

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH COURT NO.IV

Service tax Appeal No. 52602 / 2019

[Arising out of Order-in-Appeal No. 668-CRM-ST/JDR/2019 dated 11.07.2019, passed by the Commissioner (Appeals) CGST, Jodhpur (Rajasthan)]

ALLEN CAREER INSTITUTE

CP-6, Indira Vihar
KOTA 324005
Rajasthan.

APPELLANT

Vs.

COMMISSIONER (APPEALS)

CENTRAL GOODS AND SERVICE TAX
G-105, New Industrial Area,
Opp Diesel Shed, Basni,
Jodhpur-302004 (Raj)

RESPONDENT

APPEARANCE:

Ms Neha Somani, Chartered Accountant for the Appellant
Shri P Juneja, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: April 07, 2021

FINAL ORDER No. 51248 /2021

PER RACHNA GUPTA

The order of Commissioner (Appeals) bearing No. 668(CRM)ST/JDR/2019 dated 11.07.2019 has been assailed vide the impugned appeal. The facts, in brief, as are required for adjudication are as follows:

The appellants are engaged in providing commercial training and coaching services which is covered under taxable service defined under 65B(44) of Finance Act, 1994. Department observed that the appellant had availed Cenvat Credit on the invoices issued

by M/s. Quick Advertising Company. The said company was engaged in booking and canvassing for advertisements for publishing on commission basis fixed by Indian News Paper Society for publishing the same in print media. The Company have paid service tax on commission received by them from print media. The appellant in turn is observed to have taken the input service credit on the strength of these invoices of the said advertising company and for utilising the same for discharging the Service Tax liability. The department, observing that the said service was the input service for printing media from whom the said agent received the commission and as such, the appellant could not have taken the cenvat credit thereof, issued Show cause notice dated 22.02.2018 proposing recovery of the credit availed by them along with interest at appropriate rate and proportionate penalties. Vide Order No. 50/ST/KOTA-H/2018 dated 31.08.2018, the Cenvat Credit of Rs. 33,43,082/- was disallowed to the appellant and the proposal of the Show cause notice was confirmed. The said order was assailed before Commissioner (Appeals) who vide the Order under challenge has dismissed the appeal. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms Neha Somani, learned Chartered Accountant appearing for the Appellant and Shri P Juneja, learned Authorised Representative for the Department.

3. It is submitted on behalf of the appellant that service of advertising agency are eligible for cenvat credit as these have been used for and in relation to promotion of business of appellant only and not that of printing media. It is also mentioned that the appellant has correctly raised the invoices /documentation and in order to pass on the burden of service tax to the assessee, the agent on their invoices has shown the amount of commission separately and charged the service tax from the appellant. Circular dated 10.05.2008 as has been issued by Indian Newspaper Society

is also brought to the notice clarifying that the commission earned by service agent is liable to service tax under advertising service. Master Circular No. 96/7/2007-ST dated 23.08.2007 is denied having any nexus to advertising service.

3.2 It is further submitted that the issue of allowability of availing the cenvat credit by the coaching centres for getting their services advertisement through the print media is no more res integra. It has been allowed even by the Commissioner (Appeals) in appellant's own case vide Order-in-Appeal No. 723-725(CRM) ST /JDR dated 29.07.2019. Decisions of CESTAT in the case of another coaching institute i.e. M/s. Bansal Classes Pvt Ltd. and M/s. Career Point Infosystem Ltd. are also impressed upon, where Tribunal has allowed the availment of Cenvat Credit to these career institutes for availing the advertisement services from the advertisement agencies. The Order under challenge is therefore, prayed to be set aside and appeal is prayed to be allowed.

4. Per contra the learned Authorised Representative appearing for the department has impressed upon the Master Circular No. 96/7/2007-ST dated 23.08.2007, as has been relied upon in para 5.2 and 5.3 of the impugned order. Impressing upon that there is no infirmity in these findings that the impugned appeal is prayed to be dismissed.

5. After hearing the parties and perusing the entire record, I observe and held as follows:

The issue involved herein is as to whether the appellant coaching institute could avail the advertising service from the print media to foster their business as their input service and can avail cenvat credit on such services. To adjudicate it is necessary to look into the definition of Input services. Input services are defined in 2(I) of Cenvat Credit Rules 2004 as:

(I) "input service" means any service, -

- (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 upto 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;..”

6. This definition stand amended with effect from 01.07.2012. Perusal of definition makes it clear that amended definition has brought changes in three category

- (i) No specified services where these have been used either directly or indirectly in relation to final output of the assessee.
- (ii) The inclusive part where the specified service have been included to be called as input service and
- (iii) Few specified services have been excluded to be input service from 3rd element of this definition.

7. Further perusal also make it clear that inclusive part of the definition specifically include among various activities, the service provided by advertising agency. It is sufficient to hold that advertisement service is an input service. Also it is apparent that the appellant has availed the same to foster its business i.e. in relation to its business. Hence the same is definitely an input service for the appellant for which appellant can claim credit of service tax paid on such service. Hence, Cenvat Credit cannot be at all denied.

8. From the order under challenge, it is observed that while disallowing this Cenvat Credit, Commissioner (Appeals) has relied

on Master circular dated 23.08.2007, the said adjudicating authority has miserably failed to take into consideration the subsequent amendment to the definition of the input service. Any provision prior to that amendment could not therefore, be taken into consideration. The findings of Commissioner (Appeals) based on unamended provision of input service are, therefore, held unreasonable and illegal. The findings are therefore, hereby set aside. As a result thereof the Appeal stands allowed.

**(RACHNA GUPTA)
MEMBER (JUDICIAL)**

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