six Hundred and Fifty Four Only)

You may deduct TDS as applicable and send the TDS Certificate along with the payment.

Please send as the Demand Draft in favour of Indian Railway Catering and Tourism Corporation at New Delhi

The Address for sending the DD is - IRCTC Ltd - General Manager (Ops), Indian Railway Catering and Tourism Corporation Ltd., 2nd Floor, STC Building, 1 Tolstoy Marg, New Delhi-110001, Phone: 011-23701231

[Signature]
Manager/IT/IRCTC

ERTD Opns. IRCTC Ltd

RECEIVED
15 JUN 2009
FINANCE

[Signature]

CERTIFIED TRUE COPY

सं. ३६ एडिन, बैंक ऑफ़ बड़ोदा भवन, १६, संसद मार्ग, नई दिल्ली-११०००१ दूरभाष: २३३११२६३, ४४१६८ (नये) २३३११२५९
2nd Floor, Bank of Baroda Bldg-16, Parliament Street, New Delhi-110001. Tel.: 23311263, 44168 (N.Y.), Fax: 23311259

7.3 On going through the said invoice, we find that the description of the service provided by IRCTC is SBI co-brand registered as "SBI". The said invoice does not prescribe that IRCTC has provided any 'catering service' to the appellant. In fact, the lower authority has fell in error holding that IRCTC is providing only 'catering service' and the denial of cenvat credit is only on the basis of assumption and presumption.

7.4. In view of the above, we hold that the appellant is entitled for cenvat credit on the services provided by IRCTC as advertisement services.

8. In view of the above observation, we do not find any merits in the impugned orders and arguments advanced by the Id. A.R.; therefore, we set aside the impugned orders and allow the appeals with consequential relief, in any.

(Operative part of the order pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.J. MATHEW)
MEMBER (TECHNICAL)