CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86881 of 2018

(Arising out of Order-in-Appeal No. MKK/539-542/RGD-APP/2017 dated 16.02.2018 passed by the Commissioner of Central Tax, CGST (Appeals), Raigad.)

M/s Morningstar India Pvt. Ltd. ....Appellant
9th Floor Plot No. 17/19 Platinum
Technopark Sector 39A
Navi Mumbai - 400705

VERSUS

Commissioner of Central GST, Belapur ....Respondent
CGO Complex, 10, CBD Belapur,
Navi Mumbai – 400 614

WITH

(i) Service Tax Appeal No. 86883 of 2018 (M/s Morningstar India Pvt. Ltd.); (ii) Service Tax Appeal No. 86889 of 2018 (M/s Morningstar India Pvt. Ltd.); (iii) (i) Service Tax Appeal No. 86896 of 2018 (M/s Morningstar India Pvt. Ltd.)

(Arising out of Order-in-Appeal No. MKK/539-542/RGD-APP/2017 dated 16.02.2018 passed by the Commissioner of Central Tax, CGST (Appeals), Raigad.)

APPERANCE:

Shri Abhijit Saha, Advocate for the Appellant
Shri S. B. Mane, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86165-86168/2019

Date of Hearing: 26.02.2019
Date of Decision: 25.06.2019

Partial rejection of refund claim on unutilised CENVAT credits by the Commissioner (Appeals) is assailed by the appellant in these four appeals.

2. Appellant is in the business of researching and providing content/information to its offshore entity located outside India and it is a 100% subsidiary of Corporate Fundamentals Inc. (USA). It claimed CENVAT credit as per provisions of Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012 for different quarters from April, 2014 to March, 2015. Learned Assistant Commissioner (Refund), Service Tax-VII, Commissionerate Mumbai allowed a portion of refund claim and rejected the rest for those quarters against which appellant preferred appeals before the Commissioner (Appeals) who also allowed substantial portion of refund and rejected refund of CENVAT credit on certain inputs on 4 grounds namely no nexus between input and output, billing address is different in the invoice and ST-2 return address mentioned, non description of category of services and non submission of invoices. Appellant is before this Tribunal challenging the legality of such refusal of refund claim on inputs services namely event management, legal consultancy service, Chartered Accountant service, commercial coaching and training service, repair and maintenance service etc. availed in different quarters, which were refused on the above noted grounds.

3. Rejection of refund on the ground that no nexus between input and output service exist - Learned Counsel for the appellant Shri Abhijit Saha submitted that learned Commissioner has observed that no nexus exist between event related services and legal consultancy services with the output services. He argued that appellant is in the course of research activities carries out for rating of various mutual fund products and schemes launched by mutual funds in India for which appellant organised award functions for the best performing mutual funds which would help to showcase their research capabilities and the brand of appellant company as well as identify basis several factors performing asset management of companies, there growth rate and expected growth rate etc. and to conduct such events, it availed services of event managers which had a nexus to the services provided by the appellant but the same was rejected by the learned Commissioner (Appeals) on the ground that he found the service was for managing award function of the appellant in Trident Hotel. In referring to the judicial decision in *J.P. Morgan Services Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai – [2016 (42) STR 196 (Tri.-Mumbai)], Manhattan Associates (I) Dev. Centre Pvt. Ltd. Vs. CST Bangalore [2017 (5) GSTL 99 (Tri.-Bang.)], Accenture Service Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai [2015 (40) STR 719 (Tri.-Mumbai)], IBM India Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Bangalore [2014 (35) STR 384 (Tri.-Bang.)], Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE, Meerut-II [2010 (251) ELT 125 (Tri.-Del.)]* he claimed that those inputs were admissible inputs. Referring to policy/circular issued by the Ministry

of Finance in respect of Union Budget 2012 dated 16.03.2012 wherein simplified scheme for refund of CENVAT credit was highlighted wherein it was clearly pointed out that the new scheme of substituted Rule 5 of CENVAT Credit Rules, 2004 does not require the kind of co-relation that is needed at present between exports and input services used in such exports and to allow refund on tax paid on any goods or services that qualify as input service in the ratio of export turnover to total turnover, he pointed out that despite such guideline appellant had also demonstrated the nexus between such input and output but no refund was allowed to it in respect of event management services.

3.1 Learned Counsel for the appellant further submitted that tax paid on legal consultancy services was also not refunded on the same ground as nexus was found absent for the reason that legal representation and defence was in respect of complaint field in Vashi Police Station which is unrelated to the business of the appellant company and the same observation was erroneous because company had a right to defend its employees and it had to fight a law suit filed by an ex-employees against management. Moreover, he pointed out that Rule 2(l) of CENVAT Credit Rules, 2004 covers "legal services" as well as "advertisement/sales promotion" within the ambit of its definition clause.

