
(2021) 04 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40051, 40052, 40053 Of 2020

M/s. Trimble Information Technologies India Pvt. Ltd.

APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise

RESPONDENT

Date of Decision : 12-04-2021

Acts Referred:

Cenvat Credit Rules 2004 — Rule 2(1), 5

Citation : (2021) 04 CESTAT CK 0027

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : Joseph Prabakar, L. Nandakumar

Final Decision : Partly Allowed

Judgement

1. The assessee, being aggrieved by the Orders-inAppeal No. 299, 300 & 301/2019 (CTA-II) dated 12.10.2019 passed by the Commissioner of Central Tax (Appeals-II): C.G.S.T. and Central Excise, has filed these appeals and the common issue to be decided is the denial of refund claim under Rule 5 of the CENVAT Credit Rules, 2004 of the unutilized credit on the inputs and input services used for providing output services. The periodwise refund claim and the result are captured in the table below:

Sl. No.

Period

Amount of refund claimed (INR)

Order-in-Original

Amount of refund rejected (INR)

1.

October 2016 to December 2016

90,05,804/-

Order No. 45/2019 dated 30.04.2018

2,84,380/-

2.

January 2017 to March 2017

1,16,58,906/-

Order No. 47/2019 dated 10.05.2019

3,01,268/-

3.

April 2017 to June 2017

1,43,72,898/-

Order No. 48/2019 dated 10.05.2019

16,15,218/-

2. It is the case of the appellant that the Adjudicating Authority had granted substantial refund, but however, rejected a part of it, which order came to be upheld by the Commissioner (Appeals) vide Orders-in-Appeal No. 299, 300 & 301/2019 dated 12.10.2019.

3. Shri Joseph Prabakar, Learned Advocate appearing for the assessee, submitted at the outset that the erroneous rejection of refund is no more res integra and has been laid to rest by the decisions/orders of various fora.

4. Per contra, Shri L. Nandakumar, Learned Authorized Representative/Assistant Commissioner appearing for the Revenue, relied on the findings in the impugned order. He also contended specifically that the appellant did not file any details with regard to the following services and hence, the authorities below have rightly denied the refund :

(a) Plant Rental Charges

(b) Freight Charges

(c) Installation Charges

(d) Auditorium Charges, and

(e) Event Management Charges

5. I have carefully considered the rival contentions and have gone through the various decisions/orders relied on during the course of hearing.

6. Following are the services against which the CENVAT Credit availed by the

appellant have been rejected :

- Cleaning Service
- Plant Rental Charges
- Freight Charges
- Installation Charges
- Pest Control Charges
- Car parking charges, terrace charges, terrace and car-bike charges
- Auditorium Charges
- Event Management Charges
- Purchase of air conditioning - Civil Work
- Membership subscription

7. On going through the decisions/orders relied upon by the Ld. Advocate, I find the contentions of the Learned Advocate for the assessee to be correct as regards the denial of CENVAT Credit availed on some of those services, which has been held to be bad. The same is analysed below,

8.1 With regard to Cleaning Service, in the following decisions/orders it has been held that Cleaning Services are essential for providing output services and therefore, the same would qualify as input service and hence eligible for refund :

(i) M/s. RR Donnelley India Outsource Pvt. Ltd. v. Asst. Commr. of Service Tax, Commissioner (Appeals-I) [Orders-in-Appeal No. 211-222/2017 dated 26.04.2017];

(ii) M/s. Alliance Global Services IT India Pvt. Ltd. v. The Commissioner, C.C.E. & S.T, Hyderabad-IV [2017 (49) S.T.R. 235 (Tri. - Hyd.)];

(iii) M/s. HCL Technologies Ltd. v. Commr. of Cus., C. Ex. and S.Tax, Noida [2015 (40) S.T.R. 1124 (Tri. - Del.)]

8.2 The ratio laid down in the above decisions/orders are squarely applicable to the facts of the case on hand and hence, following the above ratio, the denial of CENVAT Credit on this service is bad. To this extent, the impugned order is set aside and this ground of the appeal is allowed.

