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

Appeal No. ST/90155/2014

(Arising out of Order-in-Original No. 82-83/ST-II/RS/2014 dated 16.09.2014passed by Commissioner of Service Tax (Appeals), Mumbai)

Oracle Financial Services Software Ltd. **Appellant**

Vs.

Commissioner of Service Tax, **Respondent**
Mumbai II

Appearance:

ShriB. Raichandani, Advocate for appellant
ShriDilipShinde, Asst.Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing / Decision: 14.11.2018

FINAL ORDER NO. **A/88507 / 2018**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 16.09.2014 passed by the Commissioner of Service Tax, Mumbai II.

2. Brief facts of the case are that the appellant is engaged in providing "Information Technology Software Service" and "Management, Maintenance or Repair Service", defined under the Finance Act, 1994. For providing such taxable services, the

appellant got itself registered with the Service Tax department. The appellant avails CENVAT Credit of service tax paid on the input services used for providing those output service. During the period between October, 2007 and March 2013, the appellant had availed CENVAT Credit on various taxable services, including the service tax paid on repair and maintenance of staff quarters, expenses incurred towards staff welfare services, travelling expenses, membership fees etc. Availment of CENVAT Credit on those services were disputed by the department on the ground that such services have no nexus with the output service provided by the appellant and thus, such services cannot be considered as input service for the purpose of availment of Cenvat benefit. Show-cause proceedings initiated by the department were culminated into impugned order dated 16.09.2014, wherein CENVAT Credit amounting of Rs.73,20,184/- was disallowed and the appellant was directed to pay interest on such amount. Besides, the impugned order alsoimposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. The impugned order has disallowed the Cenvat benefit mainly on the ground that there is no nexus between the disputed services and the output service provided by the appellant and that no supporting evidences were produced by the appellant to demonstrate that the disputed services can be considered as input service for the Cenvat benefit.

3. Learned Advocate appearing for the appellant submits that although under the un-amended definition of 'input service" (effective upto 31.03.2011) and the amended definition (with effect from 01.04.2011), the disputed services were clarified as 'input service' for the purpose of availment of Cenvat benefit. He further submits that since the disputed services were used/utilized for providing the output service and such services having been covered under the definition of input service as per the Rule 2(l) of Cenvat Credit Rules, 2004, the benefit of credit should not to be denied to the appellant. To support his stand that the disputed services are conforming to the definition of input service,the learned Advocate has relied upon the following decisions rendered by various judicial forums:-

(a) *Axis Bank Ltd. v. CCE- 2017-TIOL 3867-Cestate*

(b) *Xilinx India Technology Services (P) Ltd. - 2016 (44) STR 129*

(c) *Commissioner of Central Excise v. Greaves Cotton Ltd. 2010 (20) STR 703*

(d) *Commissioner of Central Excise v. Lupin Ltd. - 2012 (285) ELT 221 (Tri.)*

4. On the other hand, learned D.R. appearing for Revenue submits that the disputed services are not conforming to the definition of input service and thus, the appellant should not be eligible for the Cenvat benefit. He further submits that to support itsclaim that the disputed services should qualify as input service, the appellant did not produce any evidence before

the original authority. Thus, he submits that denial of Cenvat benefit by the original authority is proper and justified.

5. Heard both sides and perused the records.

6. Under the un-amended definition of input service (effective upto 31.03.2011), the phrase “activities relating to business” was specifically finding place for consideration of the service as input service. The fact is not under dispute that for accomplishing the purpose of the appellant’sbusiness activities, the disputed services were used and utilized by it. Since the value of taxable service along with service tax paid there-on was reflected as business expenses in the Books of Account, the disputed services should be considered as input service in terms of Rule 2(l) of the Rules for the period upto 31.03.2011.Under the amended definition of Rule 2 (l) *ibid*(with effect from 01.04.2011), the assessee is permitted to avail credit on any service used for providing the output service, excepting the excluded category of services mentioned in the definition of input service. The description of disputed services provided in the impugned order, do not fall under the excluded category provided under Rule 2(l) of the Rules. Therefore, denial of Cenvat benefit on the disputed services will not be proper and justified on the ground that those services have no nexus with the output service provided by the appellant. However, since the original authority had specifically recorded the findings that

the appellant had not produced any documentary evidences to show nexus as well as the eligibility of Cenvat benefit on the disputed services, we are of the view that the matter should be remanded to the original authority for verification of the documentary evidences to be produced by the appellant to establish that the disputed services are in fact, conforming to the definition of the input services and were used / utilized for providing the output service.

7. In view of the foregoing discussion and analysis, we remand the matter to the original authority for passing of fresh adjudication order in line of our above observations. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh. It is made clear that all issues involved in this appeal are kept open, which should be addressed by the original authority while deciding the matter afresh.

8. In the result, the appeal is allowed by way of remand to the original authority.

(Order dictated in Court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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