2014 (3) ECS (185) (Tri – Ahd.)

In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench, Ahmedabad

M/S. MARKET CREATORS LIMITED
Vs.
C C E & S.T., VADODARA

Date of Hearing: 27.06.2014
Date of Decision: 04.07.2014

Appeal No. ST/11331/2013
(Arising out of OIA No. SRP/474/VDR-I/2013 dated 27.02.2013 Passed
by Commissioner of Central Excise & S.T., Vadodara)

Appearance:
Shri H.D. Dave, Advocate For the Appellant
Shri Manoj Kutty, A.R. For the Respondent

CORAM:
Hon’ble Mr. H.K. Thakur, Member (Technical)


“Revenue entertained a view that since these premises were neither
registered as “service provider” nor as “input service distributor”, the
appellant was not eligible for CENVAT Credit of service tax paid on
input services used at these unregistered premises......

The service tax is not paid by the rented premises as ‘Head Office’
for all the branches and no service tax registration is so taken by the
appellant of such premises issuing credit taking document. In the facts
and circumstances, appellant can not take credit of the document issued
by a premises not registered as an Input Service Distributor under the
service tax provisions. Argument of the appellant that extended period
is not applicable in this appeal will not help their case as no where it
has been brought to the knowledge of the department that cenvat credit
is being taken by the appellant on a document issued by the service
recipient who is not registered as ISD under Rule 3 of the “Service Tax
(Registration of Special Category of Persons) Rules 2005” read with Rule
7 of the Cenvat Credit Rules„ 2004.” (Para 2&6)

Per : Mr. H.K. Thakur:
This appeal is directed against Order-in-Appeal No. SRP/474/VDR-I/2013
dated 27.02.2013 passed by the Commissioner (Appeals), Central Excise,
Customs and Service Tax, Vadodara.

2. M/s Market Creators Limited, the appellant, are registered for providing “Stock Broker Service” from the premises “Creative Castle”, 70, Sampatrao Colony, Opposite Masonic Hall, Productivity Road, Vadodara. The appellant had taken CENVAT Credit of Service Tax amounting to Rs. 3,23,392/- paid on hiring charges of a premises taken by them on rent at 4th Floor, Darpan Apartment, R. C. Dutt Road, Vadodara used by them as “Document Retention Centre” for storage of a large number of documents pertaining to their Stock Broker Business. This hired premise was neither registered with the Service Tax Department nor used to render any output service directly. The rent receipt did not bear address of the hired premises. The appellant also availed CENVAT Credit of Rs. 3,74,556/- on input services used at unregistered premises (facilitating centers) at Junagarh, Jamnagar and Vadodara (other than registered premises) from where no output service was provided. Revenue entertained a view that since these premises were neither registered as “service provider” nor as “input service distributor”, the appellant was not eligible for CENVAT Credit of service tax paid on input services used at these unregistered premises. The lower authorities confirmed demand of service tax of Rs. 6,97,948/- along with interest and imposed of equivalent amount under Rule 15 of the CENVAT Credit Rules 2004 read with Section 78 of the Finance Act 1994.

3. Shri H. D. Dave, (Advocate) appearing for the appellant, argued as follows:

(a) That the ‘Document Retention Centre’ was a part and parcel of the business activity of provision of stock broker service by the appellant from its registered premises. The fact that the appellant had taken on rent the premises at Darpan Apartments has not been denied by the Revenue. The fact that owner of the immovable property had charged service tax from the appellant has not been denied by the Revenue. The fact that the appellant has availed CENVAT Credit of service tax paid on rent on the strength of proper service tax payment document is not challenged by the Revenue. That the only ground for denial of CENVAT Credit was that the premises namely ‘Document Retention Centre’ and other premises were not registered with any Service Tax Officer either as ‘service provider’ or as ‘input service distributor’, which was a minor procedural lapse, for which substantive benefit should not be denied. He cited the following case laws in this regard:

(i) Lupin Limited vs. CCE, Thane-II - [2007-TIOL-1710-CESTAT-
MUM];
(ii) Eveready Industries India Ltd. vs. CCE, Belapur - [2008-TIOL-1935-CESTAT-MUM];
(iii) C. & C.C.E., Vapi vs. DNH Spinners - [2009-TIOL-1216-CESTAT-AHM];
(iv) CCE Vapi vs. Jindal Photo Limited - [2009 (14) STR 812 (Tri. Ahmd.)];
(v) Modern Petrofils - CCE Vadodara vs. CCE Vadodara Modern Petrofils - [2010-TIOL-1204-CESTAT-AHM];
(vi) Doshion Limited vs. Commissioner of Central Excise, Ahmedabad - [2013 (288) ELT 291 (Tri. Ahmd.)].

(b) That the demand of service tax was time barred inasmuch as the transactions of input services were duly recorded in the books and accounts of the appellant, and thus there was no suppression of facts etc. with intent to evade payment of service tax, particularly when the availment of CENVAT credit was duly reflected in appellant’s periodical ST-3 Returns and there was no allegation as to the eligibility of the ‘input services’ for CENVAT Credit. For the same reasons, penalty was not imposable under Section 78 of the Finance Act 1994.