9.1 On the Plant Rental Charges, the appellant has claimed that the said service is akin to Gardening Services, but however, it appears that the appellant did not file any details as to the nature of service. However, it is seen that since services of renting of equipments for organizing events are allowed as valid input service, the same logic should apply here and accordingly, in principle, the denial of CENVAT Credit is held bad. The Delhi Bench of the CESTAT in the case of M/s. HCL Technologies Ltd. v. C.C.E., Noida reported in 2015 (40) S.T.R. 369 (Tri. -

Del.) has held so.

9.2 However, as the rejection is for non-production of any details, the issue remanded to the file of the Adjudicating Authority to verify the details and follow the guidelines laid down by the Delhi Bench in the case of M/s. HCL Technologies Ltd. (supra). This ground is allowed by way of remand.

10. With regard to Freight Charges, the appellant has claimed that the above charges were incurred on a day-to-day basis for carrying the inputs used for providing output services and these are the charges paid to the vendor for inward transportation. In any case, Freight Charges are included in the inclusive part of the definition of "input service" under Rule 2 (I) of the CENVAT Credit Rules, 2004 and hence, the denial by the lower authorities is bad. The impugned order to this extent is set aside and this ground is allowed.

11.1 In respect of denial of CENVAT Credit on Installation Charges, the only ground for rejection by the lower authorities is the non-furnishing of any details. Before me, it was argued that this service was used for the modernization and renovation of the appellant's existing premises and the nature of services availed were for painting, modernization, etc. I find the following decisions/orders relied upon by the assessee to be apt:

(i) M/s. Red Hat India Pvt. Ltd. v. Principal Commissioner, Service Tax Commissionerate, Pune [2016 (5) T.M.I. 942 - CESTAT, Mumbai];

(ii) M/s. Alliance Global Services IT India Pvt. Ltd. v. The Commissioner, C.C.E. & S.T., Hyderabad-IV [2017 (49) S.T.R. 235 (Tri. - Hyd.)];

(iii) M/s. iNautix Technologies India Pvt. Ltd. v. Commissioner of Service Tax, Chennai-III & ors. [Service Tax Appeal No. 41542 of 2017 & ors. vide Final Order Nos. 42577 to 42583 of 2017 dated 02.11.2017 - CESTAT, Chennai];

11.2 However, since no details were furnished, this issue requires re-adjudication. Accordingly, the impugned order to this extent is set aside and the matter is remanded to the file of the Adjudicating Authority to verify the details and follow the guidelines enshrined in the above decisions/orders. This issue is allowed by way of remand.

12.1 On Pest Control Charges, the assessee has claimed that this issue is akin to Cleaning Services, which is very much essential to keep the business premises safe and clean and hence, the denial is clearly uncalled for. In this regard, the following decisions/orders relied on, are apt:

(i) M/s. RR Donnelley India Outsource Pvt. Ltd. v. Asst. Commr. of Service Tax, Commissioner (Appeals-I) [Orders-in-Appeal No. 211-222/2017 dated 26.04.2017];

(ii) M/s. Alliance Global Services IT India Pvt. Ltd. v. The Commissioner, C.C.E. & S.T, Hyderabad-IV [2017 (49) S.T.R. 235 (Tri. - Hyd.)];

(iii) M/s. HCL Technologies Ltd. v. Commr. of Cus., C. Ex. and S.Tax, Noida [2015 (40) S.T.R. 1124 (Tri. - Del.)]

12.2 Following the above ratio, the impugned order to this extent is set aside and this ground stands allowed.

13.1 With regard to Car parking charges, terrace charges, terrace and car-bike charges, I find that parking charges is an essential service provided to all the employees and used by them during the course of their employment and hence, this forms an essential service. The following decisions are clearly in favour of the taxpayer:

(i) M/s. BNP Paribas Global Securities Operations Pvt. Ltd. v. Commr. of Service Tax [Order No. 51, 52/2016 dated 26.04.2016];

(ii) C.S.T., Bangalore v. M/s. Mercedes Benz Research & Development India (P) Ltd. [2013 (30) S.T.R. 257 (Tri. - Bang.)];

(iii) M/s. Nuware Systems Pvt. Ltd. v. Commr. of Service Tax, Bangalore [2015 (39) S.T.R. 134 (Tri. - Bang.)];

(iv) Commr. of Service Tax, Bangalore v. M/s. Yodlee Infotech (P) Ltd. [2015 (39) S.T.R. 695 (Tri. - Bang.)]

