CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT - I

Service Tax Appeal No. 20280 of 2014

(Arising out of order-in-Original No. 76/2013 Adjn (Commr)ST dated 24.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax Hyderabad IV)

M/s Deloitte Financial Advisory Services India Pvt Ltd.,
RMZ Futura, Block C, 3rd Floor, Plot No. 14 & 15,
Road No. 2, Hitech City Layout, Madhapur, Hyderabad

Appellant

Versus

The Commissioner of Customs Central Excise & Service Tax,
Hyderabad –IV Commissionerate, Posnett Bhavan,
Tilak Road, Ram Kote, Hyderabad

Respondent

WITH

Service Tax Appeal No. 20281 of 2014

(arising out of order-in-Original No. 70/2013 Adjn (Commr)ST dated 17.10.2013 passed by Commissioner of Customs, Central Excise & Service Tax Hyderabad IV)

M/s Deloitte & Touche Assurance & Enterprises Risk Services India Pvt Ltd.,
Plot No. 13, Road No. 2, Hitech City Layout,
Madhapur, Hyderabad

Appellant

Versus

The Commissioner of Customs Central Excise & Service Tax,
Hyderabad –IV Commissionerate, Posnett Bhavan,
Tilak Road, Ram Kote, Hyderabad

Respondent

<u>Appearance:</u>

Mr. P. Makrandh, Adv for the Assessee.

Mr C. Mallkarjuna Reddy, A.R. for the Respondent.

CORAM

HON'BLE Dr. D.M. Misra, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No.30477-30478/ 2020

Date of Hearing: 21/01/2020
Date of Decision: 21/01/2020

[ORDER PER: Dr D.M. MISRA] .

These two appeals are filed against respective orders-in-original passed by Commissioner of Customs, Central Excise and Service Tax, Hyderabad.

2. Briefly stated, the facts of the case are that the appellants are engaged in providing various taxable services during the relevant period. On the basis of scrutiny of records, it was alleged that the appellant had failed to pay service tax on the amount of reimbursement of payroll cost for the expatriate employees deputed from Deloitte & Touche Overseas Services LLC USA during the relevant period. In both the appeals, demand notices have been issued for recovery of service tax on the said issue along with interest and penalty. In appeal No ST/20280/2014 in addition to demanding service tax on the said reimbursable expenses, CENVAT credit availed on input services namely business auxiliary services was also proposed to be denied and recovered on the ground that

the services provided by the appellant during the relevant period April 2011 to March 2012 was not chargeable to service tax. On adjudication, the demands were confirmed with interest and penalty. Hence the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the issue of levy of service tax on reimbursement of payroll cost for the expatriate employees is no more *res integra* and decided in their favour by the department for the periods subsequent to the period involved in the present appeal. He has referred to the order of this Tribunal in their own case wide order No A/30643/2019 dated 20th September 2019 where under this Tribunal has remanded the matter to the adjudicating authority for ascertaining the fact of employer-employee relationship between the appellant and their overseas company namely Deloitte & Touche Overseas Services LLC, USA . It is his contention that pursuant to the said remand, the adjudicating authority decided the issue in their favour. It is his contention that therefore the present demand also be set aside accordingly. Further on the issue of admissibility of CENVAT credit availed on business auxiliary services, learned advocate has submitted that for the subsequent period, the learned Commissioner (Appeals) vide order dated 26.09.2018 held that the services rendered by the appellant are classifiable as business auxiliary services and not information technology software services, therefore, they are entitled to avail CENVAT credit for the period April 2011 to March 2012.

4. *Per contra*, the learned A.R. for the Revenue reiterating the findings of the learned Commissioner in the impugned order has submitted that on the issue of employer-employee relation the Tribunal earlier remanded the case to the adjudicating authority for ascertaining the fact. Hence, the present cases also be remanded to the adjudicating authority to ascertain the fact in the light of the order of this Tribunal dated 20th September 2019. On the issue of admissibility of CENVAT credit, the learned A.R. for the revenue has submitted that Hon'ble Andhra Pradesh High court in the appellants own case reported as *Commissioner of Customs, Central Excise Hyderabad IV Vs Deloitte Financial Advisory Services India Pvt Ltd [2012-TIOL-954-HC-AP)]* observed that the services rendered by the appellant are in the nature of business auxiliary services. It is his contention that the subsequent orders passed by the Commissioner (Appeals) allowing CENVAT credit, has not considered the aforesaid judgment, hence credit was wrongly allowed to the appellant. He prays that the matter may be remanded to the adjudicating authority to decide the issue taking note of the decision of the Hon'ble Andhra Pradesh High Court.

5. We have carefully considered the submissions advanced by both sides. As far as the first issue of levy of service tax on reimbursement of payroll cost of expatriate employees deputed from overseas is concerned, we find that this Tribunal to ascertain the employer employee relation remanded the matter to the adjudicating authority vide order dated 20th September 2019.

Following the said precedent, the present appeals are also remanded on the said issue to the adjudicating authority to ascertain the said facts accordingly. On the issue of admissibility of CENVAT credit, we find that the subsequent order of the adjudicating authority has not taken note of the judgement of the Hon'ble Andhra Pradesh High Court in the appellant's own case. Since we are remanding the appeals on the first issue to the adjudicating Commissioner, in our view it is appropriate also to remand the issue of admissibility of CENVAT Credit to the adjudicating Commissioner to examine its admissibility from all aspects including the principle of law applicable to the facts of the case. In the result, the appeals are allowed by way of remand to the adjudicating authority. All issues are kept open. As far as practical, the appeals be decided within a period of four months from the date of communication of the order. Appeals are allowed by way of remand.

(Operative portion of the Order pronounced in open court on conclusion of the hearing)

(Dr. D.M. Misra)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

Neela Reddy