

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.- I**

**Appln.No.ST/COD/85743 to 85755 & 85757/2018
in
APPEAL No.ST/87046, 87047, 87048, 87050, 87052,
87053, 87055, 87059, 87060, 86031 /2018**

**APPEAL NO. ST/87062, 87065, 87057, 87066, 87063,
86034/2018**

(Arising out of Order-in-Appeal No.MKK/270-279/RGD/APP/2017 dated 29/11/2017, MKK/286-293/RGD APP/2017 dated 05/12/2017 passed by the Commissioner of Central Tax, Raigarh)

**Credit Suisse Business Analytics India Pvt. :
Ltd.,**

Appellants

**Credit Suisse Business Management India Pvt.
Ltd.**

VS

C.C. G.S.T, Raigarh

: Respondent

Appearance

Shri.Sagar Shah, CA for Appellant
Shri.Dilip Shinde, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)

**Date of hearing : 29/08/2018
Date of decision : 29/08/2018**

ORDER NO. A/88430-88445 / 2018

The applicants/appellants have filed these miscellaneous applications, seeking for condonation of delay in late filing of appeals before the Tribunal. It has been stated that against the common impugned order, disposing of

various adjudication orders, the appellants have filed single appeal before the Tribunal and on receipt of the defect memo from the Registry for filing of separate appeals, the appellants have filed further appeals beyond the limitation period provided under the statute. Considering the fact that the main appeal was filed within the stipulated time frame, the delay caused in filing the subsequent appeals is condoned in the interest of justice.

2. The issues involved in these appeals are identical and accordingly, with the consent of both sides, the same are taken up for hearing together along with Appeal No.ST/86031 & 86034/2018 and a common order is being passed.

3. Brief facts of the case are that the appellants are engaged in providing the services namely, Information Technology (IT) and Information Technology Enabled Services (ITES) to their group companies located in India and abroad. For providing such taxable services, the appellants got themselves registered with the Service Tax Department. The appellants avail Cenvat Credit of Service Tax paid on the input services used for providing the output services. Since the appellant is mostly engaged in exporting the output services to overseas entities, there was no scope for utilization of Cenvat Credit availed on the input services. Therefore, for the disputed period April 2012 to December 2014, the appellants have filed refund applications before the jurisdictional service tax authorities, claiming refund of service tax paid on the input services. The refund applications were filed under Rule 5 of the Cenvat Credit Rules, 2004 read with notification issued there under. The refund applications were rejected by the original authority on the ground that the disputed services are not confirming to the definition of input service, defined under Rule 2 (I) *ibid* and that the disputed services have no nexus with the output service provided by the appellants. On appeal against the adjudication orders, the learned Commissioner (Appeals) vide the impugned orders has allowed refund benefits in respect of some of the services and denied the benefit in some other services, holding that the services are not confirming to the definition of input service and that certain input services were consumed by the employees for their personal/welfare purpose, which was specifically excluded from the scope of definition of input service. Further, the refund

benefit was also denied on the ground that the appellants have not produced the relevant invoices/documents to co-relate actual use of the disputed services for exportation of output services and for ascertaining the eligibility of such services under Rule 2(l) *ibid* for the purpose of availment of Cenvat credit and subsequent refund thereof. Feeling aggrieved with the impugned orders passed by the learned Commissioner (Appeals), the appellants have filed these appeals before the Tribunal.

4. Ld. Consultant appearing for the appellants has submitted a detailed written note, explaining the reason for disallowance of the refund benefit and the reason for extending such benefit to the appellants. The submissions made in the said note are extracted herein below:-

