CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal No.40479 of 2021- SM

[arising out of Order-in-Appeal No.266/2019 (CTA-II), dated 21.09.2019 passed by Commissioner of GST & Central Excise (Appeals-II), Chennai]

M/s.KAAR Technologies, **Appellant**
Level 8, Shymala Tower,
No.136, Arcot Road,
Chennai – 600 093.

VERSUS

Commissioner of GST & CE, **Respondent**
Chennai South Commissionerate,
Newry Towers, 2054-I, 2nd Avenue,
Anna Nagar, Chennai – 600 040.

Appearance:

Shri M. Karthikeyan, Advocate for the Appellant
Shri Vikas Jhajharia, Authorized Representative for the Respondent

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 25.10.2021
Date of Pronouncement : 28.10.2021

FINAL ORDER No.42425 / 2021

The appellants are engaged in providing services of Maintenance and Repair, Information Technology Service etc., and are registered with the service tax department. They were exporting services and accumulated huge balance of Cenvat credit. They filed four refund claims for refund of unutilised Cenvat Credit to the tune of Rs.69,06,464/- for the four quarters of the year 2015 in terms of Rule 15 of Cenvat Credit Rules, 2004 as amended.

2. On the above refund claims, an amount of Rs.17,96,289/- was sanctioned and the balance amount of Rs.51,10,165/- was rejected on

grounds in the nature that the credit availed is in respect of unregistered premises, discrepancy in input service invoices, ineligible input services, time bar, determination of total export turn over, FIRC not submitted etc. Out of the amount of Rs.51,10,165 rejected, the appellants preferred appeal before Commissioner (Appeals) for an amount of Rs.34,25,831/-. The Commissioner (Appeals) vide Order-in-Appeal No.310-313/2017, dated 31.10.2017, allowed the refund in respect of credit taken for the unregistered premises and remanded the matter in regard to the credit disallowed for reason of discrepancy in invoices. The Commissioner (Appeals) alsorejected the refund claim relating to Credit Rating Fee for obtaining bank loans and also upheld the rejection on the ground of time bar. The appellants did not prefer any appeal against the above order. However, in the remand proceedings, by Order-in-Original No.3/2019, dated 27.03.2019, it was held that the appellants are eligible for input service credit of Rs.6,98,864/-. Out of this, an amount of Rs.2,44,046/- was sanctioned. The balance of Rs.4,54,818/- was rejected after determining the net eligibility of refund on the basis of export turnover and total turnover.

3. Against such *de novo* order, the appellant preferred an appeal before Commissioner (Appeals) and vide Order-in-Appeal No.266/2019, dated 21.09.2019, the Commissioner (Appeals) rejected the appeal filed by the appellants. Aggrieved, the appellant is now before the Tribunal.

4. On behalf of the appellants, the learned counsel Shri M. Karthikeyan appeared and argued the matter. In the present appeal, the issue relates only to the rejection of refund claims on the ground of ineligible input services. The reasons for rejection are that invoices do not contain registration number of the service provider, the invoices are not proper etc. He adverted to para 11 in page12 of the appeal paper book to point out the various services on which credit has been disallowed by the lower authorities and the matter is in issue in the present appeal. The table is reproduced as under:-

