

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.E/40357/2018

[Arising out of Order-in-Appeal No.357/2017 (CTA-I) dt.16.11.2017 passed by the Commissioner of GST & Central Excise (Appeals-I), Chennai]

Indian Oil Corporation Ltd. Appellant

Versus

Commissioner of Central Excise,
Chennai – I Commissionerate. Respondent

Appearance:

Sh.J.Dhinakaran, DGM - Taxation
For the Appellant

Shri L.Nanda Kumar, AC (AR)
For the Respondent

Per : Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of hearing : 6.12.2018
Date of pronouncement : 10.12.2018

FINAL ORDER No. 43069/2018

Brief facts are that the appellants are manufacturers of lubricants and are holding Central Excise registration. On verification of records, it was noticed that they availed CENVAT Credit of service tax paid on various services on the basis of ISD Invoices issued by their Branch Office situated in different parts of the country. The department was of the view that credit availed on various services are not eligible, as these services have no nexus with the manufacturing activity. Show cause notice was issued proposing to recover the credit

from the appellant alongwith interest and also for imposing penalty. After due process of law, the original authority allowed the credit on various services and disallowed credit on certain services. In appeal Commissioner (Appeals) partly allowed the appeal and remanded issues with regard to certain services to adjudicating authority. However, the credit availed on air travel agent services, hotel / accommodation services and debit and credit card services was disallowed. Aggrieved the appellant's are now before the Tribunal.

2. On behalf of the appellant, the Ld. Deputy General Manager for Taxation of the appellant Company, Sh.J.Dhinakaran, appeared and argued the matter. He submitted that the air travel agent services as well as accommodation services are availed only for the official purposes of the company. He furnished documents to support his contentions and argued that the list of participants who have attended the seminar/meetings would show that these services are availed for official purposes and not for personal consumption. The Lube Sales Production Meeting (LSPM) is held every month to plan the production requirements. The Officer of the company who is to take part in the said meeting has to travel and also incur accommodation charges for such meetings. The minutes of the said meeting dt.8/2/2013 is referred as a sample document. The list of the officers who are appointed to attend the meeting, would establish that air travel agent services and accommodation services have been availed for the office purposes which are used directly or indirectly in relation to manufacturing activity. It is essential for the officers to attend such meeting because the strategy as well as the production

planning is undertaken in such meetings. He therefore prayed that the credit for such services may be allowed.

2.1 . The credit availed on debit and credit card services has been denied stating that these have no nexus with manufacturing activity. He argued that after demonetisation, the transactions are mainly through debit and credit cards and therefore the service tax paid on such transactions is eligible for credit.

2.2. It is pointed out by the Ld.Officer that there is an error in calculation of credit availed. Though this mistake was brought to the notice of the authorities below, it was not taken into consideration. He furnished a calculation statement, wherein it is pointed out by the appellant that though the credit availed on air travel agent services is Rs.99,862/-, the Order-in-Original has confirmed the wrongly availed credit to be Rs.2,34,338/-. Similarly though credit availed on accommodation services is Rs.10,087/-, the Order-in-Original has confirmed the wrongly availed credit as Rs.77,807/-. The credit availed on debit and credit card services is Rs.9,973/-, whereas it has been wrongly noted in the Order-in-Original as Rs.7,693/-. He requested that the error may be corrected. The Ld.Manager also put forward an argument relying upon the decision in the case of ***Gulf Oil Corporation Ltd. Vs CCE & ST, Vapi 2016 (43) S.T.R.220 (Tri. – Ahmd.)*** and ***Commr. Of Service Tax, Ahmedabad vs Godfrey Philips India Ltd. 2009 (239) E.L.T.323 (Tri. –Ahmd.)***. Thus it is argued by him that when the credit has been availed on the basis of ISD Invoices, the demand can be raised only on their Head Office who

is registered as ISD and not on the appellant, who has availed the credit, on the basis of ISD invoices distributed by Head Office.

5. The Ld.AR, Sh.L.Nandakumar supported the findings in the impugned order. He argued that the appellant has not furnished any document before the authorities below, to establish the contention that the air travel agent services and accommodation services are availed for official purposes. The documents now produced before the Tribunal has to be verified by the adjudicating authority and therefore he requested that the issue may be remanded. With regard to debit / credit card, he submitted that the appellant has not furnished any documents and therefore the authorities below have rightly disallowed the same. With reference to the error in calculation, the Ld.AR submitted that if necessary, the matter can be looked into by the adjudicating authority. It is further submitted that the decisions relied by the appellant is not applicable.

6 . Heard both sides.

7. The issue is with regard to disallowance of credit on air travel agent services, hotel services and debit and credit card services. The appellant has now produced before the Tribunal, the documents with regard to air travel and hotel services to argue that these services were used for official purposes only. On going through this document, it is seen that the minutes of meeting would show that the officers of the company are required to attend the LSPM Meeting. This meeting is intended to plan the strategy and the production requirement. The

list of participants who have attended the meeting also is furnished. All these would indicate that appellant has availed such services for official purposes only. However, since the documents have not been verified, I am of the view that the matter requires to be remanded to the adjudicating authority, who shall verify whether the services of air travel agent and hotel services are availed for official purposes. Needless to say that if they are not used for personal consumption and only for official purposes, the appellant would be eligible for credit, as decided in the case of ***Xilinx India Tech. Services Pvt. Ltd. Vs CC., CE. & ST., Hyderabad-IV 2016 (44) S.T.R.635 (Tri. – Hyd.)***.

8. With regard to debit and credit card services, it is seen from para 16.5 of the Order-in-Original and para 6.2 of the impugned order that the credit on these services have been disallowed on the ground that the said services are not related to manufacturing activity. The Ld. DGM of the Company has explained that credit / debit card services (service tax paid for transactions using such card) was availed when the customers had used cards for making payment. The said activity is definitely related to manufacturing activity and the disallowance stating that these have no nexus with manufacturing activity is incorrect. The same is allowed.

9. From the above discussions the issue with regard to eligibility of credit on air travel agent services and accommodation services as well as the errors in calculation with respect to all these three services are to be considered afresh by the adjudicating authority. The reconsideration of calculation errors shall be confined to services

impugned in this appeal and services remanded by Commissioner (Appeals) only.

9. From the foregoing discussions, the appeal is partly allowed and partly remanded with consequential relief, if any as per the directions above.

(pronounced in open court on 10.12.2018)

(Sulekha Beevi C.S)
Member (Judicial)

vsr