(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E-50247-50249-2014/EX(DB)
(Arising out of Order-in-Original No.DLI/EXCUS/001/COM/44/2013 dated 30.09.2013 passed by Commissioner of CE, Delhi-I)

Cantabil Retail India Ltd , Rajesh Rohilla, Anil Bansal, Director …Appellant
Vs
CCE Delhi-I, CCE Delhi-I, CCE Delhi-I …Respondent

AND

Appeal No.E-53461-53463/2014/EX(DB)
(Arising Out of Order-in-Appeal No.29-31/CE/DLH/2014 dated 14.03.2014 passed by Commissioner(Appeals) CE, Delhi-I)

CCE Delhi-I, CCE Delhi-I, CCE Delhi-I ...Appellant

Vs
Cantabil Retail India Ltd, Anil Bansal, Rajesh Rohilla, Director …Respondent

Appearance:
Present for the party : Shri RK Philips, Advocate
Present for the department : Shri Dharam Pal Singh, DR

Coram: HON'BLE MR ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing/decision: 01-06.2017

Final Order No.55593-55598/2017

Per B. Ravichandran,

These are Six appeals dealing with the same dispute and accordingly taken up together for disposal. M/s Cantabil Retail India Ltd filed the main appeal against order dated 30.09.2011 of Commissioner of Central Excise, Delhi-I. The Director and the CEO of the main appellant, also filed appeals against the said order contesting the imposition of penalties on them. The Revenue filed three appeals against Order-in-Appeal dated 14.03.2014 of Commissioner (Appeals) Delhi-I. All the three parties in the above appeal are respondents in the appeals by the Revenue.

2. The brief facts of the case are that Cantabil Retail India Ltd (main appellant assessee) are engaged in manufacturing and retail marketing of branded ready-made garments. They have their factory of production and are registered with Central Excise Department. They have a separate administrative corporate office where the accounts are maintained. The appellants own a chain of retail outlets to market their garments. They also sell through direct commission agents and also through dealers appointed in different regions of the country as direct sales. All these three types of marketing outlets are supplied with their goods manufactured in their factory, either directly from the factory or on payment of excise duty or through centralised warehouses where duty paid goods were kept. All activities are controlled by the corporate office.

3. The goods manufactured by the main appellant assessee are subjected to Central Excise duty in terms of tariff value fixed under Section 3 of Central Excise Act, 1944 read with Notification No.20/2001 CE(NT) dated 30.04.2001 as amended. Apart from direct sales of garments to dealers from the factory, substantial portion of production is stock transferred to own warehouses/own retail outlets/consignment agents. Such stock transfer does not constitute sale of

goods. The Central Excise duty was discharged in terms of Rule 4 of Central Excise Rule, 1944. As per market demand, the goods were cleared from factory or from duty paid warehouses to required destinations. The clearances destined for own retail outlet and also to commission agents are cleared on stock transfer basis. The main appellant assessee manages Central Warehouses, retail outlets, depots of commission agents and all the expenditures including insurance, storage renting, etc on these premises.

4. The dispute in the present appeals relate to Cenvat Credit availed by the main assessee and service tax paid on various activities in connection with their business operation. Proceedings were initiated against the appellant for denial of Cenvat Credit availed under various headings by way of issue of SCN. We are considering first the proceeding which resulted in the issue of impugned order dated 30.09.2013. The said order denied a Cenvat Credit amount of Rs.86,35,176.00 for the period September, 2012 to February, 2013. The following is the summary of nature of service availed by the main appellant assessee, the credit on which was denied by the original authority.

