IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

S.T.Appeal No.75403/18

Arising out of Order-in-Appeal No.227/S.Tax.I/KOL/2017 dated 27.09.2017 passed by Commr. (Appeals) of CGST & Central Excise, Kolkata

M/s Deloite Haskins & Sells

...APPELLANT(S)

VERSUS

CGST & C.Ex. Kolkata North

RESPONDENT (S)

APPEARANCE

Shri Harish Bindumadhavan, Adv. & Shri Hemant Jajodia, C.A. for the Appellant (s)
Shri K. Choudhury, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING /PRONOUNCEMENT : 31.05. 2018

ORDER NO.FO/75359/2018

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against Order-in-Appeal No.227/S.Tax.I/KOL/2017 dated 27.09.2017 passed by Commr. (Appeals) of CGST & Central Excise, Kolkata.

2. Briefly stated the facts of the case are that the appellant Deloitte Haskins& Sells (DHS) is a Member of Deloitte Global an incorporated association of the Professional Accounting Firm Worldwide. Deloitte Global raised one consolidated invoice on DHS-Mumbai towards Membership Subscription Fees of all the Indian entities. DHS–Mumbai discharged Service Tax liability on the subscription paid by them under

Reverse Charge Mechanism under the category of Membership of "Club or Association Service". DHS–Mumbai issued Debit Notes on the Indian entities for their portion of their subscription towards the service received from Deloitte Global.

3. The appellant availed Cenvat Credit on the basis of the Debit Notes issued by them. According to the Revenue, the appellant is not entitled to avail Cenvat Credit on the basis of the Debit Notes as the DHS – Mumbai cannot be said to have an office or any other premises of DHS- Kolkata and they cannot be considered as an "Input Service Distributor" as it failed to satisfy the definition as provided in Rule 2(m) of the Cenvat Credit Rules, 2004.

4. Heard both sides and perused the appeal records.

5. I find that there is no dispute that the DHS- Mumbai had issued the Debit Notes towards the proportionate share in the Subscription Fee paid to Deloitte Global along with Service Tax of the appellant DHS- Kolkata.

6. The Tribunal in the case of Amra Raja Power Systems Limited Vs. Commissioner of Customs & Central Excise, Tirupati – 2016 (43) STR 313 (Tri- Hyd.) held that when Service Tax has been duly discharged by the service provider, service recipient cannot be denied credit of Service Tax borne by him. The relevant portion of the said decision is reproduced below :

> " ***2.*** *The learned counsel for the appellant contended that the department has not disputed the payments of Service Tax made by ARBL and MPPL. This would only mean that they are service providers. After accepting the*

tax, the department is now attempting to deny credit alleging that there is actually no service provided, but only sharing of common expenses. The learned counsel argued adverting to the documents like purchase order, invoices, etc. The appellants are manufacturers and undertakes the help of sister concerns for providing them facilities like IT Support services, marketing and logistics support service, procurement of inputs, dispatch of final products and similar services. The sister concerns are registered with Service Tax department and raises invoices and collects the charges for services from the appellants including the Service Tax. The sister concerns are thus integrally connected with the appellant factory as they provide the required marketing support in connection with the manufacturing operations. It is therefore clear that the services have a nexus with the appellants manufacturing activities and thus qualify as input services. The credit is sought to be denied alleging that the arrangement is merely sharing of common expenses and not rendering of service. The department cannot blow both hot and cold. When the department has accepted tax on the services provided by sister concerns to appellant, then they cannot deny credit saying that no services were rendered. I find that the demand of credit is unjustified".

7. In view of the above discussion and the ratio of the decision, the impugned Order is set aside and the appeal filed by the appellant is allowed.

(Operative part of the Order was pronounced in Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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