

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 51319 OF 2017

[Arising out of the Order-in-Original DLI-SVTAX-004-COM-097-16-17 dated 31.3.2017 passed by Commissioner of Service Tax Delhi Audit – II, Gurgaon – 122 002 Haryana.]

M/s CB Richards Eills South Asia Pvt. Ltd. ...Appellant
PTI Building, Ground Floor,
4, Parliament Street,
New Delhi – 110 001.

Versus

Commissioner of Service Tax, Respondent
Delhi Audit – II,
Mudit Square, 1st Floor, Plot No. 24,
Sector – 32, Gurgaon – 122 002. Haryana.

APPEARANCE:

Ms. Priyamvda Sinha & Ms. Dristhty Sakhuja, Advocates for
the appellant
Shri S K Meena, Authorised Representative for the Revenue

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 55589/2024

DATE OF HEARING: 06.12.2023
DATE OF DECISION: 19.04.2024

P.V. SUBBA RAO

M/s. CB Richard Ellis South Asia Pvt. Ltd.¹ filed this
appeal assailing the order-in-original² dated 31.3.2017 passed
by the Commissioner in which he decided the proposals made
in the Show Cause Notice³ dated 1.2.2012 and confirmed
demand of Rs.1,70,73,652/- invoking extended period of

1 the appellant
2 impugned orders
3 SCN

limitation under section 73 of the Finance Act, 1994⁴ along with interest under section 75 and imposed an equal amount as penalty under section 78 and also imposed Rs. 10,000/- as penalty under section 77(1) and section 77(2) each.

2. We have heard Ms. Priyamvda Sinha and Ms. Drishti Sakhuja, learned counsels for the appellant and Shri S.K. Meena, learned authorised representative for the department and perused the records.

3. The appellant provides real estate consultancy and was registered with the service tax department for providing "Real Estate Agent Services". It was also availing during the relevant period, Cenvat credit under Cenvat Credit Rules, 2004⁵. It's records for the period 2006-2007 to 2009-2010 were audited by officers of the service tax commissionerate who felt that the appellant had:

- a) wrongly availed Cenvat credit of the service tax paid on the medical insurance of its employees and their families;
- b) incorrectly calculated and reversed under Rule 6(3) of CCR an amount which was less than what was to be reversed;
- c) short paid interest on service tax paid on transactions related to associated enterprises; and
- d) had not paid service tax on certain services imported by it viz., legal fees, global website cost sharing, allocated share of annual premium for indemnity insurance.

4 Finance Act

5 CCR

4. The SCN dated 01.02.2012 was issued to the appellant proposing to demand and recover service tax and the alleged short reversed amount under Rule 6(3) with interest and impose penalties. The proposals in this SCN were decided by the impugned order. We now proceed to decide the various issues in this appeal.

Disallowance of Cenvat credit of service tax paid on medical insurance of the employees and their families

5. The Commissioner has, in the impugned order, disallowed Cenvat Credit of the service tax paid on medical insurance of the employees and their families.

6. According to the learned counsels for the appellant, this service was clearly covered in the definition of 'input service' as it was an expenditure on an activity related to business. Therefore, the appellant was entitled to Cenvat credit for the entire period. They rely on the following decisions:

- a) Satyam Computer Ltd. versus Commissioner⁶
- b) Reliance Industries versus Commissioner⁷
- c) PTC Software (India) Ltd. versus Commissioner⁸

7. The Commissioner had, in the impugned order, agreed with the submission of the appellant for the period upto 1 April 2011 but held that the appellant was not entitled to credit

6 Service Tax Appeal No. 1036 of 2009 decided by Final Order dated 7.9.2022

7 Excise Appeal No. 477 of 2012 decided by CESTAT, Mumbai (Larger Bench)

8 2014(35) STR 632 (Tri-Mumbai)

after this date because Rule 2(I) of the CCR underwent change from 1 April 2011 and certain services were specifically excluded. Of the excluded services were those:

“such as those provided in relation to outdoor catering, beauty treatment,life insurance, **health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;**

8. The Commissioner, therefore, held that the appellant was entitled to Cenvat credit upto 1.4.2011 but not thereafter. He denied the Cenvat credit of Rs.1,56,33,704/- stating that the appellant was unable to provide the breakup.

9. We find that the proposed denial of Cenvat credit on this count in the SCN was only of Rs. 44,19,319/- as can be seen from paragraph 12(i) that too, for the period 2007-2008 to 2010-2011 (as can be seen from paragraph 3.4 of the SCN). The break-up was available in the SCN itself and the entire period was before 1.4.2011. Therefore, even as per the findings of the Commissioner, this demand cannot be sustained.

Demand of Rs. 1,15,14,385/- for the period 2008-2009 to 2010-2011 on the ground that the reversal of Cenvat credit under Rule 6(3) was wrongly calculated

10. The demand of Rs. 1,15,14,385/- for the period 2008-2009 to 2010-2011 was confirmed on the ground that the appellant had short reversed the Cenvat credit under Rule 6(3)

by wrongly reversing the amount based on the “amounts received for providing exempted services” instead of reversing on the basis of “the value of exempted services provided”.

