(2021) 10 CESTAT CK 0085

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 30497 Of 2019

M/s. Dr. Reddy?s Laboratories Ltd. APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(l), 3, 7
Service Tax Rules, 1994 — Rule 4A
Finance Act, 1994 — Section 66E

Citation : (2021) 10 CESTAT CK 0085

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant in the present case are the manufacturers of bulk drugs and drug intermediates. They are availing Cenvat Credit of duty paid on inputs, capital goods and input services. In terms of Rule 3 of Cenvat Credit Rules, 2004, the appellants have obtained a Centralize Service Tax registration for all the group companies and are distributing the service tax credit accumulated with them to their various units under rule 4 A of the Service Tax Rules, 1994 read with Rule 7 of Cenvat Credit Rules, 2004 (CCR, 2004). Department, however, during the verification the records of appellant, observed that during the period from May, 2012 to March, 2013 their corporate office distributed certain amount of credit of service tax paid on air-travel agency service received by them to their units located at different places falling under different Commissionerates on the basis of input service distributor (ISD Challans) issued by heir corporate offices. Accordingly, vide Show Cause Notice No.99/2013 dated 16.05.2013, it was alleged that the appellants have contravened the provisions of Rule 3 of CCR, 2004 by availing a Cenvat Credit of an amount of Rs.262964/- during the aforesaid period on such service which does not appear to constitute an input service. Three other show cause notices were issued for the period from April, 2013 to December 2015 proposing the recovery of Rs.5,81,567/-. Accordingly,

the recovery of the said amount alongwith the interest with the appropriate penalties was proposed vide the said show cause notice. The said proposal has been confirmed initially vide order No.22/2016-17 dated 31.01.2017. The appeal thereof has been rejected vide Order-in-Appeal No.60/2017 dated 31.12.2018. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri B.Seshagiri Rao, Advocate for the Appellant and Shri C.Mallikarjuna Reddy, AR for the Respondent.

3. It is submitted on behalf of the appellant that the air-travel agency is eligible for Cenvat Credit as the same is squarely covered under the definition of input services as given in Rule, 2 (l) of CCR, 2004. It is submitted that the said services used for conveyance of appellant's officials to travel to different places to create the demand for the product manufactured and therefore, is the service which is indirectly related to the manufacture of final product. It is further submitted that the fact of availing Cenvat credit on air-travel agency service is known to the Department as the same is reflected in half yearly ISD returns and also in appellant's ISD Invoices as such, there is no suppression of any material fact of taking such credit by the appellant. The confirmation of demand as well as the imposition of penalty is therefore, alleged to be wrong. Commissioner (Appeals) is mentioned to have not considered the submissions of the appellants and also the case law quoted by them. The order under challenge is, accordingly, prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these submissions, it is mentioned on behalf of the Department that the definition of input services has undergone change w.e.f. 1st April, 2011, in accordance whereof the prime requisite for any service to be called as input service is that it should be directly or indirectly in relation to manufacture and clearance of final product and which has been availed upto the place of removal. The place or removal for the manufactured goods is the factory gate. The activities like sale promotion, auditing are the post manufacturing activities undertaken beyond the factory gate. Hence, cannot be called as the input services. The amended definition has specifically excluded such services to be called as the input services.

5. Learned D.R. has emphasized that the Adjudicating Authority has rightly relied upon the Board Circular of dated 29.04.2011 which disallows the credit when any goods or services are used primarily for consumption of employees. The airtravel services are being consumed by the employees of the appellants, hence, have rightly been denied the credit thereof. With these arguments, learned D.R. has prayed for the appeal to be dismissed.

6. From the above submissions as made on behalf of both the parties the moot controversy to be adjudicated appears to be as follows:-

"Whether the air-travel agency service is eligible for Cenvat credit of service tax paid for it, in terms of amended definition of input services given in Rule 2 (l) of Cenvat Credit Rules, 2004 as is applicable w.e.f. 01.04.2011."

