CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 50620 of 2018

(Arising out of Order-in-Appeal No. 490(SM)ST/JPR/2017 dated 28.12.2017 passed by Commissioner, Central Goods & Service Tax, Jaipur)

The Commissioner, Central Goods & Service Tax, Jaipur **...... Appellant**

VERSUS

M/s Bharti Hexacom India Ltd. **......Respondent**
K-21 Sunny House, Malviya Marg,
C-Scheme, Jaipur

APPEARANCE:
Shri Harshvardhan, Authorized Representative of the Department
Shri B.L. Narasimhan & Ms. Poorvi Asati, Advocate for the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50631/2023

DATE OF HEARING: 27 April, 2023

JUSTICE DILIP GUPTA

The issue involved in this appeal that has been filed by the department to assail the order dated 29.12.2017 passed by the Commissioner (Appeals) relates to denial of CENVAT Credit of service tax discharged on the commission paid by the respondent to collection agents for collection of dues of post-paid plans from the subscribers.

2. M/s Bharti Hexacom India Limited[1] is engaged in the provision of telecommunication services to various subscribers. It availed the services of collection agents for the purpose of collection of dues from

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1. the Respondent

post-paid subscribers and paid commission to the collection agents towards consideration for such services.

3. The respondent also availed CENVAT Credit of the service tax paid on the commission amount.

4. The Department, however, believed that as the service of collection of dues of the post-paid plan had not been used by the respondent for providing 'output' services as it had been used after completion of the provision of output service, it would not qualify as an 'input' service for the provision of telecommunication service. A show cause notice dated 27.01.2016 was, accordingly, issued to the respondent. The respondent filed a reply pointing out that in view of the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004[2], all services which are used for providing the output service would qualify as input service. It was also pointed out that the agents appointed by the respondent for collection of the dues of post-paid plan perform a service which is integral to the provision of output service in as much as they undertake collection of revenue without which the respondent will not be in a condition to continue to provide output services.

5. The Joint Commissioner, however, by order dated 27.01.2017 disallowed CENVAT Credit and also imposed penalty. The relevant portion of the order passed by the Joint Commissioner is reproduced below:-

> "**24.3**. In the instant case I find that the noticee have availed the services of collection agents for recovery / collection of dues in respect of their post paid plan and they have paid commission to such agents who have charged service tax on the commission charged by them on such post paid plan collection / recovery services. Further I find that the services of collection / recovery of dues of the post paid plan have not used by the noticee for providing the output services rather the same has been used after completion of the provision of the output services. Thus, the

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2 the 2004 Rules

activities in respect of collection / recovery of post paid plan outstanding dues have been undertaken after completion of provision of the taxable output service (i.e. telecommunication service). **Therefore I find that services of Collection Agent used by the noticee are neither covered under mean part nor in the inclusive part of the definition. Not in the mean part because of its non-utilization for the provision of output service (i.e. telecommunication service) and also not in the inclusive part because of their character does not matches with the services specified therein.** Therefore, the notice have wrongly availed Cenvat credit of Service Tax paid on commission paid to such collection / recovery agents and this service does not qualify as "input service" as defined under rule 2(l) ibid for the noticee for the provision of telecommunication service and as such the noticee shall not be allowed to take credit on such ineligible services as per rule 3(1) of the Cenvat Credit Rules, 2004."

(emphasis supplied)

6. Feeling aggrieved, the respondent filed an appeal before the Commissioner (Appeals), who by order dated 21.12.2017 allowed the appeal and set aside the order passed by the Joint Commissioner. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:-

6. I observe from the definition of input service that the services used in relation to sales promotion are covered under the scope of the said definition. **Now the question is whether the activities of commission agents can be treated as the services used in relation to sales promotion.** I find that the commission agent is a key person who identifies the potential buyers, explain them the positives of the product, convince them to buy and procure orders. His activities are entirely related to sales promotion. Without services of commission agents, it is very difficult to sell SERVICES. I observe that the clarification issued by the Board vide its circular No.943/4/2011-CX dated 29.04.2011 specifically, under point No. 5, contains the wording that "…Moreover activity of sales promotion is specifically allowed and on many occasion the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sales of dutiable goods on commission basis." **From this clarification itself it is understood that if a commission agent is paid commission on account of sales of goods, his services are qualify to be input service and cenvat credit of service tax paid on such service is admissible to the recipient of service.** I find that the issue stand settled after the said clarification itself. I find that Hon'ble Tribunal in the case of CCE Jallandhar Vs. Ambika Overseas reported in 2010 (20) STR 514 (Tri.-Del.) hold that the subject activity of commission agent is a service used in relation to sales promotion and is covered under the definition of input service. This order of the Hon'ble Tribunal was affirmed by the Hon'ble High Court of Punjab & Haryana as reported in 2012 (25) STR 348 (P & H). Regarding the judgment of Hon'ble High Court of Gujrat in the case of Cadila Healthcare Ltd. reported in 2013 (30) STR 3 (Guj.), I find that in that case the Hon'ble Court has considered the issue wherein period of demand was prior to year 2008. During the period from year 2008 till date, this issue has been considered by various appellate authorities and the Board has also issued clarification vide circular dated 29.4.2011. Further, as contended by the appellant- service providers also, an Explanation in the definition of input service has been inserted vide Notification

