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No Cenvat credit reversal required where service tax is not paid due to non-recovery of consideration in case assessee pays service tax on receipt/ collection basis

We are sharing with you an important judgment of the Hon'ble Tribunal in the case of **Commissioner of Service Tax vs. Krishna Communication [(2013) 34 taxmann.com 43]** on the following issue:

Issue:

Whether the Cenvat credit reversal is required, where no service tax is paid on output services owing to non-recovery of consideration in case the assessee pays service tax on receipt/ collection basis under Rule 6(1) of the Service Tax Rules, 1994 **("the STR")**?

Facts:

Krishna Communication **("the Respondent" or "the Asseesee")** are engaged in providing taxable services in the category of Advertising Services. The Respondent had availed the CENVAT Credit of input services on which Service Tax liability was paid and it was not utilized for providing the output services.

Due to non-recovery of consideration from some of the service recipient to whom advertisement services were rendered by the Assessee, the Respondent has written off the same as bad debt in the books of accounts. In terms of Rule 6 (1) of the STR the Respondent was supposed to pay service tax on actual receipt/ collection of consideration for services rendered. Accordingly, the Assessee did not pay service tax due to non-recovery of such consideration.

The authorities alleged that the Assessee is required to reverse the CENVAT Credit of the input services which is proportionate to the consideration not received and thus written off by the Respondent.

Held:

The Hon'ble Tribunal has held that the Cenvat credit is not required to be reversed where the Assessee provided taxable service but did not discharge service tax due to non-recovery of consideration and observed as under:

1. The input service has been taken correctly. The inputs/input services have been used in providing output services. The output services are liable for payment of Service Tax. Hence, the eligibility of availing and utilizing the credit was not in question. As per Rule 6 of the STR, Service Tax is payable when the payment towards taxable services are received. No Service Tax is payable on that part of the payment which is

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not received. There is no provision in the Cenvat Credit Rules, 2004 ("**the Credit Rules**") to deny proportional credit on the inputs which were used in providing the output service on which recovery is pending.

2. The adjudicating authority has cited Rule 14 of the Credit Rules and held that when Service Tax was not realized, the output service has not suffered any Service Tax. Hence, the credit availed would fall under the category of wrongly utilized credit and Rule 14 of CENVAT Credit Rules would be apply. In this regards, the Hon'ble Tribunal observed that Rule 14 of the Credit Rules envisages reversal of credit wrongly utilized or erroneously refunded.

   In this case, the services rendered are taxable services. The credit of inputs/input services availed is utilized in providing taxable output services. Hence, there is nothing wrong in availing and utilization of the credit. **Rule 14 does not envisage recovery of credit in situations where Service Tax recovery was pending and written off as bad debts later**.

   Further, the Hon'ble Tribunal observed that the bad debts have accumulated over a period of time. It is not possible to identify this bad debt with any particular invoice/invoices on which the recovery was pending. **There is no one-to-one connection in availing and utilization of the credit in taxable output services**. Hence, there is no merit in the allegation that the input credit has been wrongly utilized.

   Thus, the Hon'ble Tribunal held that proportional credit on the amount of bad debts written off by the Assessee is not liable to be reversed. Since credit availment and utilization is not wrong, no penalty is imposable.

Hope the information will assist you in your Professional endeavors. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards.

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ST : In case of assessee paying service tax on receipt basis under rule 6(1) of ST Rules, 1994, no Cenvat credit reversal can be required even if no service tax is payable on output services owing to non-recovery of consideration

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[2013] 34 taxmann.com 43 (Ahmedabad - CESTAT)

CESTAT, AHMEDABAD BENCH

Commissioner of Service Tax, Ahmedabad

v.

Krishna Communication*

M.V. RAVINDRAN, JUDICIAL MEMBER

ORDER NOS. A/13304 - 13305/WZB/AHD/2013
APPEAL NOS. ST/554/2011 & ST/CO-2/2012

FEBRUARY 4, 2013

I. Rule 3 of the Cenvat Credit Rules, 2004 - CENVAT Credit - General - Due to non-recovery of consideration for output services provided, assessee wrote them off as bad debts - Department argued that since service tax was payable under Rule 6(1) of Service Tax Rules, 1994 on actual receipt of consideration and there was no receipt of consideration in this case, assessee was required to reverse proportionate credit of input services attributable to output services on which no service tax was payable owing to non-receipt of consideration - HELD : There was no dispute as to : (1) eligibility of availment of CENVAT Credit, (2) receipt of input services by assessee and use thereof for providing output service; and (3) discharge of service tax liability by assessee as per law - Department's argument meant that it was trying to co-relate input services to output services while it is settled law that there need not be one-to-one co-relation of input services with output services - There is no provision in CENVAT Credit rules to deny proportional credit on inputs/input services used in providing output service on which recovery is pending - Hence, assessee was eligible for input service credit availed [Paras 9 to 12] [In favour of assessee]

II. Rule 14 of the Cenvat Credit Rules, 2004 - CENVAT Credit - Recovery of CENVAT credit wrongly taken or erroneously refunded - Department sought reversal of credit of input services on ground that no service tax was payable on output services owing to non-receipt of consideration - HELD : Services rendered by assessee were taxable services - Credit of inputs/input services availed was utilized in providing taxable output services - Hence, there was nothing wrong in availing and utilization of credit - Rule 14 does not envisage recovery of credit in situations where Service Tax recovery was pending and written off as bad debts later [Para 10] [In favour of assessee]

Dr. N.V. Suchak *for the Appellant.* **Dr. J. Nagori** *for the Respondent.*

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ORDER

1. This appeal is directed against Order-in-Appeal No.159/2011 (STC)/K.Anpazakan/Commr(A)/Ahd, dt.30.06.2011.

2. The facts of the case, in brief, are that the appellants are engaged in providing taxable services in the category of Advertising Services. The said appellants are duly registered with the Department and are holding a valid Service Tax registration No.AADHR2726RST001.

3. During the course of audit conducted by CERA, it was noticed that Service Tax would be paid to the credit of Central Government on prescribed due date in which the payment are received towards the value of taxable services. Further, the amounts billed by the appellants against customers but not realized are not liable to Service Tax as the event of payment of Service Tax is on the basis of actual realization of amounts towards the cost of service. Where the cost of service billed become irrecoverable for any reason and the same is written off fully in the books of account of the assessee, the element of input service credit attributable to such write off was required to be reversed or paid by the appellants as no Service Tax was realized on the output service in which such input service has been used. The CENVAT Credit scheme envisages availment of credit towards payment of Service Tax on output services. Where no Service Tax is payable on any output service either because such service itself is exempt or because the service charges billed for in respect of such services becomes irrecoverable, the Service Tax credit was not available to the appellants and the credit cannot be used as set off against output service in such cases. In view of the above, the CENVAT Credit to be reversed by the appellants was calculated to be Rs.1,45,808/- and the appellants, *vide* letter dt.12.11.2009, were requested to pay up the said amount.

4. A show cause notice dt.27.01.2010, therefore, was issued to the appellants. Later on, the said show cause notice was decided by the Assistant Commissioner, Service Tax, Division-I, Ahmedabad *vide* the impugned order, under which the demand of CENVAT Credit amounting to Rs.1,45,808/- was confirmed against the appellants under Section 73(1) of the Finance Act. Also, interest at applicable rate was charged under Section 75 of the Act. Penalties under Section 77 of the Finance Act were also imposed on the appellants.

5. The assessee preferred an appeal before such impugned order before Commissioner (Appeals). The first appellate authority, after considering the submissions made in the appeal memoranda as well as during the personal hearing, held in favour of the assessee and set aside the Order-in-Original.

6. Revenue, aggrieved by such an order, is in appeal before the Tribunal.

7. Ld. Additional Commissioner (A.R.), submits that the appellant had availed the CENVAT Credit of input services on which Service Tax liability was paid and it was not utilized for providing the output services. It is his submission that the said output services were rendered to the recipient of the services by the respondent. It is his submission that some of the recipient of the services from the respondent did not pay the amount to the respondent and hence the respondent has written off the amount due from such recipients of the services, from the book of accounts. It is his submission that the respondent having not received the amount from the" recipient of the services and having

written off the same as bad debt, did not discharge the Service Tax liability, as per the provisions of Service Tax entitled them not to discharge the Service Tax for the amount which was not received. It is also his submission that the CENVAT Credit Rules were framed in order to reduce the cascading effect of tax and in this case having not paid the Service Tax liability, they are required to reverse the CENVAT Credit of the input services which is proportionate to the amount which has been written off by the respondent as not received from the recipient of the services.

8. Ld. Chartered Accountant submits that availment of input service credit is not in dispute. It is his submission that they have written off only 0.8% of the amount as bad debts and they have utilized 99.2% of the services rendered. It is his submission that there is no one to one co-relation for availment of CENVAT Credit and utilization thereof.

9. I have considered the submissions made at length by both the sides and perused the records. I find that the issue involved in this case is denial of the proportionate credit of Service Tax credit, on the ground that the appellant had written off the certain amount as bad debts from the books of account for which input services were utilised. It is also undisputed that the respondent had not received the Service Tax liability on the amount which has been written off by them., as per the provisions of Service Tax Rules. From the records, it is seen that there is no dispute as to the eligibility of availment of CENVAT Credit of the Service Tax paid, by the service provider. It is also not in dispute that such services were received by the appellant and were utilized for providing output service. It is also to be noted that there is no dispute as to the discharge of Service Tax liability by the service provider to the respondent.

10. I find that the grounds of appeal of the Department, would indicate that the Department is trying to co-relate the input services to the output services. It is settled law that there cannot be one to one co-relation in availing of the CENVAT Credit of the input service to the provision of output service. I find that the first appellate authority while appreciating the law, had recorded the following:-

"8. I find that the show cause notice has been issued to deny proportional CENVAT Credit on the ground that certain amount has been shown as 'bad debts' in the books of account of the appellants and the adjudicating authority has also confirmed the demand made in the show cause notice. As per Rule 6(10) of Service Tax Rules, 1994, Service Tax shall be paid to the credit of the Central Government on prescribed due date in which the payment are received towards the value of taxable services. Further, amounts billed by the service provider against customer but not realized are not liable to Service Tax as the event of payment of Service Tax is on the basis of actual realization of amounts towards the cost of service. However, in the impugned order, it is held that where the cost of service billed becomes irrecoverable for any reason and the same was written off fully in the books of account of an assessee, the element of input service credit attributable to such write off was required to be reversed or paid by the service provider as input service to this extent had gone into an output service on which no Service Tax was payable. The reason attributed for the proposed reversal of input credit availed is that the CENVAT Credit scheme envisages availment of credit towards payment of Service Tax on output services. Where no Service Tax is payable on any output service either because such service itself is exempt or because the service charges billed for in respect of such services becomes irrecoverable, the Service Tax credit was not available to the

assessee, as the credit cannot be used as set off against output services in such cases. Accordingly, the adjudicating authority has confirmed the demand.

9. I find that the credit on the input service has been taken correctly. The inputs/input services have been used in providing output services. The output services are liable for payment of Service Tax. Hence, the eligibility of availing and utilizing the credit was not in question. As per Rule 6(10) of Service Tax Rules, Service Tax is payable when the payment towards taxable services are received. No Service Tax is payable on that part of the payment which is not received. No Service Tax is payable on that part of the payment which is not received. There is no provision in the CENVAT Credit rules to deny proportional credit on the inputs which were used in providing the output service on which recovery is pending. The adjudicating authority has cited Rule 14 of CENVAT Credit Rules and held that when Service Tax was not realized, the output service has not suffered any Service Tax. Hence, the credit availed would fall under the category of wrongly utilized credit and Rule 14 of CENVAT Credit Rules would be applicable in this case. Accordingly, he confirmed the reversal of CENVAT Credit under Rule 14 of the CENVAT Credit Rules, 2004. For the sake of easy reference, Rule 14 of the CENVAT Credit Rules is reproduced below:-

Rule 14: Recovery of CENVAT Credit wrongly taken or erroneously refunded. - Where the CENVAT Credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Sections 11A and 11AB of the Excise Act or Sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

The rule envisages reversal of credit wrongly utilized or erroneously refunded. In this case, the services rendered are taxable services. The credit of inputs/input services availed is utilized in providing taxable output services. Hence, there is nothing wrong in availing and utilization of the credit. Rule 14 does not envisage recovery of credit in situations where Service Tax recovery was pending and written off as bad debts later. Further, I find that the bad debts have accumulated over a period of time. It is not possible to identify this bad debt with any particular invoice/invoices on which the recovery was pending. There is no one-to-one connection in availing and utilization of the credit in taxable output services. Hence, I find that there is no merit in the allegation that the input credit has been wrongly utilized. Thus, I hold that proportional credit on the amount of bad debts written off by the appellants is not liable to be reversed. Since credit availment and utilization is not wrong, no penalty is imposable."

11. I find that that the above reasoning recorded by the first appellate authority are correct and are in consonance with the law as has been held by the higher judicial forum.

12. I find that the impugned order is correct, legal and does not suffer from any infirmity and no interference called for in such a well reasoned order.

13. Accordingly, the appeal filed by the Department is rejected. The cross objection filed by the respondent in support of the Order-in-Appeal also gets disposed of.