

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

ST/42249 - 42250/2016

(Arising out of Order-in-Appeal No. 284 & 285/2016) dated 29.07.2016 passed by the Commissioner of Central Excise (Appeals-II), Chennai).

M/s. Integra Software Services Pvt. Ltd.

Appellant

CCE, Pondicherry

Respondent

Appearance

Shri S. Ramachandran, Consultant
for the appellants

Shri S. Govindarajan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: 13.04.2017

FINAL ORDER Nos. 40623-40624/2017

The issue in dispute relates to culling of refund claims filed by the appellants under Rule 5 of Cenvat Credit Rules, 2004, to deny credit of certain input services which were considered as ineligible for the purpose of availing input service credit. After due process of adjudication, refund claims were only partly sanctioned, rejecting the amounts pertaining to Cenvat credit involved on 'Renting of Immovable Property service, Commercial Training or



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Coaching service, Telecommunication Services, Management or Business Consultancy service, Sponsorship Service, Maintenance & Repairs Service of Guest House etc. On appeal, the Commissioner (Appeals) vide common impugned order dated 29.07.2016, upheld the orders original authority and rejected the appeals as devoid of merit. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, Id. Consultant Shri S. Ramachandran, appearing on behalf of the appellant submits that they are not pressing the issue in respect of sponsorship service and maintenance and repair service of guest house. In respect of other disputed input services, he contends that appellants should be eligible to avail of the service tax credits thereon for the following reasons:-

(i) Ld. Consultant submits that the Director had paid service tax in respect of Renting of Immovable Property by mistake since the building was leased to the appellant by the Director of the Company.

ii) In respect of Commercial Coaching and Training, service tax demand of Rs. 13,346/- is involved, which pertains to delegate fees and participation fees paid to AIMA and STC, CII, for the employees who were nominated to take such training.

iii) In respect of Telecommunication service, landline and mobile telephone bills which were paid by the appellant company in the name of the Managing Director, who used such service.

iv) In respect of Management Consultancy service, the said services were rendered by in relation to sales, marketing and



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strategy, however, department has denied service tax paid in relation to travel expenses charged by the consultant in addition to the consultancy charges.

3. On the other hand, Id. AR Shri S. Govindarajan supports the impugned order. He points out that renting of immovable property service related to the property owned by the Director of the Company. It was not the case that the company had leased or provided accommodation to the said director as per the terms of employment. For the reason, service tax paid by the appellant cannot become an eligible input service. Relating to telecommunication service, Id. AR submits that the landline/mobile telephones were in the personal name of the concerned employee of the company. Therefore, it is not forth-coming whether they have been used by the employees in relation to the activities of the appellant, or whether the appellants have paid the bills. As far as the management or business consultancy service is concerned, he submits that the transportation charges being separate from the consultancy charges, service tax paid on that cannot be availed as cenvat credit. At the most it would be input service for the consultancy service not for the appellants.

4. Heard both sides and gone through the facts of the case.

5.1 From the impugned orders, it becomes clear that the appellants themselves have admitted that they have paid the service tax liability in respect of renting of immovable property by mistake. Id. Advocate contented that since such payment has



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been paid by mistake, department should have given refund of this amount also or otherwise, should allow re-credit of the same. However, what comes to the fore is that this dispute relates to claim of refund under Rule 5 of Cenvat Credit Rules, which interalia facilitates refund of input credit or input service tax credit which are used directly or indirectly in the manufacture of finished goods. This being so, even if the appellants have paid or suffered tax liability by mistake, they cannot claim the refund thereof under Rule 5 ibid but, under other facilitating provisions in the law. In the circumstances, I do not find any infirmity in the rejection of service tax credit relating to such renting of immovable property service. Appeal on this score is therefore rejected.

5.2 On the matter of Commercial training or coaching services, that relates to training of nominated employees. I find that this would be an eligible input service, and in particular, they are also not barred by exclusion clause of Rule 2 (I) of CCR, 2004.

5.3 Coming to the Tele-communication service, concerning landline/mobile telephones installed at the residence of the employee, I am of the considered opinion that the credit should be permitted. Though the Id. AR has points put that these are in the individual names of the employee and not in the name of the appellants, however, there is no allegation that they have not been used for the purpose of the appellant's business or for that matter, only for the personal use and consumption of an employee. This view finds sustenance in the following Tribunal decisions which have been correctly relied upon by the Id. Consultant.



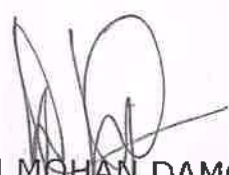
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1. *Reltech Energies Limited Vs. CCE, Mangalore*
2008 (10) STR 280 (Tri.-Bang.)
2. *Vishal Pipes Ltd. Vs. CCE, Noida*
2015 (40) STR 1091 (Tri.-Del.)
3. *ITC Ltd. Vs. CC & CE, Salem*
2009 (14) S.T.R. (Tri.-Chenn.)
4. *DCW Ltd. Vs. CCE, Tirunelveli*
2011 (22) STR 214 (Tri.-Chen.)

5.4 Coming to the dispute in response to credit availed on management or business consultancy service, I find that department has not disputed the credit availed on the management consultancy charges per se. What has been denied is the additional charges for transportation claimed by the consultancy. Appellant has not produced any contract or agreement wherein such transport charges are required to be paid, in addition to the consultancy charges. This being so, I am of the opinion that the credit availed in respect of such transport charges will not be eligible for the purpose of refunds under Rule 5 ibid. Appeals on this score is also rejected.

6. Appeals are partly allowed on the above terms.

(Order dictated and pronounced in the open Court)

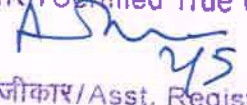
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(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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