IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

Appeal No. ST/87276/2018

(Arising out of Order-in-Appeal No. V2(A)/ST-II/539/2016-17 dated 22.03.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Navi Mumbai).

M/s POBC (division of Patel Integrated Logistics Ltd.)	Appellant

Vs.

Commissioner of CGST, Mumbai West	Respondent

Appearance:

Shri Archit Agarwal, C.A.	for Appellant
Shri S.B. Mane, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 04.01.2019

Date of Decision: 04.01.2019

ORDER NO. **A/85093 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. V2(A)/ST-II/539/2016-17 dated 22.03.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Navi Mumbai.

2. Briefly stated the facts of the case are that the appellants are engaged in providing taxable output services under the

category of 'Transport of Goods by Air' and 'Business Support Service'. During the relevant period from April, 2006 to July, 2008, they availed CENVAT Credit amounting to Rs.23,68,433/- on the Service Tax paid on the input services namely Transport of Goods by Air. Alleging that the appellant had wrongly availed the said CENVAT Credit on invalid documents, show-cause notice was issued to them on 16.09.2011 for recovery of the said credit with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned C.A. Shri Archit Agarwal for the appellant submits that the entire amount of CENVAT Credit of Rs.23,68,433/- was denied on the ground that the invoices issued was in the name of Head Office, Service Tax Registration number is missing in the invoice, calculation submitted by the appellant are not matching and the invoices do not contain Service Tax amount separately. Elaborating his argument, learned C.A. has submitted that out of the total amount of CENVAT Credit, Rs.7,84,288/- was denied on the invoices issued by Spice Jet, which was addressed to their Head Office, and the Head Office was not registered as an ISD during the relevant period. It is his contention that the services were received at their Ahmedabad Office and credit was accordingly availed to that extent. Referring to the judgment of this Tribunal in the case of *M/s Biotor Industries Ltd. – 2018 (10) GSTL 33 (Tri-Ahmd)* and Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise Vs. Dashion Ltd. – 2016 (41) STR 884 (Guj.)* he has submitted that the credit cannot be denied

merely because the Head Office was not registered as an ISD. Further, he has submitted that the amount of Rs.1,26,019/- was relating to the invoices issued by Go Air. It is his contention that even though the Service Tax Registration number was not mentioned in the said invoices, but there was no dispute on the facts that the input service was received by them and utilized in providing the taxable output service. It is his contention that merely because the registration number of the service provider was not mentioned in the input invoices, credit cannot be denied. With regard to the amount of Rs.14,58,116/- availed on the invoices issued by M/s Kingfisher Airlines Ltd., the learned C.S. has submitted that in the respective input invoices incorrectly for the word "Service Tax" it is mentioned as "pre-paid tax". It is his contention that denial of credit of the total amount of Rs.14,58,116/- merely on this ground is unsustainable. In support of his contentions about the receipt and utilization of input service on which total credit of Rs.23,68,443/- was availed, the learned C.S. produced the C.A. certificate. He submits that since credit has been correctly availed on the input services on receipt and the same are utilized in providing taxable output services, hence, credit is admissible.

4. The learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals). He submits that for verification of the appellant's claim based on evidences supported by C.A. certificate on receipt and utilization of the input services, the matter needs to be remanded to the adjudicating authority.

5. I find that the CENVAT Credit of Rs.23,68,433/- has been denied to the appellant on the input invoices issued by Spice Jet, Go Air and Kingfisher Airlines on various grounds, namely: -

(i) Rs.7,84,288/- was denied on the input invoices issued by Spice Jet for the invoices issued in the name of Head Office, which was not registered as an ISD.

(ii) Rs.1,26,019/- on the invoices of Go Air where the Service Tax registration number is not mentioned.

(iii) Rs.14,58,116/- was denied on the invoices of Kingfisher Airlines showing that Service Tax payment has not been reflected in the invoices.

5. I find that the issue of denial of CENVAT Credit on invoices issued in the name of Head Office, but received and used in the local office, when Head Office is not registered, is no more *res integra* and settled by various judgments of this Tribunal including M/s Biotor Industries Ltd. (supra). On the issue of missing Service Tax registration number in the invoices of the input supplier also the issue is covered by the judgment of this Tribunal in the case of *M/s HCL Technologies Ltd. – 2015 (40) STR 1124 (Tri-Del)* and *R.R. Donnelley India Outsource Pvt. Ltd. – 2017 (51) STR 325 (Tri-Bang).*

6. On going through the sample invoices of Kingfisher Airlines, I find that even though against the column – 'Tax paid', it is mentioned as 'pre-paid tax but not as Service Tax paid'. However, on calculation of the amount of tax paid on the value of service mentioned, it is nothing but the rate of Service Tax paid

as applicable on the gross taxable value mentioned in the respective invoice. However, I also find merit in the contention of the learned AR for the Revenue that all the pleas of the learned C.S. for the appellant needs to be scrutinized in the light of the C.A. certificate now produced claiming that the input services against respective invoices were received and used in providing the output services. Consequently, the impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority to verify the aforesaid facts in the light of aforesaid observation and scrutiny of evidences and the C.A. certificate produced by the appellant.

7. Appeal is allowed by way of remand to the adjudicating authority.

(Dictated and pronounced in the Court)

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

Sinha