IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 24.11.2017

Appeal No. ST/816/2011-SM

(Arising out of Order-in-Appeal No. 34/ST/DLH/2011 dated 25.2.2011 passed by the Commissioner (Appeals), Central Excise, New Delhi)

M/s Vaishnavi Corporate Communications (P) Ltd. Appellant

Vs.

CCE, New Delhi Respondent

Appearance

Shri A.K. Batra, C.A. - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58173/2017

Per S.K. Mohanty :

The brief facts of the case are that the appellant is registered with service tax department for providing taxable services, categorised under Management Consultant Service and advertising service. During the course of audit of the books of account in the appellant's company, the service tax department observed that for the period December, 2004 and January, 2005, the appellant had provided exempted services to UNICEF, but did not maintain separate accounts in respect of the input services used for providing such exempted service. Thus, the department entertained the view that the appellant availed unutilised Cenvat credit for service tax payment in excess of 20% of the service tax payable for non-maintenance of books of account as provided under Rule 6 of the Cenvat Credit Rules, 2004. Accordingly, the department sought to recover the Cenvat amount of Rs.2,92,831/- from the appellant. The proposed demand was confirmed in the original order dated 14.12.2009, which was culminated in the impugned order dated 25.2.2011 passed by the Commissioner (Appeals), Central Excise & Service Tax, Delhi.

2. The ld. CA appearing for the appellant submits that the appellant provides both taxable as well as exempted services and entitled for the benefit of sub-rule (5) of Rule 6 ibid in respect of certain taxable services used for providing both the category of service. He submits that the maintenance or repair service, management consultancy service and security agency service are categorised under Rule 6(5) ibid for the purpose of availment of the entire amount of Cenvat credit. Thus, he submits that out of the Cenvat demand of Rs. 2,92,831/-, the appellant will be entitled for the Cenvat credit amounting to Rs. 2,24,927/- in terms of Rule 6(5) ibid.

3. On the other hand, the ld. DR reiterates the findings recorded in the impugned order.

4. Heard both sides.

5. Rule 6 of the Cenvat Credit Rules, 2004 provides that the assessee should maintain separate records in respect of taxable output services and exempted serviced provided by it. However, sub-rule (5) of Rule 6 ibid mandates that the provisions of sub-rule (1), (2) and (3) of the said rules shall not be applicable and the assessee shall be allowed for the whole of the Cenvat credit, when the said services are not used exclusively in or in relation to providing the exempted services. Such sub-rule has notified 17 categories of services to fall under its purview. Management, maintenance or repair service, business consultancy service and security service are categorised under Rule 6(5) for the purpose of getting the benefit of availment of the entire Cenvat credit. Thus, in view of the provisions of sub-rule (5) of Rule 6 of the rules the appellant will be entitled for the Cenvat credit on such input services, irrespective of the fact that such services were used for providing both taxable as well as exempted services. However, I find that the authorities below have not specifically observed with regard to the nature of services used/utilised by the appellant for providing both categories of services. Therefore, I am of the view that the

matter should go back to the original authority for verification of the specific services which were used by the appellant for providing both category of services. If the services used by the appellant are categorised under sub-rule (5) of Rule 6, the benefit of whole Cenvat credit should be extended by the original authority.

6. Therefore, after setting aside the impugned order, the matter is remanded to the original authority to decide the issue afresh, in line with the above observations. Needless to say, that opportunity of personal hearing shall be granted to the appellant before deciding the issue afresh.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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