> No.02/2016-CE (NT) dated 3.2.2016 which, as per settled principle of Law, has retrospective effect as the same is in the form of explanation only. Further this issue has also been clarified at point B.30 of the minutes of Tariff Conference of Central Excise held on 28-29 October, 2015 circulated vide F.No.96/85/2015-CX.1 dated 7.12.2015, wherein subject service has been considered as input service. Since at this point of time, statutory provisions/grounds are available to deal with the issue in the form of clarification, Tariff Conference and Notification as discussed above, conclusion can be drawn beyond the findings of the Hon'ble Gujrat High Court, that the services of commission agent for sales of goods can also be considered as services used in relation to sales promotion that too when the above said notification clearly provides that sales promotion includes services by way of sale of dutiable goods on commission basis." **In view of the findings narrated in foregoing para, I am of the firm view that the Cenvat credit of service tax paid on the amount of post paid plan collection commission charged by their collection agents is available to the appellants- service providers.**
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> 7. **In view of the above discussion and in the light of clarification dated 29.04.2011 and notification dated 03.02.2016, I can safely conclude that the activity regarding post paid plan collection commission charged by their collection agents for selling the products i.e. post paid plan of the appellant-service provider is squarely covered under the scope of definition of input service provided under Rule 2 (l) of the Cenvat Credit Rules, 2004, as such the appellant - service providers were entitled to avail the subject credit and the same has been correctly availed.** I therefore, find it proper to set aside the impugned order disallowing the credit and ordering for recovery of the same alongwith interest. Consequently, imposition of penalties becomes void. "
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> **(emphasis supplied)**

7. Shri Harshvardhan, learned authorized representative appearing for the department submitted that the Commissioner (Appeals) committed an error in holding that the Explanation added to Rule 2(l) to the 2004 Rules would have retrospective effect for the simple reason that it would come into force only on the date of publication in the official gazette.

8. Shri B.L. Narasimhan, learned counsel appearing for the respondent assisted by Ms. Poorvi Asati, however, submitted that the respondent committed no illegality in availing CENVAT Credit for the reason that the service of collection of post- paid dues rendered by the collection agents to the respondent would be covered under the 'means' part of the definition of 'input' service. His submission is that a provider of output service is eligible to avail CENVAT Credit on all

those services which are used for providing output services without which the provision of the said output service would become impossible or at least commercially inexpedient. In support of this contention, learned counsel placed reliance upon a decision of the Mumbai Tribunal in **WNS Global Services Pvt. Ltd**. Vs. **Commissioner of Central Excise, Nashik**[3] and also on the decision of the Tribunal in **M/s Vodafone Essar Cellular Ltd.** Vs. **Commissioner of G.S.T. & Central Excise, Chennai South Commissionerate**[4]

9. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel appearing for the respondent have been considered.

10. As noticed above, the show cause notice that was issued to the respondent alleged that the service of collection of dues of the post-paid plan had not been used by the respondent for providing output service and in fact had been used after completion of the provision of output service and, therefore, would not qualify as input services for provision of telecommunication service. The Joint Commissioner, in the order dated 27.01.2017, took the same view as was proposed in the show cause notice.

11. The Commissioner (Appeals), however, held that the CENVAT Credit of the service tax paid would be available to the respondent. In coming to this conclusion, the Commissioner (Appeals) relied upon various decisions, including the Explanation inserted on 3.2.2016 to rule 2(l), which according to the Commissioner (Appeals) had

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3. 2013(32) S.T.R. 657 (Tri.-Mumbai)
4. 2018 (9) TMI 985-CESTAT Chennai

retrospective effect and would squarely cover the issue involved in the appeal.

12. Rule 2(l) of the 2004 Rules defines 'input service' to mean any service used by a provider of output service for providing output service and includes services relating to sales promotion. The Explanation that was added to rule 2(l) on 03.02.2016 provides that for the purpose of clause 2(l), sales promotion includes services by way of sale of dutiable goods on commission basis.

13. The view taken by the Commissioner (Appeals) that the Explanation inserted in rule 2(l) of the 2004 Rules on 03.02.2016 would have retrospective effect is correct. The Calcutta High Court in **Principal Commissioner of Central Excise, Kolkata-IV** Vs. **Himadri Speciality Chemical Limited**[5] held that the Explanation inserted on 03.02.2016 to the definition of input service under rule 2(l) of the 2004 Rules would have restospective effect and the relevant portion of the judgment is reproduced below:-

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> 10. xxxxxxx **Further, on and after the insertion of the explanation in Section 2(1) vide notification dated 03.02.2016, the position has become much clearer. The explanation seeks to clarify the intention of the legislature with a view to extend the benefit of credit on services of commission agent as was indicated in the circular dated 29.04.2011 which is to the following effect.**
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> B.30 - Meerut Zone - Cenvat Credit - Admissibility of Cenvat.
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> 11. As could be seen from the above clarification, the decision in Cadila Health Care was also taken note of by the department and the position stood clarified that sales promotion would include services by way of sale of goods on commission basis. As pointed out by the Hon'ble Supreme Court in Commissioner of Income Tax Vs. Vatika Township Private Limited MANU/SC/0810/2014 : (2015) 1 SCC 1 that if a legislation confers the benefit on some persons but without inflicting the corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the object of the legislature, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given retrospective effect, In Commissioner of Income Tax Vs. Archean Granite Private Limited