13.2 The denial of CENVAT Credit on the above service is therefore held to be bad. The impugned order to this extent is set aside. The appeal on this ground is treated as allowed.

14. With regard to Auditorium Charges, it is the case of the appellant that the auditorium was taken on rent for conducting trainings or meetings in relation to the appellant's business, which services are Cenvatable. I find that the above service is an essential service since the trainings are provided for the employees of the appellant or business meetings are held there and hence, the denial of CENVAT Credit is not justified. The ratio of the decision in the case of M/s. Mercedes Benz Research & Development India (P) Ltd. (supra) squarely applies here and hence, following the same, this ground is also allowed.

15.1 With regard to Event Management Charges, it is the case of the appellant that the above services were used for promoting the brand name of the company and the expenses relating to advertisements or sales promotions are specifically covered within the scope of the definition of "input service" under Rule 2 (I) *ibid*. I find that the ratio laid down in the following cases are squarely applicable here :

(i) M/s. BNP Paribas Global Securities Operations Pvt. Ltd. v. C.G.S.T. & C.Ex., Chennai South [Service Tax Appeal No. 42080 of 2018 & anor. vide Final Order Nos. 43114 to 43115 of 2018 dated 14.12.2018];

(ii) M/s. iNautix Technologies India Pvt. Ltd. v. Commissioner of Service Tax, Chennai-III & ors. [Service Tax Appeal No. 41542 of 2017 & ors. vide Final Order Nos. 42577 to 42583 of 2017 dated 02.11.2017 - CESTAT, Chennai];

(iii) M/s. IBM India Pvt. Ltd. v. Commr. of Central Excise, Cus. & Service Tax, Bangalore-LTU [2014 (35) S.T.R. 384 (Tri. - Bang.)]

15.2 The denial of CENVAT Credit is held to be bad and the impugned order to this extent is set aside. This ground of the appeal stands allowed.

16.1 With regard to the purchase of air conditioning, it is the case of the assessee that the above services were not used for the construction of a building or civil structure, but they were in the nature of annual maintenance charges. I find that the ratio laid down in the following decisions relied upon by the assessee is squarely applicable here :

(i) M/s. RR Donnelley India Outsource Pvt. Ltd. v. Asst. Commr. of Service Tax, Commissioner (Appeals-I) [Orders-in-Appeal No. 211-222/2017 dated 26.04.2017];

(ii) M/s. Virtusa India Pvt. Ltd. v. Commr. of Central Excise, Hyderabad [2016 (6) T.M.I. 681 - CESTAT, Hyderabad]

16.2 The denial on this count is also held to be bad. The impugned order to this extent is set aside and this ground of the appeal stands allowed.

17. With regard to Membership Subscription, it is the case of the assessee that being part of a multi-national company, the appellant is required to subscribe to various business magazines and register as a member with various business associations for promoting the appellant's business; membership subscription charges were paid towards obtaining corporate membership subscription of American Chamber of Commerce in India, which are purely incurred for the purpose of the appellant's business. I find that business promotion is very much essential for the survival of every company, the membership only expands the reach thereof and hence, it is a way of marketing the brand, which is an essential service. Accordingly, I am of the view that the charges incurred are eligible for CENVAT Credit as per the definition of "input service" under Rule 2 (I) of the CENVAT Credit Rules, 2004. Therefore, the denial is held to be bad, the impugned order to this extent is set aside and this ground of the appeal stands allowed.

18. In the result, the appeals are partly allowed and partly remanded, on the above terms.

(Order pronounced in the open court on 12.04.2021)