Invoice No. and date	Invoice Name	Expenses nature	Amt. of credit (in Rs.)	Reasons for rejection	Contested in present appeal
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
00313, dt-11.03.2015	M/s. Host India Events & Marketing	Education and Training Expenses	6,876	As per Rule 2(l) of CCR, 2004 the Subscription Fee is not considered as input used in providing output service	contesting
00318, dt-13.03.2015	-do-	-do-	3,098		
15011757, dt-01.02.2015	M/s. People Craft	Professional Charges	2,472	Invoice not available	contesting
31.03.2015	M/s. Airtel	Telephone Expenses	928	Invoice not available	contesting
S	Export Promotion Council for EOU and SEZ	Subscription Fee	618	As per Rule 2(l) of CCR, 2004 the Subscription Fee is not considered as input used in providing output service	
0326, dt-20.04.2015	M/s. Nasscom	Subscription Fee	24,720		contesting
BYS INV 0011, dt-15.05.2015	M/s. Beyond Square Solutions (P) Ltd.	Subscription Fee	1,854		contesting
81, dt-08.01.2015	M/s. Crave Infotech and Consultancy Services	Consultancy Charges	65,904	Supplier's ST is not available due to LEGAL case at the supplier's end RC. Hence not eligible	contesting
ACS010, dt-07.01.2015	M/s. AARTHU Consulting Services	Consultancy Charges	15,750	Invoice submitted on 08.11.2018 but there is no ST registration number, hence ineligible	contesting
BYS 0022, dt-07.03.2015	M/s. Beyond Square Solutions (P) Ltd.	Subscription Fee	2,100	Subscription Fee not an ineligible input service in terms of Rule 2(l) of CCR	contesting
DDG/2015/001	M/s. Dayadimensi India (P) Ltd.	Consultancy Service	34,720	No registration number	contesting
TOTAL			1,59,040		

5. With regard to the credit disallowed on the invoices dated 11.03.2015 and 13.03.2015, issued by M/s. Host India Events & Marketing, the learned counsel submitted that the description of the services has been wrongly mentioned in the table and in fact, the services availed are in the nature of Event Management Services. He adverted to page no.93 of the appeal paper book, where the copy of the invoice has been enclosed. The nature of the service is described in the invoice as Event Management Service on which service tax has been paid by the appellant. The said service is eligible input service and the credit ought to have been allowed by the authorities below. He drew support from the decision of the Tribunal in the case of *M/s. DBOI Global Services P. Ltd. Vs Commissioner of Service Tax, Mumbai* reported in *2017 (48) S.T.R.157 (Tri.- Mumbai)* to argue that Event Management Services were held to be eligible input service. The said decision was upheld before the Hon'ble Bombay High Court by the department and vide judgment reported in *Commissioner of Service Tax, Mumbai-VI Vs M/s. DBOI Global Services P. Ltd.* reported in *2019 (20) G.S.T.L. 351 (Bom.)* in Central Excise Appeal No.72 of 2018, dated 28.11.2018 decided on 28.11.2018, the Hon'ble High Court upheld the order passed by the Tribunal and dismissed the appeal filed by the department.

6. With regard to the refund denied in respect of invoices issued by M/s. People Craft and M/s. Airtel, the learned counsel submitted that the appellants are not able to produce the invoices and, therefore, the appellants are not contesting the issue at present.

7. The next three invoices are with regard to Subscription Fee paid to Export Promotion Council (EPC) and Special Economic Zone (SEZ), M/s. Nasscom and M/s. Beyond Square Solutions Pvt. Ltd. The learned counsel relied upon the decision of the Tribunal in the case of *M/s. Alliance Global Services IT India (P) Ltd., Vs CCE & ST, Hyderabad-IV* reported in *2016 (44) S.T.R.113 (Tri.-Hyd.)* to argue

that the fee paid for taking membership in Associations like American Chamber of Commerce in India, M/s. International Market Assessment India (P) Ltd., were held to be eligible for credit. It is explained by him that though it is noted in the invoice issued by M/s. Beyond Square Solutions (P) Ltd., that amount is paid towards Subscription Fee, in fact, the said amount is consideration paid by the appellants for providing the Software Services. He adverted to page no.95 of the appeal paper book. That though in the description of the services it is stated as monthly Subscription Fee for April, 2015, on the right corner of the invoice, it is shown as 'FOR: Software Services'. He submitted that the said company, namely, M/s. Beyond Square Solutions (P) Ltd., is a software company which provides assistance to the appellants in providing Software Services. The amount is paid for the services provided and not as Subscription Fee. He prayed that the credit in respect of these services may be allowed.