(c) The Original Authority has pointed out defects in duty paying documents for denial of CENVAT Credit of service tax but the said ground was not canvassed in the Show Cause Notice, and thus denial of CENVAT Credit on such ground is not proper and legal.

4. On the other hand Shri Manoj Kutty, Ld. A.R. for the respondent, reiterated the findings of the lower authorities and argued that the impugned Order-in-Appeal has been correctly passed against the appellant. He relied upon the following case laws:-

(i) Khaitan Electricals Limited vs. CCE Kolkata - [2011 (21) STR 184 (Tri. Kol)]
(ii) Mangalore Refinery & Petrochemicals vs. CCE, Mangalore - 2013 (30) STR 475 (Tri. Bang.)
(iii) Hindalco Industries Limited vs. CCE Allahabad - [2013 (292) ELT 416 (Tri. Del.)]

5. Heard both sides and perused the case records. Regarding availment of input services credit by the appellant on the input services utilized at appellant’s unregistered premises at Junagarh, Jamnagar and Vadodara (facilitation centres), it is observed that the said unregistered premises ought to have registered with the jurisdictional Service Tax Officers as ‘Input Service Distributor’ in
terms of Rule 3 of the “Service Tax (Registration of Special Category of Persons) Rules 2005” read with Rule 7 of the Cenvat Credit Rules, 2004. On a similar set of facts, CESTAT, Bangalore in the case of Mangalore Refinery and Petrochemicals vs. CCE Mangalore (supra) held as follows:-

“2. I have given careful consideration to the submissions. The specific statutory provisions requiring any office of a manufacturing unit or output service providing unit to take ISD registration for the purpose of distributing CENVAT credit on any input service received by it under cover of invoices/bills/challans issued by the input service provider, to its own manufacturing unit or output service-providing unit are clear. ISD, as defined under Rule 2(m) of the CENVAT Credit Rules, 2004 read with Rule 2(ccc) of the Service Tax Rules, 1994, is an office of the manufacturer/producer of final products or the provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice/bill/challan for the purpose of distributing credit of the service tax paid on the said input services to such manufacturer/producer or service provider. Rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005 requires an ISD to obtain registration with the Department. Sub-rule (2) of Rule 4A of the Service Tax Rules, 1994 provides the manner in which a registered ISD shall distribute service tax credit. It provides that the ISD shall issue an invoice/bill/challan duly signed by him or it or a person authorized by him/it, for each of the recipients of the credit so distributed. This provision also specifies the particulars to be contained in such invoice/bill/challan. Accordingly, the document should contain (i) the name, address and registration number of the provider of input service and the serial number & date of the invoice/bill/challan issued by the service provider, (ii) the name and address of the ISD, (iii) the name and address of the recipient of the credit distributed and (iv) the amount of credit distributed.

3. In the instant case, it is not in dispute that the manufacturing unit of the company at Mangalore chose to take CENVAT credit on BOFS provided by Corporation Bank, on the strength of the invoices issued by the bank to the Mumbai office of the company. Again, it is not in dispute that the Mumbai office of the appellant-company, which was, effectually, the recipient of the service rendered by the bank, allowed the Mangalore unit to take CENVAT credit of the service tax paid on the said service. This was not permissible inasmuch as the transactions involved distribution of CENVAT credit by the Mumbai office of the appellant-company to its Mangalore unit without obtaining ISD registration and issuing invoices in
terms of sub-rule (2) of Rule 4A of the Service Tax Rules, 1994. If it is held that the availment of CENVAT credit by the Mangalore unit on the basis of the invoices issued to the Mumbai office by the input service provider is not vitiated by the nature and/or the contents of the invoices used by the manufacturing unit, it would be tantamount to rendering the ISD-related provisions otiose. The aforesaid provisions made by the legislative authority are special provisions governing the registration and conduct of input service distributors. Such provisions must prevail over general provisions. By arguing that the CENVAT credit on BOFS cannot be denied to the manufacturing unit by reason of defects of documents, the learned counsel was virtually invoking the general provisions. At the risk of repetition, I must say that the special provisions prevail over the general provisions and should be given full effect to.”

6. In the case of present appellant, the service tax is not paid by the rented premises as ‘Head Office’ for all the branches and no service tax registration is so taken by the appellant of such premises issuing credit taking document. In the facts and circumstances, appellant can not take credit of the document issued by a premises not registered as an Input Service Distributor under the service tax provisions. Argument of the appellant that extended period is not applicable in this appeal will not help their case as no where it has been brought to the knowledge of the department that cenvat credit is being taken by the appellant on a document issued by the service recipient who is not registered as ISD under Rule 3 of the “Service Tax (Registration of Special Category of Persons) Rules 2005” read with Rule 7 of the Cenvat Credit Rules,, 2004.

7. In view of the above observations, appeal filed by the appellant is rejected.

(Order pronounced in the Court on 04.07.2014)