CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

SINGLE MEMBER

Excise Appeal No. 51234 of 2019

(Arising out of Order-in-Original No. 05-07/COMMR./DDN/2019 dated 26.2.2019 passed by Commissioner of Central Goods & Service Tax, Dehradun)

Linde India Limited Appellant
Oxygen House, P43 Taratala Road,
Kolkata – 700088.
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Versus

Commissioner of Central Goods & Service Tax, Dehradun Respondent
E-Block Nehru Colony,
Haridwar Road,
Dehradun

<u>Appearance</u>

Shri Nand Kishore Kothari, CA - for the appellant
Shri P. Juneja, DR - for the respondent

Date of Hearing/Decision: 05/12/2019

<u>CORAM:</u>
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 51622/2019

Bijay Kumar :

It is a second round of litigation before this Tribunal. In the first round of litigation, the Tribunal has directed the adjudicating authority for decision of following two issues :

(i) Liability of the appellant to pay Central Excise duty on delivery charges of the liquid gas;

(ii) Correctness of denial of Cenavt credit availed on ISD invoices.

The Commissioner, in the impugned order, has decided that the inclusion of delivery charges in the assessable value of service in favour of the appellant. However in case of Cenvat credit, it is the contention of the learned Advocate that the demand which has been confirmed at para 5.20 and 5.21, is not as per the data provided by them. For the ease of reference, the paragraph 5.20 & 5.21 is reproduced herein as under:

> " 5.20 On perusal of legal provisions of law in the context of present case, I find that construction, general insurance, outdoor catering and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee are out of the ambit of Rule 2(l) of CCR. On going through the abstract of services, I find that the credit availed on insurance service pertains to general insurance, Catering-Facility, management pertains to outdoor catering. As regards to the services of Travelling and Corporate services-Travel Management the party has failed to provide information/documents regarding such services from which it can be further ascertained their nature and consequent eligibility or otherwise in terms of CCR. As regards to the construction services, it is beyond doubt about the non-availability of credit on said service. Thus, I find that the following services are not eligible for Cenvat credit in terms of Rule 2(l) of CCR:

Sr. No.	**Category of services**
1.	Catering-facility management
2.	Travelling
3.	Construction services
4.	Insurance
5.	Corporate services-Travel Management

> 5.21 Accordingly, the Cenvat credit of aforesaid services is not admissible to the party and the details of the same as provided by the party during the course of personal hearing are as under:

Sr. No.	**Category of services**	**Cenvat credit involved**
1.	Catering-Facility management	646829
2.	Travelling	107237
3.	Construction services	3831
4.	Insurance	717343
5.	Corporate services-Travel Management	353750
	Total	18,28,990/-

2. The learned Chartered Accountant has submitted the break up as per their own calculation based on the documents provided in soft form before the learned adjudicating authority. As per his contention that total demand in respect of five services as indicated above should be restricted to Rs. 1,88,415/- in respect of five services as per the following calculation.

Sr. No.	**Category of services**	**Alleged demand**	**Actual amount of credit invovled**
1.	Catering-Facility management	646,829	17,686/-
2.	Travelling	107,237	6,963
3.	Construction services	3,831	36,387
4.	Insurance	717,343	122,934
5.	Corporate services-Travel Management	353,750	4,445
	Total		1,88,451

2.1 Further learned Chartered Accountant also submitted that in case these five services, the reversal of Cenvat credit has been done on the proportionate basis and the same is required to be given effect for above services. The reversal of cenvat credit has been on proportionate basis and the same is required to be considered while confirming the demand in respect of above five services.

3. The learned Departmental Representative, however, submitted that the appellant has not provided entire break up before the adjudicating authority and it is also not coming forth as to how the quantification is correct in the submission that have been made, in respect of five service for the Cenvat credit involved. This can be decided only by remanding the matter back to the adjudicating authority.

4. After having heard the matter, I am in agreement with the submission learned DR and learned Counsel that the computation of the Cenvat credit in respect of five services, which is disputed need to be re-quantified by the adjudicating authority on the basis of available documents required for such credit. For claim of benefit of the proportionate Cenvat credit, same is required to be looked into afresh in terms of their eligibility and calculation. Accordingly, the matter is remanded to the adjudicating authority to re-compute the demand after hearing the appellant within three months from the receipt of the order.

(Dictated & pronounced in open Court)

(Bijay Kumar)
Member (Technical)

RM