

Commissioner of Central Excise Vs. Data Infosys Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-2006

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Data Infosys Ltd.

Judgement :

1. The Department's appeal in this case against order-in-appeal dt.

28-10-2004 which set aside the order-in-original denying the Modvat credit of the service tax taken by the respondent.

2. Brief facts that arise for consideration are that respondents are registered with the authorities for providing online information and database-access and /or retrieval services. The respondent availed the credit on input services for service tax paid by them to BSNL. The respondents were issued a SCN for reversal of such credit availed by them on the ground that input service and out put service do not fall under the same category of services and hence Modvat credit of input service is not eligible to them. The adjudicating authority confirmed the demand and also imposed penalty on the respondent. The Commissioner (Appeals) on an appeal, set aside the order-in-original and allowed the appeal. Hence this appeal by the revenue.

3. Ld. DR submits that the Service Tax Credit Rules specifically provide that the credit of input service shall be available only which fall in the same category of taxable service as that of out put service. It is his submission that the taxable service provided by the respondent in this case will fall under the category of taxable service provided to a customer, by a commercial concern in relation to on line information and database access or retrieval or both in which electronic form through computer network in any manner, while the service tax paid by the BSNL get covered under the heading of taxable services to a subscriber by the telegraph authority in relation to a leased circuit. It is his submission that the input service leased circuit is not the same as the output service which has been provided by the appellant. It is also submitted that the provisions of Service Tax Credit Rules have to be strictly interpreted in order to grant benefit to the respondent.

4. Ld. Advocate appearing on behalf of the respondent submits that input service which they are utilising, may be considered as a leased circuit but without such input service, they could not provide any out put service. He relies upon the definition given in the Service Tax Credit Rules, 2002. Further it is his submission that the clarification issued by the Deptt. dt. 13-7-2001 also points to the fact that they are eligible for availing input service tax credit.

5. Considered the submissions made by both the sides and perused the records. I find that the question involved in this case is in a very narrow compass. The question involved in this case is whether as per Sub-rule (2) of Rule 3 of Service Tax Credit Rules, the respondents are eligible for availment of input stage credit or not. In order to appreciate the said rule it to be noted that the said rule during the relevant period was as under: For the purposes of these rules, two services shall be deemed to be falling in the same category of taxable service, if the input service and output service fall in the same Sub-clause of Clause 90 of Section 65 of the Act.

From the above reproduced rule, the intention of the Govt. was to grant the credit of the input service to the out put service only with the condition that it will fall under the same Clause 90 of Section 65 of Finance Act, 1994.

6. At the same time it has to be noticed that the definition in the said rules in respect of input service is mentioned as : "Input service" means any taxable service received and consumed by a service provider in relation to rendering of output service.

7. From the above reading of the definition as well as the Sub-rule (2) of Rule 3 of the Service Tax Credit Rules, to my mind, the intention of the Govt. was to grant the benefit of the input stage service tax paid by the person availing such services. This is borne out from the fact that the definition of the input service is very clear and it says that taxable service received and consumed by a service provider in relation to rendering of output service. In this case the respondent herein are providing the service that of a internet service provider to the various customers. The respondent has to rely upon the leased line which is given to them by BSNL. Without such leased line, the output service cannot be rendered by the respondent. When the definition itself categorically grants the credit of the service tax paid by the respondent on the input services, to give a narrow meaning to the Sub-rule (2) of the Service Tax Credit Rules would deprive the respondent of the benefit of the Service Tax Credit on the input services. To my mind the interpretation sought to be relied upon by the Depot in this case would defeat that the intention of the Govt. to provide input stage credit of Service Tax to the service provider.

8. In the facts and circumstances of the case, the order allowing the Modvat credit to the respondent is correct and no interference is called for. The departments appeal is dismissed.

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