Sl.No	Particulars of service	Reason for disallowance of refund as per the impugned order.	Submissions of the appellant
1	Works contract service	Services do not fall under the definition of input service, as is included in the exclusion part of such definition.	The entire Cenvat credit is in relation to repairs/maintenance and hence, eligible for credit/refund. Works contract service in relation to construction of building is excluded from the definition of input service. Main part of definition covers the activities of repair, maintenance and modernization as eligible input service.
2	Storage & warehousing, general insurance & insurance auxiliary, photography & event management and mandap keeper/event management service.	Services are pertaining to the personal use or welfare of the employees. Hence, eligible for refund benefit.	Though the services used/consumed for the employees, but the same are in context with the activities undertaken by them for the company and the same were not used for the personal or welfare purpose. Thus, the refund benefit should be available to the appellants.
3.	Whiteboard consulting, Blex Training, Oriental service Appartments	Such service does not fall under inclusive part of definition of input service.	The services are in context with conducting training & coaching for the employees and specifically covered under the phrase “coaching & training services” defined under Rule 2(l) <i>ibid</i> .
4.	Other taxable services	Invoices not submitted/Nature of	The services on which Cenvat credit was availed

		services not identified	and refund application was filed were in context with conducting the business operation of the appellants and not used/consumed for the personal or welfare purpose of the employees.
5.	Outdoor catering, supply of tangible goods, records and information management, rent a cab, Rakshu Enterprises and Sodexo SVC India Pvt Ltd.	Corroborative invoices not submitted to prove admissibility.	Claims withdrawn.

6. By referring to the above submissions made in the written note, the learned Consultant submitted that the appellant should be eligible for the refund benefits provided under Rule 5 *ibid*. In this context, he has relied upon the decisions of this Tribunal in the case of Infosys Ltd. Vs. Commissioner of Service Tax- [2015 (37) STR 862 (Tri. Bang)], BA continuum India Pvt. Ltd. Vs. Commissioner of Service Tax II, Mumbai, [TS-260-CESTAT-2018-ST], Comm. of C.Ex. & Service Tax (LTU) Vs. Lupin Ltd. [2012 (28) S.T.R. 291 (Tri. Mumbai)], Cubed Solutions Pvt. Ltd. Vs. Bangalore [2013 9290 STR 385 (Tri. Bang)].

7. On the other hand, the learned DR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the appellants have not specifically adduced any evidence before the authorities below to show that the services were in fact, used/utilized for providing the output service and not for the personal or welfare measures for the employees. Thus, he submitted that the authorities below have correctly denied the refund benefit to the appellants.

8. Heard both sides and perused the case records.

9. The fact is not under dispute that the appellants had exported the output services to a large extent, to the overseas group entities without payment of service tax and therefore, there were accumulated credit balance in their Cenvat accounts, which were claimed as refund in terms of Rule 5 of

the Cenvat Credit Rules, 2004. Refund claims rejected by the original authority were upheld in some cases by the learned Commissioner (Appeals) in the impugned orders on the ground that the disputed services were used for personal/welfare purpose, for the benefit of the employees and not to accomplish the business purpose; that the works contract service is excluded from the purview of the definition of 'input service'; that certain services do not fall under the inclusive part of definition of input service; that in most of the cases, the appellants did not produce the corroborative invoices to support the claim towards refund of service tax.

10. With regard to works contract service, the appellants have contended that the said service was utilized for repair and maintenance of furniture & fittings installed in the business premises. Execution of works contract of a building or a civil structure are only excluded from the purview of the definition of input service, contained in Rule 2(I) *ibid*. Repair and maintenance of furniture & fittings cannot be termed as either building or civil structure, in order to be categorized as excluded service under the said rule. On the other hand, the main part of the definition of input service takes within its ambit the activity of repair of office of the service provider, for consideration as input service. Thus, rejection of the refund benefit on works contract service is not proper and justified. However, I find that both the authorities below have not recorded any specific findings with regard to the nature of use of such service by the appellants. Therefore, the matter is remanded to the original authority for ascertaining the fact regarding the nature of use of such service by the appellants. If the utilization of such service is for carrying out the activities of repair/maintenance of furniture & fittings and not for execution of the works contract of a building or civil structure, the benefit of refund should be extended to the appellants.