7. The entire period in the present case is from September, 2011 to April, 2015 i.e. post 01.04.2011 when definition of input service got amended. The said definition reads as follows:-

"Rule 2(l) "input service" means any service,-

(i) used by a provider of output service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ;or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(c) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"

8. As per the above definition, input service could be 'any service' which was

used by the manufacturer and / or any output service provider directly or indirectly, in or in relation to manufacture of final products and those which are used for the purpose of clearances of final products upto the place of removal; but not limited to and include the services used in relation to, inter alia, sales promotion; procurement of inputs; quality control; auditing etc. as specified in the inclusive part of the definition. It is important to note that the inclusive part of the definition is as important as the first part of the definition. In fact, the inclusive part of the definition cover such services like accounting, auditing, financing, recruitment, sales promotion; procurement of inputs; quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, which cannot be related to the manufacturing process; but certainly contribute indirectly for promotion of the manufacturing activity. Hence, with regard to the services related to the activities specified in the inclusive part of the definition, there is no necessity to establish any direct relation or nexus with the manufacturing activity. This implies that it is not only the activities specified in the inclusive part of the definition but also any services used in relation to such activities specified in the inclusive part of the definitiobn, would qualify themselves as an input service, under Rule 2 (l) of CCR. Therefore, Air Travel Agency Service having been used by the officials of the manufacturer for traveling to different places for creating the demand for the products manufactured by them is also a service used in relation to procurement of inputs, sales promotion/ marketing activities (which is a specified activity in the inclusive part of the definition) thus it also qualify itself as an input service, even after 01.04.2011.

9. Further, it is important to note that the input service definition under Rule 2 (l) of CCR, w.e.f. 01.04.2011, also expressly provided certain activities/services used for specified purposes cannot treated as an 'input service' for the purpose of CENVAT Credit Rules, 2004, as mentioned in the exclusion portion of the said Rule 2 (l) of CCR. The subject services viz., Air Travel Agency Service and Convention Service are not forming a part of the exclusion clause of the definition under Rule 2 (l) of CCR. For this reason also, I opine, that Air Travel Service being not exclusively excluded but being covered under inclusive part of the definition, is the service eligible for Cenvat Credit.

10. The aforesaid definition also clarifies that though the word "business activity" was removed from the definition of input services at the time of amendment but still they were made eligible for Cenvat Credit of Service Tax paid on the subject services as they were used in relation to sales promotion, market research, accounting, financing, recruitment, quality control, coaching & Training and business exhibitions, as all these services are specifically mentioned in the exclusive part of the definition. Further, the word "include" as is used in the definition means that the definition was not exhausted but was inclusive i.e. it expanded the meaning to a wider scope. Accordingly the expression "in relation to" was to be given a wider meaning as it has been explained by Hon'ble Supreme Court in the case of Doyopack System Pvt. Ltd. vs. Union of India

reported as 1988 (36) ELT 201 (S.C.) and was retired in another case of Ponds India vs. CIT reported in 2008 (227) ELT 497 (S.C.). In addition, it has been clarified by Hon'ble Apex Court that the exclusion clause of the definition applies only to such services as were used primarily for personal used or consumption of any employee. This exclusion would not apply in other cases.

11. There is no denial to the fact that the air-travel agency service, in the present case has been used for business purpose i.e. for the purpose of promotion of sales, auditing, review of various business processes, inspection of vender premises and other business purposes. None of these services were used for personal use or consumption by any employee. Accordingly, I am of the opinion that they were all for the purpose of the appellant company, its corporate office and all other units. Further, no lacuna has been pointed out in the Show Cause Notices or in the order of adjudication about any discrepancy for receiving credit based on input service distribution invoices. I also observe that in respect of air-travel services itself in appellant's own case the Department has allowed the credit. Accordingly, in view of the entire above discussion, I hold the impugned service to be eligible for input service.

12. As a result, I do not find justification in the order under challenge while denying the said eligibility despite admitting that the service was not used by the employees personally. The order is, therefore, hereby set aside. Consequent thereto the appeal stands allowed.

[Order pronounced in the open Court on 28.10.2021]