8. The credit in respect of invoices issued by two consultancy services, namely, M/s. Crave Infotech and Consultancy Services and M/s. Dayadimensi India (P) Ltd., has been denied for the reason that the registration number of the service provider has not been mentioned in the invoices. The learned counsel argued that the invoices is issued by the service provider and when there is no dispute with regard to the services availed and the service tax paid, the department cannot deny the credit/refund on these services. To support his argument, he relied upon the decision of the Tribunal in the case of *M/s. Mafatlal Industries Ltd., Vs CC & ST, Ahmedabad* reported in *2020 (43) G.S.T.L. 562 (Tri.-Ahmd.)*. He prayed that the appeal may be allowed.

9. The learned Authorised Representative Shri Vikas Jhajharia supported the findings in the impugned order.

10. Heard both sides.

11. The issue is with regard to the rejection of refund claim filed under Rule 5 Cenvat Credit Rules, 2004 as amended. The table reproduced above would give the details of the services that are contested in this appeal.

12. The first issue is with regard to the rejection of refund claim on the invoices issued by M/s. Host India Events & Marketing. The credit has been disallowed by the original authority holding that there is no nexus with the output services. In the table, the services is seen described as Education and Training Expenses. The said invoice has been furnished in page no.93 of the appeal paper book. In the invoices, the services are described as Event Management Services. The invoice does not show that the services are provided for Education and Training Services or as Subscription Fee. As per invoice, the consideration is paid for Event Management Services. The Tribunal in the case of *M/s. DBOI Global Services P. Ltd.* reported in *2017 (48) S.T.R.157 (Tri.-Mumbai)* has held that Event Management Services are eligible for credit. The said decision has been upheld by the Bombay High Court as reported in *2019 (20) G.S.T.T.351 (Bom.)*. Following the said decision, I am of the view that the disallowance of credit/refund on these invoices issued by M/s. Host India Events & Marketing is unjustified. The appellant is eligible for credit/refund.

13. The learned counsel has submitted that the appellants are not contesting the issue of credit in respect of invoices issued by M/s. People Craft and M/s. Airtel. The rejection of refund claim in respect of these two invoices, dated 01.02.2015 and 31.02.2015 are upheld.

14. The authorities below have rejected the refund claim in respect of Subscription Fee paid to Export Promotion Council for EOU, SEZ, and M/s. Nasscom. The Tribunal in the case of M/s. *Alliance Global Services IT India (P) Ltd.,* (supra) has analysed the very same issue and held that the credit is eligible. It also needs to be pointed out that in para 7.4 of the impugned order, the Commissioner (Appeals) has

relied upon the decision in the case of *M/s. Maruti Suzuki Ltd. Vs CCE, Delhi-III* reported in *2009 (240) E.L.T.641 (S.C.)* to hold that the credit is not eligible. The said judgment of the Hon'ble Supreme Court is with regard to the interpretation of 'inputs' and not 'input services'. The Tribunal in the case of M/s. *Alliance Global Services IT India (P) Ltd.,* (supra) had not discussed the same and observed as under:-

> *"It is seen that the authorities below have denied the refund laying thrust on the judgment rendered in M/s. Maruthi Suzuki Ltd., Vs CCE, Delhi-III – 2009 (240) E.L.T. 641 (S.C.). In the said case, the Hon'ble Apex Court was dealing with interpretation of the definition of "inputs" and not "input services'. Therefore, the said case has been wrongly applied by the authorities below to hold that appellant is not eligible for refund. Further, it needs to be stated that the interpretation of "inputs" laid in M/s. Maruthi Suzuki Ltd., case was referred to the Larger Bench of Supreme Court, in the case of M/s. Ramala Sahakari Chini Mills Ltd., UP Vs CCE, Meerut – 2010 (26) E.L.T.321 (S.C.) while considering the admissibility of credit on welding electrodes used in repair and maintenance. The Hon'ble Larger Bench of Apex Court held that the word "include" in the statutory definition of 'input' is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction".*

For these reasons, I am of the view that credit availed in respect of Subscription Fee paid on Export Promotion Council for EOU, SEZ and M/s. Nasscom vide invoices dated 20.04.2015 and 15.05.2015 are eligible for refund.

