(2024) 04 CESTAT CK 0013

Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Case No: Service Tax Appeal No. 50273 Of 2017

M/S Emirates Shipping Line Dmcest	APPELLANT
Vs	
Commissioner, Service Tax-Delhi II	RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 2(l), 3, 9(2), 14
- Service Tax (Determination Of Value) Rules, 2006 - Rule 5(2)
- Finance Act, 1944 - Section 78

Hon'ble Judges: Dilip Gupta, President; P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Vishal Kumar, Prashant Kumar Sinha

Final Decision: Allowed

Judgement

P. V. Subba Rao, Member (T)

1. M/s Emirates Shipping Line[the appellant] filed this appeal to assail the order in original dated 31.10.2016 passed by the Commissioner of Service Tax, Delhi [the Commissioner].

2. The appellant is registered as a company in Dubai and has its operations of chartering vessels in India also. To the extent it was rendering services within India, it was registered with the service tax department and was paying service tax on its output services. It had engaged as an agent “M/s Emirates Shipping Agencies India Pvt. Ltd”. under an Agency Agreement dated 28.02.2006. The agent was helping the appellant in promoting its business and activities incidental thereto. The agent also procured various input services on behalf of the appellant which were used by the appellant in relation to its output service. The appellant paid for the services from its own account. The appellant availed CENVAT credit on the invoices so raised by the service providers. Some of the service providers, however, raised invoices in the name of the agent instead of raising it to the name of the appellant. There is no dispute that the services pertained to the business of the appellant and that the appellant had paid the service provider for the services and that the agent had not paid for the services.

3. The show cause notice dated 17.04.2023 was issued to the appellant seeking to deny CENVAT credit of Rs. 50,20,296/- availed by the appellant on such invoices which were issued in the name of its agent during the period 2007-08 to 2011-12. It was proposed to recover the ineligible CENVAT credit on these invoices under Rule 14 of the CENVAT Credit Rules, 2004 [CCR] along with interest and impose penalty of an equal amount

under section 78 of the Finance Act, 1944 was also proposed.

4. The appellant opposed the proposals in the show cause notice which were, however, confirmed by the impugned order holding that since the invoices were raised on the agent and not on the appellant, no CENVAT credit was admissible.

5. On behalf of the appellant the following submissions were made:

(a) The appellant is the service recipient with respect to the “input services” procured by the agent on its behalf;

(b) The appellant and agent are functioning under the principle of agency, which is governed under the Indian Contract Act, 1872;

(c) Privity of contract with respect to procurement of input services exists between the input service providers and the Appellant;

(d) The Agent is acting as a pure agent of the Appellant, as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006;

(e) The nature of “input services" are such that the same cannot be used by the Agent to provide output service on its own account. In other words, the nature of "input services" cannot be linked to the services provided by the Agent to the Appellant;

(f) The payments against "input services" procured by the Agent have, in effect, been made by the Appellant. The Appellant provides advance amounts to the Agent from time to time to incur expenses on its behalf;

(g) The payment for "input service" is borne by the Appellant and is treated as an expense in the profit & loss account of the Appellant;

(h) Certificate issued by Chartered Accountant acknowledges receipt/ utilization of "input services" and payments thereof by the Appellant;

(i) Appellant deducts applicable tax at source (TDS) in relation to payments made to service providers/ vendors;

(j) Cenvat credit of service tax paid on "input services" is available to the Appellant in terms of Rule 3 read with Rule 2(l) of the Cenvat Credit Rules;

(k) There was wrong utilization of Cenvat credit by the Appellant, hence, no short payment of service tax by the Appellant;

(l) Cenvat credit cannot be denied to the Appellant in terms of Rule 9(2) of the Cenvat Credit Rules, in isolation. Additionally, Rule 9(2) of the Cenvat Credit Rules would have no application in cases where "input services" have been procured by the agent on behalf of the principal;

(m) Cenvat credit has not been availed by the Agent despite the disputed invoices being issued in its name, as said "input services" cannot be linked to the services provided by the Agent to the Appellant/ principal.

6. Learned authorized representative appearing for the department supports the impugned order and asserts that no interference with the impugned order is called for.

7. We have considered the submission advanced by both the sides and have perused the records.

8. There is no dispute that the “Input Services” were rendered by the service providers that and that these services were utilized by the appellant. There is also no dispute that the appellant had rendered its output services on which it paid appropriate service tax.

The only dispute is that the invoices for input service were issued in the name of agent of the appellant and not on the appellant itself. It is also not in dispute that the appellant had paid for these services and there is no evidence that the agent had paid for the services. In view of above, we find no reason to hold that the services were not utilized by the appellant or that the appellant had not paid for the services. It is true that the input invoices should have been in the name of the appellant instead of being in the name of its agent but, in our view, the mere fact that they were issued in the name of the agent is not sufficient to deny the substantive benefit of CENVAT Credit to the appellant when the utilization of the services and payment for them by the appellant is not in doubt.

9. In view of above, we set aside the impugned order and allow the appeal.