CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Service Tax Appeal No. 88099 of 2019

(Arising out of Order-in-Appeal No. PVNS/31/Appeals Thane/TH/2019-20/1235 dated 04.06.2019 passed by the Commissioner of GST & Central Excise (Appeals), Thane, Mumbai)

M/s. Hapag-Lloyd Global Services Pvt. Ltd. **Appellant**
Unit No.402 & 403, Dosti Pinnacle,
Plot No. E-7, Road No.22,
Wagle Industrial Estate,
Thane 400 604.

Vs.

Commissioner of CE & CGST, Thane Appeal **Respondent**
Office of the Commissioner of GST & C.E.,
Appeals Thane, Mumbai 400 012.

Appearance:

Shri Niraj Hande, Advocate, for the Appellant
Shri Nitin Ranjan, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 16.08.2022
Date of Decision: 16.08.2022

FINAL ORDER NO. A/85704/2022

This appeal is directed against order-in-appeal No. PVNS/31/Appeals Thane/TH/2019-20/1235 dated 04.06.2019 of the Commissioner of GST & Central Excise (Appeals), Thane, Mumbai.

2.1 Appellant operates as a global processing centre and provides offshore business support services to their principal (Hapag-Lloyd AG, Germany) through its office situated in India. They availed cenvat credit on services such as car hire charges, travels, event management, mandap keeper, security services, hotel banquets, photography, decoration and transportation charges. Revenue was of the opinion that these services against which the appellant has taken cenvat credit were having no nexus to the output services provided by them. Periodical show cause notices were issued to them from 2005 to 2014-15. These show cause notices were adjudicated and confirmed. For the subsequent period i.e. 2015 to June 2017 also, show cause notices were issued to the appellant to deny and recover inadmissible cenvat credit.

2.2 I am concerned in this appeal with the show cause notices issued for the period 2015 to June 2017 where a demand of Rs.10,54,954/- has been confirmed by the adjudicating authority in terms of Rule 14 of Cenvat Credit Rules read with Section 73(2) of the Finance Act, 1994.

2.3 In the present case the issue that is before me for consideration is vis-à-vis the input services of security agent, air travel and hotel stay. The Commissioner (Appeals) has upheld the order of the adjudicating authority denying the credit.

3.1 I have heard Shri Niraj Hande, Advocate for the appellant and Shri Nitin Ranjan, Deputy Commissioner (Authorised Representative) for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- For the show cause notices issued during the period 2014-15, the matter was remanded back by the Tribunal vide order No. A/86697-86707/2018 dated 07.06.2018 to the original adjudicating authority.
- In the remand proceedings, the adjudicating authority has again confirmed disallowing cenvat credit totally amounting to Rs.28,80,452/-.
- Against this order, the appellant had filed an appeal to the Commissioner (Appeals) who vide order-in-appeal No. DL/258/Appeals Thane/TH/2021-22 dated 22.02.2022 has allowed the appeal in their favour.
- As the issue in respect of these three services has acquired finality by the order of the Commissioner (Appeals), this appeal should be allowed in terms of the order-in-appeal.

3.3 Learned Authorised Representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 For disallowing the cenvat credit, the impugned order holds as follows:-

"11. Security Services: The expenses incurred on account of Security Services are in relation to their office premises both in Mumbai & Chennai which caters to international customers on a 24 x 7 basis and are for the security of employees, assets and premises & relied upon that since security Services are specifically mentioned in the definition of input services, the CENVAT credit thereto cannot be denied. Some sample invoices of security service produced by the appellants in their submissions also clearly signifies the discrepancy of address what is mentioned in the invoice with that mentioned in the Cenvat Credit Register with other facts as ascertained by the adjudicating authority vide impugned Order. Therefore, in absence of a nexus between input service and output services, the credit is deniable in terms of sub-rule (2) of Rule 9 of the CCR which says that no CENVAT credit shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the documents specified in sub-rule (1). Considering that the invoices presented before the adjudicating authority were not addressed to the registered business premises/ office premises of the appellants, the invoices cannot be said to be containing the prescribed particulars of Rule 4A of the Service Tax Rules, 1994. I, therefore, find that in spite of defence put forth by the appellants, CENVAT credit is not allowable as per sub-rule (2) of Rule 9 of CCR. In terms of sub-rule (6) of Rule 9 of CCR, the burden of proof regarding admissibility of CENVAT credit lies upon the appellants. There is not enough proof from the appellants which establishes that input service has been used by the appellants for providing output services. Here, it is pertinent to mention that as per Rule 3(1) of the CCR, CENVAT credit is allowed to be taken on 'input service' as defined under Rule 2(1) of the CCR, 2004 and as per main part of the definition, only when a service is used for providing an output service, it qualifies as "input service'. In other words, a service for being an input service' has to have a nexus with the output service. It is not disputed that Appellant is a software firm which uses many services. for its operation, main service being

Business Process outsourcing (BPO) services, if even security services are not used, the output Service of Software development sector would still work. Therefore, in want of collateral documentary proof output nexus is not established that such input service has been actually used by the appellants for their output service in relation to their business of the appellant in their registered premises only. Nexus should be established between the services rendered and the business carried on by the assessee: unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable as held in the Case of CCE Vs. Manikgarh Cement(2010-TIOL-720-HC-MUM-ST), B'bay HC held that taxable Service procured at the residential colony for the benefits of the employees is not an activity integrally connected with the business of the assessee and therefore the service rendered d not constitute input Service for the assessee under the Canvat Credit Rules 2004. The decision of Mumbai Bench of the Hon'ble Tribunal in the case of Vikram Ispat vs CCE, Raigad-2009(16) STR 195(Tri. Mumbai) & Telenet Systems (P) Ltd vs CCE, Belapur 2010(17) is applicable in the instant issue. Accordingly, I agree with the findings of the adjudicating authority in the respective impugned orders and reject the contentions of the appellants in respect of this service. Held accordingly.

