

IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 19.07.2018

Date of Decision: 31.07.2018

Appeal No. ST/54878/2014-DB

[Arising out of Order-in-Original No. 22/COMR/ST/ADJ/2014 dated 30.06.2014 passed by the Commissioner of Service Tax, Bhopal]

Bharat Sanchar Nigam Limited	...	Appellant
	Vs.	
CCE&ST, Jabalpur	...	Respondent

Appearance:

Represented by Shri Himanshu Khemuka, Advocate for the Appellant.

Represented by Shri Vivek Pandey, DR for the Respondent.

Coram:

Hon'ble Mr. C.L. Mahar, Member (Technical)

Hon'ble Mrs. Rachna Gupta, Member (Judicial)

Final Order No. 52657/2018 dated 31.07.2018

Per Rachna Gupta:

Present is an appeal against the order of Commissioner No. 22/COMR/ST/ADJ/2014 dated 30.06.2014.

2. The facts relevant for the purpose are that the appellant is engaged in providing taxable "telephone services" as defined un Section 65 of Chapter 5 of Finance Act, 1994, and is accordingly registered under Service Tax. During an audit, the Department observed that the

appellant have taken credit on duty of excise paid on office equipments, tables, chairs, split air conditioners, power plant battery, HDPE cables, equipments, miscellaneous window cooled sets, air conditioner EA sets, W/C diesel EA as detailed in Annexure A of the Show Cause Notice during the period October 2005 to 31.03.2006, and the remaining 50% credit has been taken by the appellant during the next Financial Year deeming all those Articles as capital goods and utilizing the same and discharging the Service Tax liability on the taxable services rendered by them. A Show Cause Notice dated 08.04.2011 was served upon them, to disallow and recover in cash, the Cenvat Credit availed by the appellant during the period under dispute along with the proportionate interest and the penalties in this respect. While adjudicating the said Show Cause Notice, the entire demand except for Rs. 11,92,192/- was confirmed vide the order under challenge. Resultantly, the present appeal.

3. We have heard Shri Himanshu Khemuka, learned Advocate for the appellant and Shri Vivek Pandey, learned DR for the department.

4. It is submitted by the appellant that the Cenvat Credit has been denied to the appellant on the table, chairs and other office equipments as are mentioned in the Annexure. It is impressed upon that the services as provided by the appellant are in the form of telecom services and can be

provided only while sitting in the office. Hence, the objects on which the credit has been taken by the appellant account the capital goods as being required for rendering the output services. The order is, therefore, alleged to suffer infirmity. It is impressed upon that applying the "user test" all the items on which the Cenvat Credit has been availed are eligible as accessories to the capital goods. With respect to HDPE cables, it is submitted that the same has already been held as capital goods. However, the order under challenge is, otherwise, alleged to suffer infirmity and accordingly, is prayed to be set aside. Appeal is prayed to be allowed.

5. While rebutting these arguments, it is submitted by the learned DR that Cenvat Credit is denied on the office equipments. While impressing upon Para 15.3 of the order under challenge, it is submitted that the adjudicating authority has been judicious and reasonable while distinguishing the goods of Annexure A to Show Cause Notice as to what can be used as a proper input and what cannot be used. Justifying those findings, the learned DR has prayed for dismissal of the appeal.

6. After hearing both the both the parties, we are of the opinion that the Cenvat Credits can be availed on the capital goods as per Rule 2(a)(A) and (B) of Cenvat Credit

Rules, 2004. As per the provision of this Rule the “capital goods” means as follows:

- (i) All goods falling under Chapter 82, Chapter 84, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
- (ii) Pollution control equipment;
- (iii) Components, spares and accessories of the goods specified at (i) and (ii);
- (iv) Moulds and dies, jigs and fixtures;
- (v) Refractories and refractory materials;
- (vi) Tubes and pipes and fittings thereof; and
- (vii) Storage tank, used –

7. The perusal of the definition makes it clear that anything which does not fall under any of the Chapter as mentioned in Clause (i) above will not be a capital good unless it is a component spare or accessory for anything in said Clause (i). For all or any of these to be accessory we need to know the relevance of their use, for the provider of Telecom Services, the output service is Telephone & Cellular Network. Thus, any article/ thing /object which is used for transmission & reception of said network can be

called as component/ spare/ accessory of the goods in Clause (i) as mentioned above, upon which the Cenvat Credit can be availed. Tribunal Mumbai in Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune reported in 2013 (29) S.T.R. 401 (Tri.-Mumbai) has held that:

"Component or part of any goods means something which is required to make such goods a finished item. Only those articles which would go into composition of another article can be considered to be components or parts of latter. As work 'component' is not defined in Central Excise Act or Rules framed thereunder, its dictionary meaning has to be considered for Rule 2(a)(A)(iii) of Cenvat Credit Rules, 2004. [para 30]

To qualify as capital goods under Rule 2(a)(A) of Cenvat Credit Rules, 2004, item should be a component or accessory of any of goods mentioned in sub-clause (i) or (ii) thereof, before it is used for providing of output services.

Since office chairs used by telecom service providers are classifiable under Chapter 94 of Central Excise Tariff which is not specified in Rule 2(a)(A)(i) of Cenvat Credit Rules, 2004. In that view, they are not capital goods on which credit could be availed. Also, as there was no evidence of their use for providing

telecom service, they were not inputs on which credit could be claimed – Rule 2(k) ibid.”

8. Applying the above observations to list of articles on which credit has been availed, we are of the opinion that most of the articles of Annexure A are equipments or appliances to be used in the office of the appellant or any office, hence cannot be categorized as such component/ spare/ accessory of the goods which are rendering output service herein, and hence, are not the goods on which the Credit can be availed. However, some other articles of Annexure-A such as optical fiber cables, HDPE cables, batteries used for running servers and the air conditioners used in server rooms to maintain the requisite temperature of the servers are opined to be the articles which are actually used for providing the output services of telecommunication. These are the articles which are specific for telecom agency and in absence thereof, the transmission and receiving of signals and conversion thereof into electrical signal, what precisely is the telecommunication is not possible. Thus, we hold that OFC, HDPE, batteries and ACs for server rooms are the inputs used in providing output service. Hence, the appellant are entitled to claim Cenvat Credit on these items only.

9. In view of these findings, we hold that the original adjudicating authority has not committed any error while

permitting the credit on these items and reducing the recovery to that an extent. Rest of the articles being clearly the office equipments and being clearly out of the definition of being called as capital goods or the components, spares or accessories thereof, the credits have rightly been denied. We find no infirmity in the order under challenge. The same is accordingly upheld. The benefit of authorities relied upon by the appellant have already been extended in favour of the appellant by the adjudicating authority below. There is no such other finding in those authorities which are applicable to satisfy the grievances of the appellant herein. As a result of this discussion, the appeal in hand is hereby dismissed.

[Pronounced in open court on 31.07.2018]

(Rachna Gupta)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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