11. According to the appellant all their exempted services were rendered to SEZ units and in Rule 6 of CCR, 2004, sub-rule (6A) was inserted by notification no. 3/2011-CE (NT) dated 1 March 2011 with retrospective application since 10.2.2006. This excluded the services provided to SEZ areas from the requirements of reversal of Cenvat credit under Rule 6 (3). Therefore, according to the appellant, the demand on this count needs to be set aside. Reliance is placed on **SIFY Technologies Ltd. versus Commissioner of C. Ex. & ST, LTU, Chennai**⁹

12. The Commissioner agreed with the above legal position but declined to allow the benefit stating that during audit, the appellant had not informed the audit that the exempted services were provided to SEZ but had only mentioned it in the written reply to the SCN. He said that in the absence of any material fact on record to establish that such services were provided to SEZ and that all the conditions as per relevant notifications exempting services provided in SEZ were fulfilled in the case, the benefit of Rule 6(6A) which provides exemption from reversal under Rule 6(3) could not be extended. He, therefore, confirmed the demand.

9 2011(21) STR 252 (Tri-Chennai)

13. The reasoning of the Commissioner cannot be accepted. The Commissioner agrees with the legal position but holds that the appellant was not entitled to the benefit of the exemption because:

- a) The appellant had not pointed out that the services were rendered to SEZ when the audit was conducted but indicated only it in the reply to the SCN; and
- b) There is no evidence on record that the services were rendered to the SEZ units and all the conditions for exemption of such services in the relevant notifications were fulfilled.

14. The Commissioner was bound to consider the submissions made in the reply to the SCN and any submission could not be rejected because it was not made before the audit team at the time of audit. If the demand has to be confirmed only what was discovered during audit leaving no scope to put up defence afterwards, the SCN itself will be irrelevant. The SCN had called upon the appellant to explain why certain actions should not be taken and when the appellant explained, the Commissioner was bound to consider the reply. He agrees that the legal position indicated in the reply was correct. The Commissioner committed an illegality in denying the benefit merely because this position had not been pointed out during audit. His second reasoning cannot also be accepted. If the appellant had not fulfilled the conditions of the exemptions and was not entitled to the exemption from service tax for the

services which it had rendered to the SEZ units and for that reason they were not exempted, the question of any reversal under Rule 6(3) does not arise. The very basis for the SCN and the Commissioner to say that reversal has to be done as per Rule 6(3) was that the output services were exempted. When the audit was conducted and all the records were available with the department and the invoices of the recipient of the exempted services and the amounts received from them were examined, if the Commissioner doubts that the receivers of service were SEZs, he must have some basis to say so. Nothing to the effect is coming out of the order.

15. We, therefore, find it proper to remand this part of the demand to the Commissioner with a direction to examine the invoices and record if the exempted services in question were rendered to units in SEZ or not and accordingly, re-calculate the demand, if any.

Short payment of interest on late paid service tax on services received from an Associated Enterprise from outside India

16. The appellant received services from its Associated Enterprises viz., CBRE Inc., from outside India in March 2008. It paid for these services in August 2008. The undisputed legal position is that the appellant was required to pay service tax on reverse charge mechanism on the services rendered to it by its Associated Enterprise M/s. CBRE, Inc. It had paid CBRE for the services in August 2008 but paid service tax on the value of this service only in July 2011 along with interest.

17. On 10 May 2008, Rule 6 of the Service Tax Rules, 1994 was amended and an Explanation was inserted as follows:

Explanation: For the removal of doubts, it is hereby declared that where the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax."

18. The effect of this amendment was that after the amendment, in respect of transactions with associated enterprises, the value of taxable service includes any amount which is recorded in the books of account of the tax payer. In other words, if 'A' from outside India, renders service to its associated enterprise 'B' in India, B is liable to pay service tax on any amount which it records in its books of account as payable for the service to A regardless of when it actually gets paid. Before this amendment, service tax was payable only if the amounts were received.

19. According to the Commissioner, the amendment dated 10.5.2008 was retrospective and would apply to any amounts which were recorded though not paid on 10.5.2008. Therefore, according to the Commissioner the appellant should have paid service tax on 10.5.2008 and since it had delayed and paid

service tax only in July 2011, interest should have been paid from 10.5.2008.

20. According to the appellant, the amendment dated 10.5.2008 was only prospective and it was required to pay service tax only in August 2008 when it paid the Associated Enterprise. Since it paid service tax only in July 2011, it paid interest for the period August 2008 to July 2011.

21. The dispute, therefore, is confined to the question if the amendment dated 10.5.2008 was retrospective and consequently, if interest was payable for the period from 10.5.2008 to August 2008. Learned counsel relies on a decision of a bench of this tribunal in **Sify Technologies Ltd. versus Commissioner of Central Excise, LTU Chennai**¹⁰

22. We find that in the absence of any stipulation to the contrary, all laws are presumed to be only prospective and not retrospective because men are expected to arrange their affairs as the law is and are not required to anticipate what the law is likely to be and arrange their affairs accordingly. Of course, nothing prevents any legislation being given retrospective effect but in the absence of any such stipulation, all laws should be treated as having only prospective effect. We, therefore, respectfully follow the decision of a coordinate bench in **Sify Technologies** and hold the amendment dated 10.5.2008 was only prospective and it does not apply to services rendered and accounted for prior to this date.

