CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50034 of 2017 [DB]

[Arising out of Order-in-Appeal No. 83/ST/DLH/2016-17 dated 16.09.2016 passed by the Commissioner of Service Tax (Appeals-I), New Delhi]

M/s. Perfect Relations (P) Limited **...Appellant**
S-27, Second Floor, Star City,
Mahatta Tower, Mayur Vihar,
Phase-I, New Delhi-110091

VERSUS

Commissioner of Service Tax,
Delhi-I **...Respondent**
Gate No.2, C.R. Building,
I P Estate, Delhi - 110109

APPEARANCE:

Mr. A.K. Batra and Mr. Akashdeep, Advocates for the Appellant
Mr. Radhe Tallo, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 18.04.2023
DATE OF DECISION: 18.04.2023

FINAL ORDER No. 50850/2023

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 83/2016-17 dated 16.09.2016, vide which the demand under 'Business Auxiliary Services' has been confirmed against the appellant. Facts in brief are as follows:

The appellant is registered with the service tax department and has been engaged in providing services to United Nations Development Programme (UNDP). During the Financial Year 2009-10 and 2010-11, Department, while auditing, observed that the appellant is providing Business Auxiliary Services to UNDP but has not paid any service tax on the said services on account of availment of exemption under Notification No. 16/2002-ST dated 02.08.2002. Observing that the exemption is not available that the Show Cause Notice No. 202/2014-15 dated 09.06.2014 was served upon the appellant proposing the recovery of an amount of Rs.1,63,631/- along with applicable cess and the interest at appropriate rates with the proportionate penalties. The said proposal was initially confirmed vide Order-in-Original No. 10/2016 dated 31.03.2016. The appeal thereof has been rejected vide the order under challenge.

2. We have heard Shri A.K. Batra and Shri Akashdeep, Advocates for the appellant and Shri Radhe Tallo, Authorized Representative for the department.

3. It is submitted on behalf of the appellant that appellant was engaged actually in providing 'Public Relation Services' to UNDP which is not a business organization. Hence, the services provided cannot be called as Business Auxiliary Services. Learned Counsel has brought to the notice the contents Notification No. 16/2002-ST dated 02.08.2002 vide which all taxable services if provided to the United Nations or any international organization, those stands exempted. It has also been brought to the notice that the decision of United States District Court Southern District of New York in the case of **Sadikoglu Vs. United Nations Dev. Programme** has held UNDP to be an international organization and a subsidiary body of United Nations. It is submitted that benefit of said notification has wrongly been denied while confirming the demand. The order

under challenge is accordingly prayed to be set aside and appeal is prayed to be allowed. The following case laws have been relied upon:

(i) M/s. Sir Ganga Ram Hospital Vs. Commissioner of Service Tax, New Delhi reported as 2020 (11) TMI 536 – CESTATE NEW DELHI

(ii) M/s. AC Nielson Org. Marg Pvt. Ltd. Vs. Commissioner of S.T. Mumbai-II reported as 2018 (12) G.S.T.L. 322 (Tri.-Mumbai)

4. Learned DR has acknowledged that the case laws relied upon by the appellant has settled the issue involved to have already been decided in favour of the assessee.

5. Having heard both the parties and perusing the case laws relied upon.

6. We observe that the UNDP is a subsidiary program of the United Nations. UNDP was established in 1965 by the General Assembly, which is one of the UN's "six principal organs" and its primary policymaking and representative body. UNDP reports directly to the General Assembly of its ongoing projects. The identical issue has been considered in the case of **Vijayanand Roadlines (supra),** wherein this Tribunal has passed the following order:-

"6. *We have gone through the provisions of "Service Tax Credit Rules 2002". The above mentioned rules have been made in exercise of the powers conferred by clause (ee) of sub-section (2) of Section 94 of the Finance Act, 1994 (32 of 1994). These rules are similar to Cenvat Credit Rules. In case of the goods, the duty paid on the* *inputs, can be taken as Cenvat credit. The credit so taken can be utilized for payment of duty on the goods manufactured and cleared from the factory. If the final products are exempted, no input credit is allowed. The Service Tax Credit Rules, 2002 are similar to the Cenvat Credit Rules. The Service Tax Credit Rules, 2002 have been superseded by the Cenvat Credit Rules, 2004 with effect from 9-9-2004. Presently both the goods and services are covered by the Cenvat Credit Rules 2004. Just as Cenvat credit is taken on the inputs, the service tax paid on input service can be taken as credit and the credit so accumulated can be utilized for payment of service tax on output service in terms of Service Tax Credit Rules 2002. In case a service provider avails credit on any input service and renders such output services which are chargeable to service tax as well as exempted, then the service provider is required to maintain separate accounts for receipt and consumption of input service meant for taxable output service and non-taxable (exempted) output service. However, there is a provision under Rule 3(5) of the Service Tax Credit Rules, 2002 by which the service provider can opt not to maintain separate accounts. In such circumstances, what are his obligations? In order to understand the same, we are reproducing the Rule 3(5) of Service Tax Credit Rules, 2002 herein below :-*

> *"(5) In case the service provider opts not to maintain separate accounts of input service meant for consumption in relation to rendering of such output services which are chargeable to service tax as well as exempted services or non-taxable services, he shall be allowed to utilize service tax credit for payment of service tax on any output service only to the extent of an amount not exceeding thirty five percent of the amount of service tax payable on such output service."*

A careful reading of the above provisions show that when the service provider does not maintain a separate accounts of input service for taxable and non-taxable output service, there is a restriction on utilization of the credit. As per the above rule, the utilization is restricted to 35% of the amount of service tax payable on such output service. At any point of time, the service provider can arrive at his liability which is service tax payable on his output service. He should calculate 35% of his liability. From out of the accumulated credit, he has allowed to utilize up to 35%. There is no indication that the service tax credit accumulated during the earlier *period would lapse. In other words, there is no question of lapse of the credit legally taken. In the present case, from May 2003 to March 2004, even though the appellant had input credit available, he chose to pay tax only through PLA. As on November 2003, he had accumulated credit to the tune of Rs. 3,01,932/-. However, for the period from November 2003 to March 2004, the payment was done mostly by utilization of credit. In the month of March 2004, a part of the liability was paid by PLA and another part by utilization of credit. In other words, the total tax paid from December 2003 to March 2004 by utilizing the credit comes to Rs. 4,94,494.00. This is actually equal to 35% of their liability from May 2003 to March 2004. There is no rule which says that the credit accumulated during the month should be used in the same month. In fact, no time frame has been fixed in the rules. In these circumstances, the utilization of credit to the extent of Rs. 4,94,494/- during December 2003, January 2004, February 2004 and March 2004 is in order and in consonance with Rule 3(5) of the Cenvat Credit Rules, 2002.*

7. In view thereof, it is held that issue involved herein is no more *res integra*. It stands already decided in favour of the assessee. We find no reason to differ from those adjudications. We observe that despite these decisions were brought to the notice of Commissioner (Appeals), he has erred while ignoring them. The department authorities are equally responsible to follow the judicial protocol, hence are required to be careful in future. Resultantly, the order under challenge is hereby set aside, appeal stands allowed with all consequential benefits.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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