3.2 Learned Authorised Representative for the respondent-department Shri S. B. Mane, Assistant Commissioner supported the reasoning and rationality of the order passed by the Commissioner (Appeals) on these two points but going by the definition of input service available in Rule 2(l) of CENVAT Credit Rules, 2004, legal services are included in the said definition and hence denial of legal service expenses made by the appellant to defend the company or its managements is improper. Further going by the Order-in-Appeal, tax paid on event management service was held as inadmissible credit despite the fact that the learned Commissioner (Appeals) noted the contention of the appellant in his order that such services were received for organising investment conference at Trident Hotel and appellant had duly explained the reason for holding of such conference that comes within the per-view of the decided case laws referred above in respect of admissibility of such credits. I am therefore of the considered view that both those credits are admissible credits for which refund was to be granted as appellant had rightly justified the nexus, which according to the policy/circular was also not required to be established in case of export of services.

4. <u>Billing address is different in invoice and ST-2 return</u> – The ground of rejection on Chartered Accountant service was for the reason given at para 6.5 of the point No. 15 of the Order-in-Appeal. One service provider Opera Associates invoices were discarded on the ground that billing address is different from the address mentioned in ST-2 certificate. In the course of argument and in the additional consolidated submissions, learned Counsel for the appellant submitted that billing address, as found in the invoice was

covered in the ST-2 return of the appellant during the relevant time and without looking at valid ST-2 form for the disputed period, the said credit was denied though subsequent to such bill of 2014, Chartered Accountant had taken a new premises in 2015 with new registration. He enclosed ST-2 form in Annexure-G to justify that no variation exists between the invoices of the return filed. Even without accepting the said annexure as admissible piece of additional evidence as objected by the respondent-department, it can be said that the ground is too technical to deny refund since name of the service provider remain unchanged, for which the said credit and consequential refund is held to be admissible.

5. <u>Non description of services</u> – For Q-2, tax paid on commercial coaching and training services were held to be inadmissible by the learned Commissioner (Appeals) on ground that no service detail was provided and nature of services was not identifiable or services were provided for personal benefit of employees. Learned Counsel for the appellant submitted that such services were availed from Aptech Ltd. to provide training on computers to identified employees of the appellant to enhance their management and negotiation skills. But, no evidence is forthcoming that such stand was taken before the lower authorities for which appellant is required to justify the stand before the Commissioner (Appeals).

6. <u>Non submission of invoices</u> – In point No. 17 to 19 at para 6.5 of the Order-in-Appeal, learned Commissioner (Appeals) had denied

several CENVAT credits to the appellant on the ground that invoices were not submitted in respect of those services. Learned Counsel for the appellant, in referring to judicial decisions reported in *Commissioner of Customs, Central Excise & Service Tax Vs. Kesarwani Zarda Bhandar – [2017 (47) STR 78 (Tri.-All.)], Commissioner of Central Excise, Goa Vs. Essel Propack Ltd. – [2007 (8) STR 609 (Tri.-Mumbai)* submitted that challan is a valid document under Rule 9 of CENVAT Credit Rules, 2004 to avail CENVAT credit and in cases where service tax was paid under reverse charge mechanism, the same should have been allowed on the strength of valid challans produced by the appellant. However, he conceded that in respect of other services, invoices could not be produced at the time of hearing, for which he produced sample invoices before this Tribunal during the hearing to arrive a right decision.

6.1 Learned AR for the respondent-department submitted that only in respect of work contract which is covered in the exclusion clause of the definition of CENVAT credit paid under reverse charge mechanism, no credit can be availed by the appellant to which the appellant's reply was that no credit was taken on works contract and Sr. No. 4 of Order-in-Appeal indicates that repair and maintenance contract was undertaken concerning which invoices are produced during hearing. Without verification of those invoices which would amount to mini trail, and without acceptance of those invoices as additional piece of evidence, since those are not in conformity to Rule

23 of the CESTAT Procedure Rules, I consider it proper to remand the matter to the Commissioner (Appeals) for re-examination of the entitlement of the appellant only in respect of denial of refunds on those CENVAT credit against which valid invoices were not produced before him. Hence the order.

ORDER

7. The appeals are allowed in-part by way of limited remand to the Commissioner (Appeals). The order of Commissioner (Appeals) concerning rejection of CENVAT credit in respect of event related service, legal consultancy service, Chartered Accountant service is hereby set aside by allowing refund on those credits to the appellant. In respect of rejection of refund of tax paid on Commercial Coaching and Training services as well as refusal of refunds for non-submission of invoices/invalid documents, re-examination by the Commissioner (Appeals) is to be initiated with liberty to the appellant to produce the relevant documents upon notice.

(Order pronounced in the open court on 25.06.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad