
(2024) 11 CESTAT CK 1303

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 50119 of 2017

**M/s. Marudhar Hotels Pvt. Ltd. @APPELLANT @Hash Commissioner of
Central Excise, Jodhpur @RESPONDENT**

Date of Decision : 29-11-2024

Acts Referred:

Finance Act, 1994 — Section 65(105)(za), 65(105)(zm), 65(105)(zp), 65(105)(zy),
65(105)(zzd), 65(105)(r), 65(105)(zzq), 65(105)(zzk), 65(105)(zzr)
Cenvat Credit Rules, 2004 — Rule 6, 6(2), 6(3), 6(3A), 6(3)(ii), 6(5)

Citation : (2024) 11 CESTAT CK 1303

Hon'ble Judges : Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Sanjiv Agarwal, Rajeev Kapoor

Final Decision : Partly Allowed

Judgement

Dr. Rachna Gupta, J

1. M/s. Marudhar Hotels Pvt. Ltd. i.e. the appellants herein are engaged in providing taxable service, namely, Mandap Keeper Service, Internet Café Service, Renting of Immovable Property Service, etc. They are also providing the exempted services and had availed the option under sub-clause (ii) of sub rule 3 of Rule 6 of the Cenvat Credit Rules, 2004. During the audit of their records, department observed that the appellant has Cenvat credit of Rs.1,11,22,936/- during the Financial Year 2010-11 and of Rs.1,42,31,299/- during 2012-13. The Cenvat credit on the said amounts have been worked out at Rs.28,42,027/- and Rs.32,22,660/- for the respective financial year. However, department has worked out the same at Rs.97,67,158/- and Rs.36,32,862/- (Rs.20,17,121 + Rs.16,15,741/-) respectively. Based on these observations, it is alleged that the appellant has short paid an amount equivalent to Cenvat credit attributable to exempted services amounting to Rs.73,35,333/- during the Financial Year 2010-11 and 2012-13 thereby contravening the provisions of sub rule 2 and 3 of Rule 6 of Cenvat Credit Rules, 2004. The excess credit availed of Rs.73,35,333/- is proposed to be recovered from the appellant along with the interest vide Show

Cause Notice No. 115/2015 dated 06.08.2015. The said proposal has been confirmed vide Order-in-Original No. 39-16-17 dated 07.11.2016. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri Sanjiv Agarwal, learned Chartered Accountant for the appellant and Shri Rajeev Kapoor, Authorized Representative for the respondent.

3. Learned Chartered Accountant for the appellant has mentioned that the short paid Cenvat credit has been worked out by the department for three different periods i.e. 2010-11, from April 2012 to June 2012 and from July 2012 to March 2013. Learned Chartered Accountant has submitted separately for each of these periods. With respect to the short payment of Rs.69,25,131/-during the Financial Year 2010-11, it has been submitted that while computing the said amount, the department has failed to take into consideration Rule 6(5) of Cenvat Credit Rules, 2004, according to which 100% credit on the services of management consultancy as defined under Section 65(105)(r) of the Finance Act, 1994 is specifically allowed. Even if it is partially used in providing the exempted services, thus credit taken on Management Consultancy Service it was not liable for proportionate reversal. Total Cenvat credit availed in the Year 2010-11 is Rs.1,11,22,936/- out of which substantial amount of Rs.78,86,394/- pertains to Management Consultancy Services. Hence, the substantial demand on this account is liable to be set aside.

3.1 With respect to the alleged short payment of Rs.3,87,671/-for the period from April 2012 to June 2012, it is submitted that the figures taken by the department for calculating the said shortcoming do not tally with the figures reflected in the appellant's record. Learned Chartered Accountant further mentioned that during this period, an amount of Rs.4,46,651/- has been included in the credit availed of Rs.15,77,123/- despite the fact that the former amount pertains to the re-credit taken in the month of June 2012 in respect of the excess credit debited during the previous year under Rule 6(3A) of Cenvat Credit Rules, 2004. The inclusion of said amount is not justified and the demand of Cenvat credit for this amount is therefore not sustainable.

3.2 Finally submitting with respect to the alleged short payment of Rs.22,531/- for the period July 2012 to March 2013, it is submitted that the said income pertains to Wi-fi expenses which are solely incurred for the provisions of taxable services. Hence, Rule 6 of Cenvat Credit Rules, 2004 is not applicable. The demand for this period is also liable to be set aside. With these submissions, learned Chartered Accountant has prayed for the order under challenge to be set aside and the appeal is prayed to be allowed.

4. Learned Departmental Representative on the other hand has reiterated the findings arrived at by the Commissioner in the order under challenged. Impressing upon no infirmity in the order, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the case record, we observe following to be the admitted facts:

(i) Appellant is holding service tax registration for providing various taxable services like Management Consultancy Services, Internet Cafe Services and Mandap Keeper Services.

(ii) The appellant is also rendering few services which are exempted from payment of tax.

(iii) The appellant is not maintaining the separate register for the inputs used in providing taxable as well as exempted services like Food Sale in Restaurants, Boarding and Lodging facilities of guests etc.

(iv) Sub-clause (ii) of Rule 6(3) of Cenvat Credit Rules, 2004 has been complied with by the appellant.

(v) While applying Rule 6(3A) of Cenvat Credit Rules, 2004 appellant had reversed the proportionate Cenvat Credit of Rs.28,42,027/- for the Year 2010-11 with an intimation thereof to the department vide letter dated 30.06.2011 and has also reversed the proportionate Cenvat credit of Rs.28,32,413/- for the Year 2011-12 under intimation to the department vide letter dated 29.06.2012.

6. We also observe that the period in question has been divided into three vis-à-vis the respective demand as follows:

Year/period

Amount of Cenvat credit attributable to exempted service works out

Amount of Cenvat credit attributable to exempted service worked out by assessee

Short paid

2010-11

$373750620/425630900 \times 11122936 = 9767 \ 158$

2842027

6925131

04/2012 to 06/2012

$21421379/25447050 \times 2396194 = 2017121$

1629450

387671

07/12 to 03/2013

$49501315/362591008 \times 11835105 = 16157 \ 41$

1593210

22531

TOTAL

7335333

7. Period wise observations in the light of above admitted facts are as follows:

7.1 Financial Year 2010-11

7.1.1 Appellant has claimed the applicability of Rule 6(5) of Cenvat Credit Rules, 2004. The provision is perused. It reads as follows:

"Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services."

7.1.2 The perusal makes it clear that the provisions of Rule 6 of Cenvat Credit Rules, 2004 are not applicable on 16 services as mentioned in the said provision. One of such services is of Management Consultancy Service defined under Section 65(105)(r) of Finance Act, 1994. According to the said provision 100% credit on the Management Consultancy Service is specifically allowed even if it is partially used in providing the exempted services. The rule clarifies that the credit taken on Management Consultancy Service is not liable for proportionate reversal under Rule 6 of Cenvat Credit Rules, 2004. We accordingly hold that the amount of Cenvat credit was not supposed to be reversed vis-à-vis Management Consultancy Services. The original adjudicating authority also in Para 4.4.1 in sub-para 2 has held that appellant to be entitled to avail 100% credit of the same irrespective of their utilization in taxable or non-taxable service during the period under question. However, relief has been denied as the said sub-rule (5) was omitted vide Notification No. 3/2011. However, we observe that the said notification is dated 01.03.2011 which omits sub-rule (5) of Rule 6 of Cenvat Credit Rules, 2004 w.e.f. 01.04.2011. The period in question is March 2010 to March 2011 which means the notification has wrongly been applied by the adjudicating authority for denying the availment of 100% credit on the Management Consultancy Services.

7.2 April 2012 to June 2012

7.2.1 We observe that the amount of Rs.4,65,651/- as claimed as re-credit by the appellant against excess reversal in previous Financial Year has already been denied to be subjected to proportionate reversal in the ratio of exempted services provided in the subsequent period. As has been observed in Para 4.5 of the Order-in-Original/order under challenge, the already reversed Cenvat credit under intimation to the department has also been acknowledged by the adjudicating authority in the said para itself. The proportionate value of Cenvat credit has already been reduced. We do not find any reason to interfere with those findings.

7.3 July 2012 to March 2013

7.3.1 The submission of appellant with respect to the demand for this period is that the Wi-fi Services availed during this period were exclusively used in providing the taxable services. Provisions of Rule 6 of Cenvat Credit Rules, 2004 do not apply. However, in the light of the above observed admitted facts, the appellant was providing taxable as well as exempted services and was not maintaining the separate register of the proportionate inputs used for both kind of services. The said argument of the appellant is not sustainable. The adjudicating authority in Para 4.6 of the order under challenge has held that use of Wi-fi Service by its very nature is not restricted to providing only taxable services. The use of Wi-fi Services in providing number of exempted services has not been denied by the assessee. Rather the assessee themselves had exercised the option under Rule 6(3)(ii) of Cenvat Credit Rules, 2004 for payment of proportionate amount attributable to exempted services as they were not in a position to identify a particular input service with a particular output service. In the light of the said admitted facts, it has been held that there is no justification in showing use of a particular input service exclusively in taxable output service and to claim full Cenvat credit on a subsequent occasion without having withdrawn the option availed of Rule 6(3) of Cenvat Credit Rules, 2004. We find no reason to differ from these findings. Accordingly, we hold that once the appellant exercised option to pay under Rule 6(3)(ii) of Cenvat Credit Rules, 2004 they were under legal obligation to pay the amount as determined under the said rule.

8. In the light of the entire above findings, the demand for the period 2010-11 vis-à-vis the amount of Cenvat credit availed on Management Consultancy Services is hereby set aside. The demand from April 2012 to June 2012 stands modified as discussed above. The order with respect to demand for the period July 2012 to March 2013 is also upheld. Consequent thereto, the order under challenge is hereby modified and the appeal stands partly allowed.

[Order pronounced in the open court on 29.11.2024]