CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Service Tax Appeal No. 2153 of 2012
(Arising out of Order-in-Appeal No.90/2012 (H-IV) S.Tax dt.31.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

Invensys Development Centre
(India) Pvt Ltd **......Appellant**
7th Floor, Block C1 Labs Centre,
Software Units Layout, Madhapur,
Hyderabad - 500 081

VERSUS

Commissioner of Central Tax
Hyderabad - IV **......Respondent**
Posnett Bhawan, Tilak Road,
Ramkoti, Hyderabad – 500 001

Appearance
None for the Appellant.
Shri Chittaranjan Wagh Prakash, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30002/2024

Date of Hearing: 01.01.2024
Date of Decision: 01.01.2024

[Order per: ANIL CHOUDHARY]

The Appellant herein is a 100% EOU registered with Software Technology Park of India (STPI) providing services under category of "Information Technology and Software Services" (ITSS). They are registered with the service tax department.

2. Appellant is absent on call.

3. We have perused the records and heard learned AR for Revenue.

4. The brief facts are that the Appellant filed, with the Department, the applications in Form-A for refund of unutilized Cenvat credit under Rule 5 of CCR read with Notification No.5/2006-CE (NT) dated 14.03.2006, for an amount

of Rs.27,67,107/- on 19.04.2010 for April to June 2009 and Rs.25,70,771/- for June to September, 2009 respectively, totalling to Rs.53,37,878/- along with copies of input service invoices, export invoices, FIRCs, Bank Statements, Export Clearance Certificates, Agreements, etc.

5. The Department issued SCN vide OR No.148/2010 seeking why (a) Cenvat credit of Rs.14,13,899/- (out of the said refund claim of Rs.53,37,878/-) should not be disallowed under Rule 14 of CCR read with Sec 73(1) of the Act, (b) Interest on said amount (i) above should not be recovered under Rule 14 of CCR read with Sec 75 of the Act and (c) Penalty under Rule 15 of CCR read with Sec 78 of the Act should not be imposed on the Appellant.

6. The Appellant made detailed submissions with case laws, explaining in detail that the (a) Cenvat credit of Rs.14,13,899/- should be allowed to them in total and consequently (b) Interest should not be recovered from them and (c) Penalty should not be imposed on them.

7. The SCN was adjudicated by the Additional Commissioner who was pleased to confirm the disallowance of proposed Cenvat credit of Rs.14,13,899/- holding that service tax credit taken on various expenses like fit out charges, canteen charges, car parking fee, operation and maintenance charges etc., appeared to be not eligible and irregular, since the charges are collected by the service providers in relation to maintenance of immovable property, which are not in the nature of input service as defined in Rule 2(l) of CCR. With regard to telecommunication service/courier service, it was observed that the credit of Rs.4,631/- is in excess than the amount of tax mentioned in the invoices. Credit of Rs.1,22,500/- was disallowed on invoices issued by the service provider for cleaning activity/housekeeping services as it appeared that there is lack of nexus with the output services. Cenvat credit of Rs.72,978/- was disallowed towards annual maintenance service of Air Condition/Ductable split air condition/Blue Star cassette Sanyo. Further, an amount of Rs.63,337/- was disallowed on services received from outside India on the allegation that Appellant has failed to produce relevant documents evidencing payment of appropriate service tax and the invoices/documents issued by the service providers. Further, interest was demanded on the amount disallowed and equal amount of penalty was imposed under Rule 15 of CCR read with Sec 78 of the Act.

8. Being aggrieved, the Appellant preferred Appeal before the Commissioner (Appeals), who was pleased to reject the Appeal save and except, he reduced

the amount of penalty under Rule 15(1) of CCR to Rs.3,50,000/-, observing that the SCN nowhere mentions of any suppression of facts or malafide, etc., on the part of the Assessee.

9. Being aggrieved, the Appellant is before this Tribunal, inter alia, on the following grounds:

a) The learned Commissioner (Appeals) has rejected all submissions, contentions, representations, case laws, etc., without considering proper interpretation of Act, Rules, Circulars, Notifications, etc., and without considering the intention of the legislature for the refund of unavailed Cenvat credit for export of services.

b) The learned Commissioner (Appeals), has not properly interpreted the meaning of "Input services" as defined under Rule 2(l) of CCR for the ITSS provider as a 100% EOU, when it is an inclusive definition and it gives a wide meaning.

c) The learned Commissioner (Appeals) has not changed the wrong classification done by the ADC for some of the "input services", for Cenvat credit of Rs.11,50,453/- when they relate to and form part of "Renting of Immovable Property service" only and otherwise also they form part of input services. Further, the charges for the cleaning of the premises (Rs.1,22,500/-), centralized AC maintenance (Rs.72,978/-) form part of the input services, the premises being software unit working on computer systems, servers and communication equipment on a continuous basis in a closed environment, all these services are essential and form part of eligible input services. Relief should have been granted on the service tax paid on import of services (Rs.63,337/-) to the extent of evidence available.

d) The learned Commissioner (Appeals) has grossly erred in stating that there is no nexus between the input services availed by the Appellant and the output services rendered.

e) The learned Commissioner (Appeals) has grossly erred in holding that :

    (i) The input service should have a direct nexus in providing the output service to avail Cenvat credit, when there is no such requirement.

