(2021) 07 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Stay Application No. 29117 Of 2013, Central Excise Appeal No. 28419 Of 2013

M/s. Microsoft India (R And D) Pvt. Ltd. APPELLANT

Vs

Commissioner Of Central Excise And Service Tax RESPONDENT

Date of Decision : 26-07-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(l), 5

Citation : (2021) 07 CESTAT CK 0032

Hon'ble Judges : S.S. Garg, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Prasad. P, P. Gopakumar

Final Decision : Allowed

Judgement

Sl. No.,Description of service,Amount (in Rupees)

1,Event Management,"4,81,289

2,Outdoor catering,"14,66,348

3,Mandap / Shamiana Service,"8,456

4,Rent-a-cab Service,"20,96,220

,Total,"40,52,313

7. After considering the submissions of both the parties and perusal of the material on record, we find that the only issue involved in the present case",,

is whether â??input servicesâ?? in the nature of Event Management, Outdoor Catering, Mandap or Shamiana Service and Rent-a-Cab service",,

qualify as eligible input services for the appellant to claim CENVAT credit during the relevant period. Further, we find that the appellant is a 100%",,

Export Oriented Unit registered under Software Technology Park of India (STPI) scheme and has been availing input services for rendering its output,,

services. Appellant has been claiming refund of accumulated tax credit under Rule 5 of CENVAT Credit Rules, 2004. In the present appeal, the",,

CENVAT credit has been denied on four input services mainly on the ground that these impugned input services do not fall in the definition of â??input,,

serviceâ?? and there is no nexus between the input service and the output service and secondly, absence of such services will not directly have an",,

impact on the quality and efficiency of provisions of taxable services. In this regard, it is essential to examine the definition of â??input serviceâ?? as",,

defined under Rule 2(l) of CENVAT Credit Rules, 2004 during the relevant period, which is reproduced herein below:",,

â??(i) used by a provider of taxable 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 from the place of removal and includes services used in relation to setting up, 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 upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing,",,

recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward",,

transportation of inputs or capital goods and outward transportation upto the place of removal;â??,,

7.1 Further, the department vide Notification No.3/2011-CE dated 1.3.2011 amended the definition of â??input serviceâ?? by introducing exclusion",,

clauses. During the relevant period, the definition of â??input serviceâ?? was very wide and the Tribunal has also recognised the wide import of the",,

word â??usedâ?? in the definition through the case law of M/s. Dell International Services India Pvt. Ltd. vs. CCE, Bangalore: 2010 (17) STR 540",,

(Tri.-Bang.) by holding that the definition of â??input serviceâ?? is of a very wide interpretation for the following reasons:,,

a) It uses the phrase â??whether directly or indirectly, in or in relation toâ??, for providing,",,

b) It gives an inclusive definition which further widens the scope of the main definition; and,,

c) It uses the phrase â??activities relating to businessâ?? as an input service.,,

7.2 Further, we find that the appellant has given full justification and established nexus between the input service and the output service, which is given",,

herein below:,,

(i) Event Management Service â?" Such services are procured for the purpose of planning, promotion, organizing or presentation of business. Such",,

services are an essential requirement while conducting business or any meetings and are beneficial to the employees or customers attending the,,

business meet. Official meetings and seminars are conducted where large number of employees can be accommodated at once to enhance the,,

business objective, these meetings and seminars are part of regular activity either to improve or deliver the services. Accordingly, such are input",,

services in relation to business activities and are necessary for provision of output services by the company.,,

(ii) Outdoor Catering Service â?" Such services procured for the purpose of provision of supply of food and beverages to the employees of the,,

company. The same is towards the welfare of the employees. As there is no facility in the immediate vicinity where the employees can have their,,

meals, services of such outdoor caterers are being utilized. Therefore, this cafeteria facility is essential for the employees to work and hence saves",,

effective working time and allows for a consistency in the provision of food across to the employees. Hence, this facility is integral to running of the",,

business.,,

(iii) Pandal or Shamiana Service â?" Such services provided in relation to supply of furniture, fixtures, lights and light fittings is an essential",,

requirement while conducting business or any meetings and is to benefit the employees or the customers attending the business meet. Accordingly,",,

such services qualify as input services in relation to business activities and are necessary for provision of output services by the appellant.,,

(iv) Rent-a-Cab service â?" Transport / cab facilities provided are for the employees to commute between their places of residence to the place of,,

work. Such services are not only for the welfare of the employees but are essentially in the companyâ??s interest to carry out its business activities,,

effectively. The employees have to reach on time to deliver services and accordingly transport services of vendors are being utilized. Hence, the same",,

is essential for the business operations of the company.,,

7.3 Further, we find that for the immediate preceding period October 2006 to March 2010 for the same impugned services as involved in the present",,

appeal, the learned Commissioner vide its order dated 10.10.2012 has dropped the proceedings and the department has not filed the appeal against the",,

same. We further note that Principle of Consistency warrants that the department should not have taken a contrary view in the present case in view,,

of the apex courtâ??s decision in the case of Radhasoami Satsang vs. Commissioner of Income Tax cited supra. Further, we find that the",,

adjudicating authority does not dispute the usage of impugned input services for providing the output services but has disallowed the credit only on the,,

ground that these are not connected with the business activity or not necessary for providing output service. In this regard, we note that once for the",,

previous period such nexus has been accepted by the department than there is no basis for denial of such nexus for the subsequent period. Further, we",,

also note that for the current period involving April 2010 to March 2011, the refund has also been allowed vide order dated 30.9.2019 and the order",,

has also been placed on record wherein the impugned services have been held to be eligible for refund under Rule 5 of CENVAT Credit Rules, 2004",,

and the Revenue has not appealed against the said order. We also note that it is a settled position of law that there cannot be two different yardsticks,,

i.e., one for allowing refund and the other for deciding the eligibility of CENVAT credit. This proposition has been clarified by the Department in their",,

Circular No.120/01/2010-ST dated 19.1.2010. Further, in the case of Commissioner of Service Tax vs. Convergys India Services Pvt. Ltd. cited supra,",,

it has been held by the Division bench of the CESTAT, Delhi that there cannot be two different yardsticks, one for allowing refund and another for",,

deciding eligibility of CENVAT credit.,,

8. In view of our discussion above, we are of the considered view that the impugned order denying the CENVAT credit on impugned services is not",,

sustainable in law more so when refund relating to the impugned services has already been granted to the appellant. In view of this, we set aside the",,

impugned order by allowing the appeal of the appellant. Stay petition is accordingly disposed of.,, (Order was pronounced in Open Court on ______________),,