15. With regard to invoices issued by M/s. Beyond Square Solutions (P) Ltd., the learned counsel has argued that though the nature of expenses is described in the invoices dated 15.05.2015 and 07.03.2015 by M/s. Beyond Square Solutions (P) Ltd., as Subscription Fee, these invoices are actually issued for providing software solutions and not expenses towards Subscription Fee. In page 95, the invoice issued by M/s. Beyond Square Solutions P. Ltd., dated 15.05.2015 is enclosed. The description of service is mentioned in the invoice as monthly Subscription Fees for April, 2015. The learned counsel has been at pains to submit that the right hand corner of the invoice bill, it is shown that the invoice is issued 'FOR: Software Services'. Similarly, in page no.98, the invoice issued by M/s. BSSPL, dated 03.07.2015 is enclosed. The description of service is shown as 'monthly Subscription

for June, 2015'. On the right corner of this invoice also it is shown that 'FOR: Software Services'. On perusal of these two invoices, the description of services unambiguously shows that the amount is paid for monthly Subscription Fee. The amount in both these invoices are constant, which is Rs.15,000/-. I cannot find any reason to assume that these expenses were for Software Services rendered by M/s. BSSPL to appellants.. It has also to be mentioned that the amount paid being constant for every month, it can only be that the amount is paid towards subscription. The appellants have not produced any evidence to support their arguments that M/s. BSSPL assisted them for providing software solutions and the expenses are incurred for such services and not Subscription Fee. For this reason, the rejection of credit on the invoices by M/s.BSSPL is upheld.

16. The next is with regard to credit/refund in respect of invoices issued by two Consultancy Services, namely, M/s. Crave Infotech and Consultancy Services and M/s. Dayadimensi India (P) Ltd. The reason for rejection of refund in respect of these invoices is that the invoices do not indicate the Service Tax Registration No. of the service provider. It is an omission on the part of service provider, which is beyond the control of the appellants, who is the service recipient. In the case of *M/s. Mafatlal Industries P. Ltd., Vs CCE & ST, Ahmedabad* reported in *2020 (43) G.S.T.L. 562 (Tri.-Ahmd.)*, it was held that this issue is only a technical infraction and the error not being on the assessee's part, the benefit of credit/refund cannot be rejected. The relevant paragraph reads as under:-

> *"As regards the demand of Rs.3,31,180/-,we find that Cenvat credit was denied only on the ground that the invoices, certain services did not carry either Serial Number or Service Tax Registration. We find that this is a technical infraction and moreover this error is not on the part of the appellant but on the part of the service provider, who issued the invoices. It is not a case of the department that in said invoices, no service tax was paid and there is no dispute about receipt and use of the services, which are the main criteria for allowing Cenvat credit on input service. Therefore, in our view, credit, only on the technical infraction should be denied."*

Following the said judgment, I hold that the credit/refund on these invoices is eligible.

17. In the result, the impugned order is modified to the extent of allowing the credit/refund in respect of invoices issued by –

(i) M/s.Host Events India & Marketing dated 11.03.2015 and 13.03.2015;

(ii) Invoices issued by Export Promotion Council for EOU, SEZ and M/s. Nasscom; and

(iii) Invoices issued by two Consultancy Services, namely, M/s. Crave Infotech and Consultancy Services and M/s. Dayadimensi India (P) Ltd.

18. The credit/refund in respect of the following invoices are rejected and the decision of the authorities below is upheld-

(i) Invoices issued by M/s. People Craft and M/s. Airtel; and;
(ii) Invoices issued by M/s. Beyond Square Solutions P. Ltd.

19. The appeal is partly allowed in the above terms with consequential reliefs, if any.

(Pronounced in open court on **28th October, 2021**)

(Sulekha Beevi C.S.)
Member (Judicial)

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