SN	NAME OF SERVICES	SERVICES USED	CREDIT AVAILED (INCLD.EDU. CESS & S H EDU. CESS)
1	Rent	Service Tax paid on renting charges paid for company run, retail outlets, company owned warehouse for storage of duty paid goods	61,82,902
2	Common Area Maintenance Charges and Amenities Charges	Service Tax paid on the services provided by Mall or Building owner to up keep the amenities where the company run its owned retail outlet	10,59,969

3	Freight & Cartage	Service tax paid on freight and cartage for purchase of inputs used for manufacture of dutiable goods and outward freight used for removal of finished goods from factory of production to company owned duty paid warehouse for storage and for further removal of goods to the company owned retail 0otlets or up to the warehouse of the company's commission agents on stock transfer basis	160452
4	Postage & Courier	Service tax paid on postage and courier services availed for correspondence and to send small post parcels of goods to the retail outlets and up to the premises of the company commission agents on stock transfer basis	18,002
5	Security	Service tax paid on the security services used for guarding factory of the Appellant, retail outlets, warehouses of the company	72,573
6	Legal & Professional	Service tax paid on the service received from advocates and other professional such as chartered accounts, fashion designer, consultants, etc.	2,59,453
7	Advertisement	Service tax paid on the advertising services used for advertise the products manufactured and sold by the Appellant in print and other modern advertising media	86,486
8	Insurance	Service tax paid on the insurance services used to insure the building, stock in trade and furniture & fixtures at factory, warehouses, retail outlets owned by the Appellant to safeguard against theft, fire, rioting and other natural calamities.	70,208
9	Software & Website maintenance and development	Service tax paid on software & website development and maintenance services which is used for running nationwide inventory and sales control a company owned retail outlets, warehouses and commission agents. The system is so advanced, each movement of a single garment can be monitored until it has been sold to consumer from any location across country by the company owned retail outlet or commission agent	24,990
10	Commission charges	Service tax paid on the commission charge paid for receiving the business auxiliary services from the commission agents who earn commission on sale of goods on behalf of the Appellant	6,56,950

11	Service provided by Commission Agents from State of J&K	Service received from the Non Taxable Territory viz As per Finance Act, 1994 any person who receives taxable services from the person outside the taxable territory, the recipient is liable to deposit the tax, here in the present case the taxable services such as commission paid to the agent operating in state of J&K.	43,191

5. The original authority held that the main appellant-assessee is not eligible for any of these credits as they are not falling under the scope of 'input service' in terms of Rule 2 (l) of Cenvat Credit Rules, 2004. The original authority held that the main appellant assessee is not covered by the provisions for Input Service Distributor(ISD). It was also held that the goods were cleared on payment of duty from the factory and the 'place of removal' should be considered as factory gate of the main appellant assessee. The services availed by the appellant assessee after the clearance of goods cannot be considered as input services for credit. He also held that the debit notes which are ineligible documents for transfer of credit, cannot be the basis for availing credit. Some documents mentioned incorrect service tax division and did not show the address of the service provider and tax paid. On these basis also the denial of credit was ordered.

6. In another proceedings, which concluded in the order dated 30.10.2013, the Addl. Commissioner confirmed denial of Cenvat Credit of Rs.24,03,854/-, on similar set of facts for the period March, 2012. Appeals were filed against the said order. The Commissioner (Appeals) vide order dated 14.03.2014 allowed to parties' appeals and set-aside the original order. Revenue preferred three appeals against this impugned order of Commissioner (Appeals).

7. We have heard Shri RK Phillips, ld Advocate for the appellant-assessee and Shri Dharam Singh, ld AR for Revenue. We have examined the appeal records carefully. The original authority in both the proceedings held that the services on which credit were availed by the appellant-assessee are not covered by the scope of 'input services' under Rule 2(l) of Cenvat Credit Rules, 2004. We note that the main point of dispute in these appeals is the determination of 'place of removal' of excisable goods. The main appellant-assessee categorically stated that they transfer their goods to their warehouses from where they further transport them to the retail outlets or warehouses of their commission agents, from where the goods were sold. Hence , it was pleaded that place of removal in terms of Section 4 of Central Excise Act 1044 should be retail outlet/warehouses of commission agents. The goods remain in their ownership, till the time of sale from these retail outlets owned by them or up to the warehouses of commission agents, as the case may be. Freight also is paid by the main appellant-assessee up to the retail outlets/commission agents warehouses. We note that the original adjudicating authority fell in error in arriving at the correct factual position regarding 'place of removal.' In fact, we note the Commissioner (Appeals) in his order dated !4.03.2014 has examined these issues in great detail. We are in agreement with the findings of the Commissioner (Appeals). The relevant portion of the said findings are as below:

> "7.1 In order to seek reply to these observations, the definition of input services as given under Rule 2(l) of Cenvat Credit Rules, 2004 has to be seen in the light of the nature and the use of these input services. Rule (l) on

'input service', as it existed during relevant period i.e. for March, 2012, says as under:

"Input services" means any service –

(i) Used by a provider or taxable service for providing an input service:

Or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacturers of final products and clearance of final products up to the place of removal

And includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.'

