CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO. IV

Service Tax Appeal No. 87292 of 2018

(Arising out of Order-in-Appeal No. CD/TR(APPEALS)/ME/71/2017-18 dated 05.03.2018 passed by the Commissioner of Central GST & Central Excise, Thane Rural.)

M/s Ipsos Research Private Limited ....Appellant
Unit No. 1707, 17th Floor, F-wing of Western
Express Highway, Goregaon East,
Mumbai, Maharashtra- 400 063

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel,
Parel East, Mumbai

APPERANCE:

Shri Darshan Ranavat, CA for the Appellant
Shri O.M. Shivdikar, AC, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85664/2019

Date of Hearing: 04.12.2018
Date of Decision: 04.04.2019

SUVENDU KUMAR PATI:

In this appeal, the appellant has challenged the inadmissibility of CENVAT credit availed by it on air travel agent & tour operator services, life insurance/general insurance services and rent-a-cab services for the period from April, 2008 to March, 2013 covering pre and post negative list resume on the basis of EA Audit held in October, 2013 resulted upon imposition of duty liability of ₹9,37,781/- with interest under Section 75 of the Finance Act, 1994 and penalty under Section 76 of ₹5,584/- along with penalty of ₹8,81,942/- under Section 78 of the said Act by the Adjudicating Authority that attained finality in the order of Commissioner (Appeals) except confirmation of penalty under Section 76.

2. In the memo of appeal and during the course of hearing of the appeal, learned Counsel for the appellant Shri Darshan Ranavat submitted that the primary ground of confirmation of duty demand etc. by the Adjudicating Authority and rejection of its appeal by the Commissioner (Appeals) was that appellant failed to produce documents before them to establish the co-relation between input and output services and failed to substantiate that those services were not availed for personal use or consumption by its employees, for which he set aside the order passed by the Commissioner (Appeals).

3. Learned Authorised Representative for the respondent-department, while reaffirming the reasoning and rationality of the order passed by the Commissioner (Appeals), pointed out that w.e.f. 01.07.2011 i.e. after introduction of negative list, those services are categorically excluded from the purview of availment of CENVAT credit for which the order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

4. Heard from both sides and perused the case records. During the course of hearing of appeal, though not permissible generally to produce evidence before the Tribunal unless express permission is obtained from the Tribunal or the Tribunal directs such production of documentary evidence (Rule 22 of CESTAT Procedure Rule), a bunch of documents had been brought by the learned Counsel for the appellant to substantiate that those services were used for providing output services which are in the nature of providing Market Research Services to the clients and not for personal use of its employees but

the authorities below had not taken strain in inspecting those documents before given their respective findings. It is also submitted by way of written note that considering the nature of services provided by the appellants, a lot of travelling was involved on a continuous basis throughout the year for attending various clients and considering the loss or injury to the staff as well as nature of services, Air Travel and Insurance Services were undertaken and those are extended to the employees in their official capacity and not extended to their family members or to any employee in particular. On being asked to satisfy this Court by establishing the co-relationship between input and output services, learned Counsel for the appellant produced two invoices raised by M/s J.M. Mehta & Tour Co. Pvt. Ltd. raised on 18.06.2012 & 31.03.2012. Both the invoices and its annexed documents indicated that Mr. Papmar/Sapnams as an employee had travelled from Mumbai to Chennai for a day on 02.04.2012 to attend "Pepsodent Product Test Small Talk" and the same has been truly reflected in its connected ledger. Likewise Ms. Tripti Sharma had travelled from Pune to Chennai by Indigo flight with an assigned job to make demand assessment study and the same is also duly reflected in the general ledger. This being so, I fail to understand as to why appellant failed to produce any document before the authorities below to substantiate availment of CENVAT credit and its eligibility for which it was put to show-cause notice which was replied with citing the same reason as noted in the preceding paragraph. I therefore consider it is a fit case which requires to be re-adjudicated by the Adjudicating Authority. Hence the order.

ORDER

5. The appeal is allowed by way of remand to the original Adjudicating Authority i.e. Assistant Commissioner, Division-IV, Service Tax-VI, Mumbai for re-adjudication and the order passed by the Commissioner of Central GST & Central Excise, Thane Rural in

Order-in-Appeal No. CD/TR(APPEALS)/ME/71/2017-18 dated 05.03.2018 is accordingly set aside. The appellant is duty bound to produce necessary documents before the Adjudicating Authority upon notice. If any duty demand is confirmed, penalty aspect to be examined with reference to decision of the Tribunal in appeal No. ST/85855/2018 in the case of Thyssenkrupp Industries India Pvt. Ltd. and Hon'ble Andhra Pradesh High Court in the case of Aditya College of Competitive Exam reported in 2016 (45) STR J 57 (AP).

(Order pronounced in the court on 04.04.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad