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Dear Professional Colleague,

No direct Nexus required of Input Services vs. Output Services for Refund on Export

We are sharing with you an important judgement of Hon'ble CESTAT-Mumbai in the case of **M/s Kijiji (India) (P.) Ltd. Versus Commissioner of Central Excise, Mumbai-I [(2013)29 taxmann.com 252 (Mumbai - CESTAT)]** on the issue:

Issue:

Whether any direct nexus required between input services and output services for refund?

Facts:

In the present case, M/s Kijiji (India) (P.) Ltd. (*hereinafter referred to as appellants*) was engaged in providing Business auxiliary services to their customers located abroad. The appellant filed a refund claim for the service tax paid on input services such as legal services, market data, payroll processing, customers support activities, etc., under Rule 5 of CENVAT Credit Rules, 2004, on the ground that they are unable to utilize the credit inasmuch as all their output services are exported. The same was examined and rejected by the adjudicating authority on two grounds namely:

- (i) there is no nexus between input services and output services and
- (ii) they have not submitted the invoices for the service tax paid on input services.

The appellant preferred an appeal before the lower appellate authority. The Commissioner (Appeals) held that the appellant has submitted invoices in majority of the cases in respect of the input services on which they have claimed refund but rejected the refund claim only on the ground that there is no direct nexus between input services received and output service rendered. Hence, the appellant filed an appeal before the Hon'ble CESTAT-Mumbai.

Held:

It was held that nature of the services received by the Appellant were essential for providing Business Auxiliary services which were exported and therefore, all services come within the purview of Rule 2(l) of Cenvat Credit Rules, 2004.

The Tribunal has relied upon the decision in the case of **CST v. Convergys India (P.) Ltd. [2009] 21 STT 67 (New Delhi - CESTAT)** where it was held that when cost of goods and services becomes part of cost of final product or output services, such goods and services should be treated as input or input services for the purposes of CENVAT Credit Rules, 2004. Further, the Hon'ble Tribunal also take into consideration the decision of the Hon'ble Bombay High Court in the case of **CCE v. Ultratech Cement Ltd. [2010] 29 STT 244** wherein it

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was held that any service which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as "input service".

Henceforth, it was concluded that appellant was rightly entitled for the refund of the service tax paid on input services which have been used in the rendering of output services has been exported.

Points to be noted:

It may be drawn from the above judgment that it is not essential to have direct nexus between the input services and the output services provided. Those input services which are essential and forms part of providing output services can also be covered under the definition of input services under Rule 2(l) of Cenvat Credit Rules, 2004.

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

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