5 . 2022(66) GSTL 264 , CEXA No. 4 of 2022 decided on 27.09.2022

(2020) 117 Taxmann.com 977 (Madras) amendment made to Section 40(a) (ia) of the Finance Act, 2010 inserting proviso therein was held to be retrospective with effect from the assessment year 2005-2006 and the Court followed the decision in the case of Commissioner of Income Tax Vs. Calcutta Export Company MANU/SC/0528/2018: (2018) 93 Taxmann.com 51. Therefore, we find that the approach to the issue in the manner done by the learned tribunal cannot be faulted."

14. This apart, what needs to be noticed is that the view taken by the Joint Commissioner that since the activities in respect of collection /recovery of post-paid plan outstanding dues had been undertaken after completion of the provision of taxable output services they would not be covered in the main part or the inclusive part of the definition of input service is not correct. Rule 2(l) of the 2004 Rules provides that the input service must be used for providing output service. The provider of output service, therefore, shall be eligible to avail CENVAT Credit on all those services which are used for providing output services without which the provision of the said output service would become impossible or commercially inexpedient. What, therefore, follows is that services having relation with the business of providing of output service would be covered by the definition of input service. In this connection, reference can be made to the decision of the Tribunal in **Bajaj Finance Ltd.** Vs. **Commissioner of Central Excise, Pune**[6] wherein the Tribunal held as follows:

4. xxxxxxxxxxx From the above definition it can be seen that any service used for providing output service. As discussed above, the service of taking repossession of the vehicle which is an activity in relation to recovery of the loan is used for overall service of lending. Therefore as per the main part of the definition, the service of recovery agent received by the appellant is an input service. The appellant also claimed that his service is related to 'Security' which is specified in the inclusion part of the definition as one of the input service. We find that the vehicle on which the appellant have given the loan is hypothecated with the appellant as the security. Therefore in connection to the recovery of the loan this vehicle is taken under repossession, therefore this service is clearly covered under the definition of 'Security' which means "a thing deposit or pledged as a guarantee of the fulfilment of an undertaking or the

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6. 2018 (10) GSTL 251 (Tri.-Mumbai)

> repayment of the loan, to be forfeited in case of default. In view of this definition the service of taking repossession of the vehicle from the borrower is a part of security service which is specifically included in the definition of input service. For this reason also the service of repossession provided by the recovery agent to the appellant is an input service. Therefore the appellant is clearly entitled for the Cenvat credit on such input service. However it is observed from the submission of the Ld. Counsel that the amount of recovery charges was recovered by the appellant from the individual borrowers at the time of giving repossession of the vehicle in case the borrower has repaid the amount. In this regard the proceedings related to demand of Service Tax on such part is pending before this Tribunal. Since that is not a subject matter of the proceedings of the present case, the same cannot be taken into consideration for deciding the issue on merit involved in the present case. However, the Revenue is free to take appropriate action in accordance with law, if it is found that against the credit of input service i.e. seizing charges if any exempted service is provided. As per our above discussion, the appellant is entitled for the Cenvat credit on the service of repossession of vehicle provided by the various recovery agent to the appellant against the output service of the appellant i.e. lending of money (Banking and Other Financial Service), accordingly the impugned order is set aside. The appeal is allowed.

15. In **Vodafone Essar Cellular Ltd**., the Tribunal also reiterated the aforesaid views in the following manner:-

> The third issue that arises for consideration is the credit availed on **various input services**. The appellant has given the details of the various input services in the table as shown above. The services erection, construction and installation of towers and shelters was availed by the appellant for providing output service of telecommunication. These services have direct nexus with the output service and therefore, is eligible for credit. The Tribunal in the appellant's own case vide Final Order dated 22.01.2018 has allowed the credit. For this reason, we hold that the credit on this service is eligible. The appellant has availed credit on collection charges which are nothing but charges paid to Bill Collection Agencies. In the case of **Bajaj Finance Ltd. Vs. C.C.E., Pune-1 - 2018 (10) G.S.T.L. 251 (Tri. - Mum.)** it was held that assessee is entitled to CENVAT Credit on input services which were used for repossession of vehicle by recovery agent. Here, the appellants have used the facility of Bill Collectors/Agents for recovery of the bills from customers. Thus, the said credit availed on such collection charges, in our view, is eligible. The various other services as shown in the table, except that shown in SI. No. 22, have been held to be eligible for credit in various decisions as cited in the table.

16. In view of the aforesaid discussion, it has to be held that the respondent was entitled to avail CENVAT Credit of service tax discharged on the commission paid by the respondent to collection agents for collection of dues of post-paid plans from the subscribers.

17. The appeal filed by the Department would, therefore, have to be dismissed and is dismissed.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Rekha