(2021) 08 CESTAT CK 0045

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20154 Of 2021

M/s Outsource Partners International Private Limited @APPELLAN @Hash Commissioner Of Central Tax A Central Excise, Thiruvanthapuram

Date of Decision : 16-08-2021

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

Citation : (2021) 08 CESTAT CK 0045

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Sudeeshna Banerjee, P. Gopakumar

Final Decision : Partly Allowed

Judgement

1. The present appeal is directed against the impugned order dated 10.11.2020 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant is registered with the Service Tax Department and are engaged in providing services under the category of 'Business Auxiliary Service' and their main activities include data entry work, finalization of accounts, preparation of corporate tax and individual tax returns etc. The unit is engaged in the export of services also. During the course of audit by the Department for the years 2013-14 & 2014-15, it was found that the appellant had taken and availed ineligible CENVAT credit on certain services which are excluded from the definition of input services as per CENVAT Credit Rules, 2004 and also ineligible credit on certain improper documents. A SCN was issued and after following the due process, the Assistant Commissioner vide Order-in-Original dated 09.02.2018 confirmed the same. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned Counsel appearing for the appellant submitted that the CENVAT credit

on Works Contract Service and service tax paid on Quiz Competition has been wrongly rejected on the ground that the CENVAT credit pertains to execution of Works Contract Service in respect of the building/civil structure occupied by the appellant, which is excludable from the purview of Rule 2(l) of the CENVAT Credit Rules, 2004. Learned Counsel further submitted that the appellant has undertaken from time to time the required renovation and repairs of the interiors of the office premises for the purpose of modernizing the working environment. The services of repairs, renovation and maintenance service of the office is a sine qua non for providing the output services by the Appellant from such office premises and therefore, such services clearly fall within the means portion of the definition of input service. She further submitted that the services of repair, renovation, maintenance are specifically covered within the inclusive part of the definition of input service under Rule 2(l) of CCR 2004. Further Rule 2(l)(A) of CENVAT credit Rules, 2004 excludes service portion in the execution of a works contract and construction services only in so far as it relates to construction or execution of works contract of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods, and not all works contract activities. She further submitted that in the present case, no new civil structure was raised and only the existing building was refurbished. She placed reliance on the following decisions to prove that CENVAT credit of service tax on repair and renovation has been allowed consistently in the following decisions:

? WM Global Sourcing India Pvt Ltd v. Commissioner Of Central Tax 2021-TIOL-407-CESTAT-BANG

? M/s Mercedes Benz Research and Development India Pvt Ltd V. Commissioner of Central Tax, Bengaluru East 2021-TIOL-158-CESTAT-BANG

? M/s. Menzies Aviation Bobba (Bangalore) Pvt. Ltd. v. CCE 2020-TIOL-989-CESTAT-BANG

? Samsung R & D Institute India Bangalore Pvt Ltd v. Commissioner Of Central Excise and Service Tax, Bangalore 2019-TIOL-3122-CESTAT-BANG

? Ion Exchange (I) Ltd. Vs. CCE,Cus. & ST, Surat-II 2018-TIOL-752-CESTAT-AHM

? Red Hat India P. Ltd. Principal Commissioner of ST, Pune v. Principal Commissioner of ST 2016-TIOL-1300-CESTAT-MUM

? Infosys Ltd. v. CCE 2014-VIL-37-CESTAT-BLR-ST

4.1. She also referred to Circular No.943/4/2011-CX dated 29.04.2011 which clarified that the credit of input services used for repair or renovation of factory or office is allowed as services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services. As far as CENVAT credit of service tax paid on Conducting of Quiz Competition is concerned, learned Counsel submitted that the appellant conducts on regular basis recreation activities for its employees as a part of team building efforts, in order to promote the team spirit and to enhance the morale of the employees and therefore it should be allowed as eligible input service. She also submitted that part of the demand is barred by limitation.

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the Works Contract Service involved in the present case falling under the definition of Input Service because services availed by the appellant pertains to only repair, renovation and maintenance of the office of the appellant which is on a leased premises and such renovation, repair is required for providing the output service of the appellant and they have not been specifically excluded under Rule 2(l) of the CENVAT Credit Rules, 2004 because they do not pertains to construction or execution of works contract of building or civil structure. Further, I find that it has been consistently held in various decisions cited supra that repair and maintenance of the office premises falling under the definition of Input Service and the assessee is entitle to avail credit of the same. Moreover, Circular No.943/4/2011 dated 29.04.2011 also clarified that the CENVAT credit of input service used for repair or maintenance of the factory is allowed, hence denial of CENVAT credit on works contract is not sustainable. As far as CENVAT credit of service tax on conducing quiz competition is concerned, I am not inclined to allow the CENVAT credit on these re-creational activities, hence I deny the CENVAT credit of service tax paid on conducting quiz competition.

7. In the result, the appeal of the appellant is partly allowed and CENVAT credit on Works Contract Service is allowed and CENVAT credit of service tax paid on conducting of quiz competition is denied. Accordingly, the appeal is partly allowed.

(Order pronounced in the open court on 16/08/2021)

