CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing: 20.04.2017
Date of pronouncement: 12.05.2017

S.T. Appeal No. 58643 of 2013

(Arising out of order in appeal No. APPL/LTU/34/2013 dated 09.04.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU, New Delhi).

M/s EXL Service.com (India) Pvt. Limited Appellant

Vs.

CCE&ST, LTU Respondent

Appearance:

Sh. Purshottam Anand & Sh. Shatawik C. Advocates for the appellant
Sh. Amresh Jain, AR for the Revenue

Coram:

Hon'ble Mr. S. K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.53208/2017

Per: B. Ravichandran:

The appeal is against order dated 9.4.2013 of Commissioner (Appeals), Central Excise, New Delhi. The appellants are registered with the Department for providing taxable service under the category of "Business Auxiliary Service". They were providing the said services through various centres located in different places. The services are provided on behalf of foreign clients. For the services provided during October, 2010 to December, 2010. They have filed refund claim of unutilized cenvat credit amounting to Rs.2,25,08,012/- in terms of Rule 5 of Cenvat Credit Rules read with Notification No.5/2006-CE (NT) dated 14.03.2006. The said claim was examined and allowed by the Original Authority, partially. An amount of Rs.69,00,586/- was rejected by the Original Authority on various grounds. On appeal, the Commissioner (Appeals) allowed further refund of Rs.1,51,430/- and rejected an amount of Rs.67,49,156/- relating to various input services. The appellant is aggrieved by the said order and is in appeal before us.

2. Ld. Counsel for the appellant submitted chart containing the nature of services and the amount of credit availed on such services and their justification for eligibility of the credits as well as subsequent refund as claimed by them. He submitted supporting case laws that each one of the input services, the credit of which was denied and refund rejected, is used in or in relation to providing output services and the supporting documents will clearly establish the correctness of their claim.

3. Ld. AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records.

5. We note that the dispute in the present case relates to rejection of claim of the appellant to an extent of Rs. 67,49,156/-. Out of this amount, an amount of Rs.59, 43,503/- is tax credit availed by the appellant on input

services relating to payment of insurance of Directors, employees and their dependents. The impugned order rejected the claim on the ground that amount attributable to medical policy taken for the employees is eligible for credit, however, the amount attributable to their family members is not admissible. In absence of documentary evidence with break up details, the credit as a whole on this service was held to be not admissible. We note that the Tribunal in ***PTC Software (India) Pvt. Ltd. 2014 (35) S.T.R. 632 (Trib.-Mumbai),*** relying on earlier decisions on the same subject, held that the appellants are rightly eligible to take credit of service tax paid on insurance premium on Group Insurance Policy, as the said service is an eligible input service. The Tribunal in Faurecia Interior Systems (I) Pvt. Ltd. (Appeal No. ST/85802/13-Mum) vide final order dated 13/04/2015 held that the appellants are eligible for credit of service tax paid on insurance premium, including for family members of the employees. We note that appellants have categorically declared that they are not recovering any such amount from the employees. The expenditure is borne by the appellants themselves. As such, we find that the claim of the appellant on this credit is sustainable.

6. An amount of Rs. 5,89,322/- was denied as credit and refund was rejected, in respect of payments made for advertising service, designing service and event management service. We have examined the appellant's claim along with background details of these services. These services are with reference to advertising service provided at the family day function

of the employees of the appellant. The designing services were availed for events organized by the appellants in connection with anniversary, festivals and on various special occasions like appreciation programme for the employees, design of banners, logos for the appellant etc. Similarly, event management services were availed for participation in corporate football tournament, function for awarding the employees of the companies and team building activities of the employees including training. We note that the Hon'ble High Court of Karnataka in ***Toyota Kirloskar Motor Pvt. Ltd. 2011(24) S.T.R. 645 (Kar.)*** held that these type of activities do fall within the activities relating to business, consequently credit on such input services are available to the assessee. Hon'ble High Court was also referring to the expenses incurred by the appellant on participation in Karnataka State Day, which is also to be considered as a part of business activity of manufacture of final product. We note that the appellants have arranged and availed these various services in connection with their business activities and considering the nature of their business and output service, we hold that the credits are available on such services as they are connected to their business of rendering taxable output service.

7. We note the credit on security services provided to clients, parking area for interview and event of the appellant, was denied. Similarly, credit on outdoor catering services in connection with annual function celebration, payments towards rent-a-cab expanses was denied to the appellant. We note that the security services were availed by the appellant

in connection with their various business activities. These are in connection with security of the employees, key officials at different places in connection with conducting interview, security in parking area, which is part of the office premises of the appellant and the catering service availed is in connection with annual day function at the appellant's premises. We find these services have direct connection with the business activities of the appellant and the denial of credit is not justified. In this connection, we refer to the decision of the Tribunal in ***P.T.C. Software India Pvt. Ltd. (Supra)*** and ***Stanzen Toyota (supra)***, where similar credits were allowed. The rent-a-cab service is used by the appellant for travel of the employees and officials in connection with official work for the appellant. We find such services are eligible for input credit. Similarly, hospital services availed by the appellant for their employees are an integral part of their business expanses and cannot be denied for credit. We also note that the appellant's claim for service tax paid on air travel agent service and air ticket expanses are to be allowed as these are with reference to air travel undertaken by the employees as well as expenses relating to visa processing, work permit documentation etc., which has got direct nexus with the business of output service rendered by the appellant. Similarly, the service tax paid on maintenance and repair of business premises and the official guest house maintained by the appellant as part of their business requirement and have nexus to the output services. The expanses are borne by the appellant and the service tax has been duly discharged on the same.

8. The appellants also claimed certain discrepancies in the application of formula of computation of refund claim. They have mentioned in detail the calculations adopted by them and claimed that the same is in terms of the statutory provisions. Since the credit on various input services availed by the appellants were held to be eligible to them, as discussed above, we find that the original authority has to examine that claim for due sanction in terms of the provisions, under which the said claim was filed. The discrepancy claimed by the appellant in calculation, can also be verified before sanction of the claim.

9. In view the above discussion and findings, we allow the appeal with a direction to the Original Authority to verify the claim filed by the appellant for sanction in terms of the above observations.

(Pronounced on 12.05.2017)

(S. K. Mohanty)	(B. Ravichandran)
Member (Judicial)	Member (Technical)

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