10 2011 (21) STR 252 (Tr-Chennai)

Therefore, for the past transactions, the liability to pay service tax fell on the appellant only in August 2008 when it paid its Associated Enterprise and interest was correctly calculated and paid from August 2008. No interest was payable from 10.5.2008 to August 2008. The demand on this head needs to be set aside and we do so.

Non payment of service tax on certain imported services

23. The demand on this count is on three types of services

- (a) Allocated share of annual premium for indemnity insurance;
- (b) Legal fees for obtaining visa; and
- (c) Cost sharing of the global website.

24. Of the above, learned counsel submitted that they are not pressing on the third service related to cost sharing of global website. Regarding the indemnity insurance, its parent company abroad obtained the indemnity insurance and it covered the appellant also. The appellant paid its share of the premium to its parent company and enjoyed the protection of the insurance. A demand of Rs. 11,13,633/- as service tax was made on its share of the premium under reverse charge mechanism.

25. The appellant's submission is two-fold. It paid the amount to its parent company which is not an insurer and therefore, there was no service provider and service recipient

relationship between its parent company and itself. Therefore, no service tax can be charged. Secondly, there was some error in calculation for the period 2007-08 due to which excess service tax amounting to Rs. 3,33,720/- has been demanded.

26. The case of the Revenue is that the appellant had not obtained services from its parent company but from the insurance company abroad through its parent company. The service provider was the insurance company and the service recipient is the appellant. The appellant enjoyed the insurance from professional indemnity and paid for it. However, instead of obtaining the insurance directly, it obtained it collectively through its parent company abroad.

27. The view of the Revenue deserves to be accepted. The question is if there is a service provider and service recipient relationship and if there was a taxable service and consideration was paid for it. Indisputably, the appellant was enjoying the service of professional indemnity insurance and it was the service recipient. The insurance was not being provided by its parent company but by the insurance company abroad which is the service provider. For this service, the appellant paid an amount as consideration. However, since the insurance was taken by the parent company covering the appellant also, the premium was also paid by the parent company and the appellant reimbursed to its parent company its share of the premium. Therefore, looking at the total transaction, we find in favour of the Revenue and against the

appellant on this count. The appellant is liable to pay service tax on this service. As far as the dispute regarding calculation is concerned, we find it proper to remand the matter to the Commissioner to consider the submissions made by the appellant and determine the amount of service tax payable.

Service tax on legal fee paid- Rs. 8,185/-

28. The case of the Revenue is that the appellant paid to a company outside India, some legal fees to obtain visas on which it was liable to pay service tax under the head "support service for business or commerce'.

29. The case of the appellant is that legal service was not covered under 'Support Service for Business of Commerce" under section 65(104c). Service tax on legal service was introduced only from 1.9.2009. It had paid the amounts for the period August 2008 to September 2008 when it was not taxable. The department has incorrectly considered it as a service rendered during 2009-2010.

30. Since this issue requires verification of facts, we find that this also needs to be remanded to the Commissioner for verification of facts and determining the service tax payable, if any.

31. In the factual matrix of this case, considering that we have already found in favour of the appellant with respect to most demands, we set aside all penalties under section 80 of the Finance Act.

32. In view of the above we partly allow, partly reject and partly remand the appeal and modify the impugned order as follows:

- (a) The denial of Cenvat credit of Rs. 44,19,319/- service tax paid on medical insurance of employees and families of the appellant is set aside as the Commissioner himself found the legal position in favour of the appellant and held that credit was available up to 1.4.2011 and paragraph 3.4 of the SCN shows that entire demand was for the period 2007-2008 to 2010-2011.
- (b) The demand of Rs. 1,15,14,385/- on the ground of short reversal of Cenvat Credit (or payment of an amount) under Rule 6(3) of the CCR is remanded to the Commissioner to verify if the exempted services rendered by the appellant were to SEZ units and hence covered by Rule 6 (6A) of CCR or if the services were exempted for some other reason and accordingly re-determine the amount payable by the appellant or refundable to it, as the case may be.
- c) The demand of additional interest of Rs. 2,16,021/- on the delayed payment of service tax on services received from the Associated Enterprise M/s. CBRE, Inc. is set aside.

- d) The demand of service tax of Rs. 11,13,633/- on the share of the appellant in the premium paid for professional indemnity insurance obtained from an insurance company abroad through its parent company is upheld.
- e) The demand of service tax of Rs. 8,185/- on the legal services received by the appellant is remanded to the Commissioner to determine if the services were obtained before 1.9.2009 (when legal services were not exigible to service tax) or after that date and accordingly re-determine if tax is payable.
- f) The demand of Rs. 18,130/- on the costs shared for the global website is upheld as not contested.
- g) Interest, as applicable has to be paid on any service tax due.
- h) All penalties are set aside invoking section 80 of the Finance Act.

(Order pronounced in open court on 19/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)