11. The impugned order has denied the Cenvat credit on mandap keeper/event management service on the ground that the said service was used for either personal or welfare purpose and not for business use. In response to such findings, the appellants have contended that the said service was availed by the appellant for advertising/marketing the output service

provided by them and thus, such services qualify as input service under Rule 2(l) *ibid* for the refund benefit. Any service used by a provider of output service is considered as an input service in terms of Rule 2(l) *ibid*. However, the said rule has excluded certain category of services from the purview of input service. The disputed services fall under the excluded category, if used for personal use or consumption by the employees. On the contrary, if the disputed services namely, mandap keeper/event management are used in context with providing the output service, then the refund benefit provided under Rule 5 *ibid* should be available to the assessee. However, on perusal of the impugned order, I find that the learned Commissioner (Appeals) had denied such benefit to the appellants on the ground that the said services were used for personal or welfare purpose. Since, the submissions made by the appellants at this juncture that such service was used for business purpose and not otherwise, has not been properly examined by the authorities below, I am of view that the matter should be remanded to the original authority for a proper fact finding on the issue and for that purpose, the appellants should produce relevant evidence to support their stand that such services were in fact, used for providing the output service by them. In such an event, the original authority should extend the refund benefit to the appellants. Accordingly, the matter is remanded to the original authority.

12. With regard to storage & warehousing and photography/event management services, I find from the available case records that the said services were used by the appellant in, or in relation to providing the output service, which will be termed as input service as per the main part of definition provided under Rule 2(l) *ibid*. Further, I also find that the authorities below have not specifically recorded any findings to the effect that the said services were used by the appellants for the personal or welfare purpose of the employees. Hence, denial of refund benefit of service tax paid on storage & warehousing and photography/event management services is not sustainable and accordingly, the appeal filed by the appellants merits consideration for the benefit of refund.

13. The department has denied the refund benefit on the services provided by M/s Whiteboard Consulting, Blex Training and Oritel Service Apartments on the ground that such services do not fall under the inclusive part of the definition of input service. On perusal of the documents available in file, I find that the said services were availed by the appellants for conducting trainings for the employees and for re-location of the employees. Such services are specifically covered under the inclusive part of definition of input service as “coaching & training”. Thus, such service qualifies as input service for the purpose of refund benefit. Accordingly, it is held that the appellants are eligible for refund of service tax paid on such services.

14. I find that the impugned order has denied the benefit of refund in respect of the dispute services, on which the corroborative invoices were not submitted by the appellants to prove the admissibility of refund. During the course of hearing, it was pleaded on behalf of the appellants that adequate records are being maintained to demonstrate use of the disputed services for the intended purpose of providing the output service. However, I find that since no such documentary evidences were available before the authorities below, the Cenvat credit/refund benefit was denied to the appellants. Therefore, considering the submissions that the appellants have maintained proper records, I am of the view that the matter should be remanded to the original authority for verification of the invoices/records for consideration of the refund benefit to the appellants. Accordingly, on this ground also the matter is remanded to the original authority.

15. With regard to general insurance & insurance auxiliary service, the appellants have not substantiated the fact that the said services were in fact, used for carrying out the business activities. On the contrary, it is observed from the available records that the appellants had availed the medical/accidental insurance for the employees. Since, such services were used for the personal use/benefit of the employees, as per the exclusion clause provided in Rule 2(l) *ibid*, the said service cannot be considered as input service and the benefit of refund shall not be extended to the appellants. Accordingly, the appeal filed by the appellants on such ground is dismissed.

16. In view of above discussions, the conclusions are summarized herein below:-

S.No.	Disputed Service	Decision
1	Works contract service	Matter remanded to the original authority for a fresh fact finding in line with the observations made in paragraph 10 above.
2	Mandap keeper/event management service	Matter remanded to the original authority for a fresh fact finding in line with the observations made in paragraph 11 above.
3	Storage & warehousing and photography/event management services	Appeals allowed, as per findings recorded in paragraph 12 above.
4	Coaching & training service	Appeals allowed, as per findings recorded in paragraph 13 above.
5	None submission of invoices/documents	Matter remanded to the original authority for a fresh fact finding in line with the observations made in paragraph 14 above.
6	General insurance & insurance auxiliary service	Appeals filed by appellants are dismissed.

17. The appeals filed by the appellants are disposed of accordingly.

(Pronounced and dictated in court)

(S K Mohanty)
Member (Judicial)

PJ