12. Travel Services: From the above case laws, it can be observed that there must be some documentary evidence to establish that the travel service was used for the purpose for providing output services. However, in the present case, appellant had merely submitted their written submissions without proper collateral documentary evidence. Hence, it is not ascertainable whether the travel was undertaken for the business purposes only, as the Individual person could travel for his personal work as well. Further, travel benefit extended to employees when such services are used primarily for personal use or consumption of any employee has been specifically excluded from the definition of "input service" w.e.f. 1.4.2011(Rule 2(1)(C) of the CENVAT Credit Rules, 2004). I also find that activities relating to business stands deleted from inclusive part of the definition of 'input service under Rute 2(1) *of the CENVAT Credit Rules, 2004 with effect from 1.4.2011. Hence, activities relating to business are no more input services with effect from 1.4.2011. The burden of proof regarding the admissibility of CENVAT Credit shall lie upon the provider of output service in terms of Rule 9(6) of the CENVAT Credit Rules, 2004. In absence of any further evidence in this regard and specific exclusion from the definition of "input service" w.e.f. 1.4.2011, I agree with the findings of the adjudicating authority in the respective impugned orders and reject the contentions of the appellants in respect of this service. Held Accordingly.*

13. Accommodation (Hotel Stay) Charges: The appellants have stated in their submissions that the said expenses are in relation to hotel stay of employees/clients during business meetings visits etc. These activities are inevitable for operation of business. However, in the present case, appellant had merely submitted their written submissions without proper collateral documentary evidence to the effect that the said expenses have been actually incurred for official purposes only and therefore it is not possible to draw a conclusion that the said expenses are used only in relation to business activities of the appellants. I find that the expenses incurred on activities relating to hotel stay/hotel accommodation would not appear to impact the efficiency in providing the output service. The appellant has not produced adequate justification with collateral documentary evidence to support their contention or to establish direct nexus of these services with output services as desired by the law. The case law relied upon by the appellant do not apply to the facts of the case as each case should be examined separately being distinct from each other. Further, the activities relating to business, stands deleted from inclusive part of the definition of 'input service' under Rule 2(1) of the CENVAT Credit Rules, 2004 with effect from 1.4.2011. Hence, activities relating to business are no more input services with effect from 1.4.2011. So as per the evidence available on records, I therefore agree with the findings of the adjudicating authority in the respective impugned orders and reject the contentions of the appellants in respect of this service. Held Accordingly."

4.3 I find that the same issue for the period 2005, 2014-15 has been considered and finalized by the Commissioner (Appeals) in the remand proceedings in respect of these three services holding as follows:-

"(b) Business travel expenses, Transportation charges, driving charges:

-that Appellant merely submitted invoices and had not attempted to provide any information about the employee and the need for him to travel and also to substantiate the event for which the travel embarked upon by the particular employee.

It is the contention of the Appellant that the invoices have been issued in the Appellant's name; that the invoices are paid for by the Appellant as evidenced by bank statements and the expenses incurred in relation to these services are accounted for in the Appellant's books of accounts and the Profit and Loss account which amply prove that these travel by the employees have been made exclusively for official purposes. Reliance was interalia among various case laws placed in the case of Goodluck Steeel Tubes Ltd. V Commissioner of Central Excise, Noida - [2013 (32) STR 123 (Tri. - Delhi) which I find is rightly applicable in the Appellant's case.

(d) Security services:

-that Appellant failed to provide the details of the place/location/site where the Security services were provided; that there was no nexus in the services received by the Appellant with the output services rendered by the Appellant.

It is the contention of the Appellant that these services are availed by the Appellant at its offices both in Mumbai and Chennal and was to guard its office premises; that the invoices specifically mention the name of the Appellant as the service recipient and hence cannot be said that these services have not been used to guard the premises of the Appellant; that the invoices have been issued in the Appellant's name; that the invoices are paid for by the Appellant as evidenced by bank *statements and the expenses incurred in relation to these services are accounted for in the Appellant's books of accounts and the Profit and Loss account which amply prove that these services is for securing official premises of the Appellant. Reliance was interalia among various case laws placed in the case of Cubed Solutions v CCE [2013 (293) ELT 398 (Tri-Bang.)] which I find in rightly applicable in the Appellant's case.*

(e) Hotel stay charges/Hotel accommodation/Food related:

-that the Appellant had failed to clearly show the nexus between output service and input service, hence the Cenvat credit of the Service Tax paid towards Hotel stay charges/Hotel accommodation/Food related services was held to be liable for denial.

It is the contention of the Appellant that hotel accommodation services procured by them are exclusively for purposes of its business which the Respondent has failed to take into cognizance; that these services are availed in relation to either employees travelling for business or clients visiting for meetings; that the documentary evidences proves that these expenses have actually been incurred for official purpose as the invoices have been issued in the Appellant's name; that the invoices are paid for by the Appellant as evidenced by bank statements and the expenses incurred in relation to these services are accounted for in the Appellant's books of accounts which amply prove that these hotel stays by the employees have been made for official purposes. Reliance was interalia among various case laws placed in the case of One Advertising & Communication Services Ltd. V Commissioner of Service tax, Ahmedabad [2012] 27 taxmann.com 68 (Ahmd.- CESTAT) which I find is rightly applicable in the Appellant's case."

4.4 Since the Commissioner (Appeals) has in the remand proceedings allowed the credit in respect of these services, I do not find any reason to differ with the order of the Commissioner (Appeals) in the case of the appellant itself.

5.1 In the result, the appeal filed by the appellant is allowed setting aside the impugned order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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