    (ii) The non-receipt of those services (where input is disallowed) is not going to make any difference to the production of final products and/or such service, cannot be considered as input service, when without such input services it would not have become possible to provide output services.

f) The learned Commissioner (Appeals) failed to appreciate the fact that the unit is a 100% EOU working in a bonded premises and all those services on which the input credit is disallowed, are essential to run the business/providing ITSS services.

g) The learned Commissioner (Appeals) failed to consider Board's Circular No.120/1/2010, dt.19.01.2010 where in it is clearly stated that the nexus needs to be liberally interpreted in a harmonious and broad manner, which also contains an exhaustive list of input services, beneficial to the Appellant.

h) The learned Commissioner (Appeals) has heavily relied on the decision in Maruti Suzuki Ltd., vs Commissioner [2009 (240) ELT 640 (SC)] and other case laws cited in the Order, which relates to the inputs for manufacture of goods, whereas the Appellant is a service provider and the ratio of the said case laws does not have any application to the set of facts in the case of the Appellant.

i) The learned Commissioner (Appeals) has wrongly confirmed the levy of interest when the Appellant has not at all utilized any Cenvat credit, but it is only a claim for refund, which has not been granted and the ratio of the case law cited is not applicable to the present case and more so when the Cenvat credit is reversed.

j) The learned Commissioner (Appeals) has wrongly retained the penalty of Rs.3,50,000/-, when the Appellant has not at all utilized Cenvat credit, but only made a claim for refund, which has not been granted and the ratio of the case law cited is not applicable to the present case and more so when the Cenvat credit is reversed.

10. Learned AR for Revenue supports the Impugned Order.

11. Having considered the rival contentions, we find that the Appellant had given the categories of input services in dispute, in the reply to SCN as follows:

Nature of input service	**Relevant sections in the Finance Act, 1994**	**Category of service in the Finance Act, 1994**
Rent	90(a), 65(105)(zzzz)	Renting of Immovable Property
O & M charges	65(105)(zzg)	Management, Maintenance or Repairs
Fit out charges	65(105)(zzg)	Management, Maintenance or Repairs

Canteen charges	65(105)(zzt)	Outdoor Caterer services
Car Park charges	90(a), 65(105)(zzzz)	Renting of Immovable Property
Reimbursement of Addl. AC charges	65(39a)	Erection, Commissioning or Installation
ILL (Tata Communications)	65(109a), 65(105)(zzzx)	Telecommunication Services
Call (Inter call)	65(109a), 65(105)(zzzx)	Telecommunication Services
Housekeeping attendants	65(105)(zzg)	Management, Maintenance or Repairs
Housekeeping supervisors	65(105)(zzg)	Management, Maintenance or Repairs
Material charges	65(105)(zzg)	Management, Maintenance or Repairs
Contract amount	65(105)(zzg)	Management, Maintenance or Repairs
M/s McLean Maintenance charges		Management, Maintenance or Repairs
Security Guards	65(105)(w)	Security Agencies
Hire charges for vehicles for company employees	65(105)(o)	Rent-a-Cab Scheme Operator
Professional fees for providing recruitment services	65(105)(o)	Manpower Recruitment or Supply
Building maintenance	65(105)(zzg)	Management, Maintenance or Repairs
Training Employees	65(105)(zzc)	Commercial Training or Coaching
AMC charges	65(105)(zzg)	Management, Maintenance or Repairs
Consultancy fees	65(105)(r)	Management/Business Consultancy

12. It is further contended that the aforementioned services are required by the Appellant in provision of their output services, being software development and it would not be possible to carry out their business without the aforementioned input services. Admittedly, the Appellant does not undertake any domestic business and their entire turnover comprises of export turnover only. Thus, there is no question of any utilization of the input tax credit for payment of any output tax and/or utilization of input tax credit. We further find that the Court below has rejected the input tax credit merely, on the nexus theory, observing that there is no direct nexus of input services in dispute, with the output services provided. We further find that the Board Circular No.120/01/2010-ST provides guidelines for harmonious interpretations of nexus between input services and output services provided. The Circular provides a test for testing the nexus viz., - if the absence of such input service adversely impacts the quality and efficiency of the provision of output service exported, the same should be considered as eligible input service. We find that the Court

below summarily rejected the contentions of the Appellant, observing that the absence of such input services would not adversely impact the quality and efficiency of the output service provided by the Appellant/Assessee. We find that this amounts to interfering and/or dictating how the Assessee should do their business, which is not the spirit of law. We further observe that Rule 2(l) of CCR provides – input service means any service used by a provider of output service for providing an output service and includes services used in relation to renovation or repairs of the premises/factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, requirement of quality control, coaching and training, computer networking, etc. Thus, the definition provides for credit of both types of input services, the benefit of which is either received directly or indirectly. There is no such restriction in the definition under Rule 2(l). We find that the Order of the Court below is non-speaking and cryptic. We further find that no penalty is exigible in the facts and circumstances as the issue is wholly interpretational. Accordingly, we set aside the penalty imposed and retained by the Court below under Rule 15 of CCR read with Sec 78 of the Act.

13. Further, in the facts and circumstances, we allow this Appeal by remanding the matter back to the Original Adjudicating Authority to decide the SCN afresh, after considering the relevant Circular and the precedent decisions of various Courts as well as the explanations and clarifications provided by the Assessee. We also direct the Appellant/Assessee to appear before the Adjudicating Authority with a copy of this Order and seek an opportunity of Hearing.

14. Appeal is allowed by way of remand.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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