The impugned order has not discussed the kind and nature of the individual services. Yet, the question 'whether the "categories of input services" claimed by the appellant (Service Tax paid on renting charges, freight and cartage, postage and courier charges, security, legal and professional charges, advertising, insurance, software & website maintenance and development charges and commission charges) could legitimately be comprehended as input service for availing Cenvat credit', is the question that falls for appellate consideration. From the submissions made by the appellants it can be seen that they have taken the credit of Service Tax paid on **i) Renting charges** paid for company run retail out lets, warehouse for storage of duty paid goods; **ii) Freight and Cartage** for purchase of inputs used for manufacture of dutiable goods and out ward freight for removal of finished goods from factory of production to company owned retail outlets or up to the warehouse of the company's commission agents on stock transfer basis, **iii) Postage & Courier services** availed for correspondence and to send small post parcels of goods to the retail outlets and up to the premises of the company commission agents on stock transfer basis; **iv) The security services** used for guarding factory, retail outlets and warehouses of the company; **v) legal and professional services** received from advocates and other professionals such as chartered accountant, fashion designers, consultants etc.; **vi) the advertising services** used to advertise the products manufactured and sold by the appellants in print and other modern advertising media; **vii) the insurance services** used to insure the building, stock in trade and furniture & fixtures at factory, warehouses and retail outlets owned by the appellants to safeguard against theft, fire, rioting and other natural calamities; **viii) software & website maintenance and development services** used for running nation wide inventory and sales control at company owned retail outlets, warehouses and commission agents; **ix) the commission charge** paid for receiving the Business Auxiliary Services from the commission agents who earn commission on sale of goods on behalf of the appellants; and **x) on the services used for organizing the annual general meetings** of the company.

7.2 On true and fair construction of Rule 2(l) of the Cenvat Credit Rules, 2004, insofar as is relevant to the facts on hand, it is clear that any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal would constitute input services. From the perusal of the input service received by the appellants and the nature of these services, it is evident that all the services are essential in running manufacturing business of the appellants and in view of the inclusive clause stipulated under Sub-rule (ii) of Rule 2(I) of the Cenvat Credit Rules, 2004, all the above mentioned services can certainly be attributed to have been termed as activities relating to the business of the appellants and used prior to the clearance of the subject goods to the ultimate consumer from the final place of removal."

8. In the appeals, the Revenue contended that the services availed at retail outlets cannot be considered for credit to the main appellate assessee. The Revenue contended that these services used in retail outlets had no remote connection in the manufacture of ready-made garments. We note that the original authority did not appreciate the legal scope of Rule 2(l) of the Cenvat Credit Rule, 2004. The Revenue presumed that the services should be in or in

relation to manufacture of ready-made garments, whereas Rule 2(l) clearly talks about services used by manufacturers, whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products up to the place of removal. A plain reading of the said statutory provision will indicate that the presumption of the Revenue is not sustainable.

9. The Tribunal had occasion to examine similar issue in Sports & Leisure Apparel Limited, 2016-TIOL-887-CESTAT-ALL. The Tribunal observed as below:

> "4.2 As per the above provisions a depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold, after their clearance from the factory, can also be the place of removal. In the instant case, no sales are effected from the factory gate. Central Excise duty in all cases has to be paid at the time of clearance from the factory but it does not mean that place of removal in all cases should be the factory gate by virtue of definition given in Section 4 (3) (c) of the Central Excise act, 1944. In the existing factual matrix in the case of the appellant since the goods are not sold at the factory gate but are sold at the retail outlets, therefore, by virtue of the express provisions of Section 4 (3) (c) (iii) of the Central Excise Act, 1944, the place of removal in the case of appellant will be the retail outlets from where goods are sold. This view is also forfeited by the relied upon case law of Metro Shoes Act Pvt Ltd Vs Commissioner of Central Excise, Mumbai-i (Supra) where CESTAT, Mumbai has held as follows in para 6:
>
> "6......."1) Input service "means any service.-
>
> (i) Used by a provider of taxable service for providing an Output service; or
>
> (ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal and includes services used in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control coaching and training, computer networking, credit rating, share registry/And security, inward transportation of inputs or capital goods and outward transportation upto the place of removal".

