IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/87349/2016

[Arising out of Order-in-Appeal No: CD/534/M-III/16 dated 26th May, 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

SH Kelkar & Co Pvt Ltd …***Appellant***

Versus

Commissioner of Central Excise
Mumbai – III ***…Respondent***

Appearance:

Shri Yogesh Patki, Advocate for appellant

Shri M K Mall, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 17/11/2017
Date of decision: 17/11/2017

ORDER NO: ___________________________

Appellant, M/s SH Kelkar & Co P Ltd seeks quashing of order-in-appeal no. CD/534/M-III/16 dated 26th May, 2016 of Commissioner of Central Excise (Appeals), Mumbai-II on the ground that the proceedings culminating in the impugned order had been initiated on allegations that were vague in a show cause notice full of presumptions which is not consistent with the principles of natural justice that should govern tax disputes.

2. The dispute pertains to disallowance of CENVAT credit of ₹5,04,700 availed on tax paid on procurement of 'management consultancy service' and which, according to jurisdictional authorities, was not utilized exclusively by them but shared with their related enterprises.

3. Heard Learned Counsel for appellant and Learned Authorized Representative. A perusal of the show cause notice makes it amply clear from

> *'4. And whereas it appears that input services on which "the assessee" has availed of cenvat credit of Service Tax are not exclusively provided to them. It appears that the core management of M/s S.H. Kelkar & Co. Pvt. Ltd., and its related Companies viz. M/s. Keva Flavours P. Ltd., M/s. SHK Vashivali, M/s. SHK Mumbai-2, Residence of Directors etc. are common and also there is significant business and financial linkage between them. The Cenvat credit availed on the basis of the said invoices issued by M/s B. Ramkrishnan towards retainer fee for Management Consultant is common service to management. Thus it appears that the said services have also been used by other entities/related companies viz. M/s. Keva. Flavours P. Ltd., M/s. SHK Vashivali, M/s. SHK Mumbai-2, Residence of Directors etc., and not used exclusively in or in relation to the manufacturing the final product of the assessee. Further, it appears that the assessee*

> *have not sufficiently proved that the said services were used in or in relation to the manufacture of goods. Thus the service tax credit availed and utilized appears to be inadmissible as per Rule 2(l) of Cenvat Credit Rules, 2004.The details of such Cenvat credit availed by the assessee in the above manner is as listed out in Annexure-A to this show cause notice.'*

that the issuing authority was not in possession of any evidence of multiple utilization of the service.

4. There is no dispute that the appellant had borne the cost of impugned service and invoices were issued in the name of the appellant. In such circumstances, unless sufficient evidence of utilization of service by others was available with the jurisdictional authorities, initiation of proceedings is not warranted.

5. Accordingly, the impugned order is set aside and appeal allowed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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