It can be seen from the above reproduced portion that the input services definition is having three different parts. Presumably, the first part i.e. used by provider of taxable service for providing an output service “is not an issue in this case. The second part of the definition used by the manufacturer.....from place of removal” is being strongly contested by both sides. On a plain reading of the second part of the definition, we find that any input service used by the manufacturer, whether directly or indirectly in or in relation to the manufacturer of final product and clearance of final product from the place of removal, stands eligible for availing as credit. It is also undisputed that the sale of said shoes take place from the said showrooms only and did not take place from the factory premises. If that be so, it has to be accepted that the show rooms which are belonging to the appellant herein, have to be considered as place of removal. The services utilised by the appellant till the place of removal and the service tax paid thereon are to be considered as services utilised by him for the manufacture of final product and the clearance of the same from the place of removal. This would indicate that the services which are rendered by various service providers during the course of transportation of the final product from the appellant’s factory premises to their own showrooms located in various place, for e.g

GTA, warehousing facilities, C&F agents, insurance, internet services, security, courier services, telecom services, pest control services, bank services etc. And service tax paid on such services would be eligible as credit being the services used by the appellant directly or indirectly in or in relation to the final product and the clearance of the same from the place of removal. As such, we find that the credit of the service tax paid by the service providers and charged to appellant till the sale of the goods from the retail showroom, the appellant is eligible to avail said credit as input service credit.”

4.3 Similar view has been taken by CESTAT, Delhi in the case of L.G. Electronics (India) Pvt Ltd Vs Commissioner of Central Excise, Noida (Supra) wherein paras 4.2.4, 5.1, 6.1 & 7 it has been held that if deliveries are on FOR destination basis then the point of sale will be treated as ‘place of removal’ and CENVAT Credit upto such place of sale will be admissible.”

10. Regarding the dispute relating to registration of the main appellant assessee as ISD, we are in agreement with the findings of the Commissioner (Appeals). On examination of provision of Rule 2(m) of the Cenvat Credit Rules, 2004, the Commissioner (Appeals) clearly recorded that, a manufacturer who wants to avail benefit of Service Tax should get registered himself as service

provider and then he will be able to account for all the input Service Tax paid in the headquarters and distribute the same to various units. After examining the provisions of Rule 7 of Cenvat Credit Rules, the Commissioner (Appeals) concluded that as the manufacturer was having various retail outlets and office besides the factory for manufacture, in order to utilise the credit of input service got registered with the department as ISD.

11. In view of the above discussion and analysis, we find that the impugned order dated 30.09.2013 of the Commissioner is liable to be set-aside and appeals of the main appellant-assessee and two others against the same are to be allowed on the same reasons. The order dated 14.03.2014 of Commissioner (Appeals) is upheld and three appeals of the Revenue against the stay order are dismissed. All the Six appeals are disposed-of accordingly.

12. Another dispute in the present appeal is relating to credit availed by the main appellant-assessee on the basis of debit notes, which were found to be ineligible documents. We note that the appellant-assessee issued challans under Rule 4A of Service Tax Rule, 1994 which contain all the required details. Even in case certain particulars were found missing in the relevant documents, we note that substantial benefit of Cenvat credit cannot be denied on this ground. In this connection, we refer to proviso to sub-rule (2) of Rule 9 of CENVAT Credit Rules, 2004 which provides for discretionary powers to the jurisdictional Asstt. Commissioner regarding allowing his credit in such situation. As such, mention of wrong address of the Service Tax Department on the documents is not a bar to avail the credit.

(Operative part of the order pronounced in the open court).

(Anil Choudhary) (B. Ravichandran)
Member (Judicial) Member (Technical)

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