

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 20027 of 2020
AND
Service Tax Appeal No. 20028 of 2020**

[Arising out of Order-in- Appeal No. 266 & 267/2019 dated 16.10.2019 passed by the Commissioner of Central Tax (Appeals-I), Bengaluru]

**M/s. Fidelity Business Services
India Pvt Ltd** **....Appellant**

Pinehurst Embassy Golf Links Business Park
Off Intermediate Ring Road
BANGALORE - 560071
KARNATAKA

VERSUS

**Commissioner Of Central Tax,
Bengaluru East** **....Respondent**

BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE - 560071
KARNATAKA

WITH

- (i) Service Tax Appeal No. 20314 of 2020 (Fidelity Business Services India Pvt. Ltd.**
- (ii) Service Tax Appeal No. 20315 of 2020 (Fidelity Business Services India Pvt. Ltd.**
- (iii) Service Tax Appeal No. 20316 of 2020 (Fidelity Business Services India Pvt. Ltd.**
- (iv) Service Tax Appeal No. 20317 of 2020 (Fidelity Business Services India Pvt. Ltd.**

[Arising out of Order-in-Appeal No.186-189/2020 dated 09.03.2020 passed by the Commissioner of Central Tax (Appeals-I), Bengaluru]

APPEARANCE:

Shri T. Suryanarayan, Advocate for the Appellant
Shri Narendrabab P. Byahatti, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER

FINAL ORDER NO. 20109-20114/2021

DATE OF HEARING: 16.04.2021

DATE OF DECISION: 16.04.2021

S.S. GARG

The appellants have filed these 06 appeals against the impugned orders passed by the Commissioner of Central Tax (Appeals) whereby the learned Commissioner has rejected the appeals of the appellant. Since the issue involved in all the 06 appeals is identical hence all the 06 appeals are being taken up together for the purpose of discussion and disposal. The details of all the 06 appeals are given herein below:

Appeal No.	Period	Category of services for which refund got rejected	Amount of refund for which appeal is filed
ST/20027/2020	Jan 2017 to Mar 2017	Architect Services	134,016/-
		Event Management Services	606,415/-
		General Insurance Services	29,000/-
		Supply of tangible goods	53,684/-
		Works Contract	150,677
		Total	973,792/-
ST/20028/2020	April 2017 to June 2017	Architect Services	277,563/-
		Event Management Services	709,964/-
		Membership of Club	12,473/-
		Supply of tangible goods	61,715/-
		Works Contract	705,990/-
		Total	1,767,705/-
ST/20314/2020	April 2008 to Sept 2008	Credit card, debit card & other payment card services (Bank Charges)	121,554/-
		Event Management Services	607,742/-

		Total	729,296/-
ST/20315/2020	Oct 2009 to Mar 2010	Credit card, debit card & other payment card services (Bank Charges)	25,124/-
		Event Management Services	481,473/-
		Photography Services	30,410
		Total	537,007/-
ST/20316/2020	April 2010 to Sep 2010	Credit card, debit card & other payment card services (Bank Charges)	28,595/-
		Event Management Services	212,470/-
		Photography Services	29,870/-
		Total	270,935/-
ST/20317/2020	Oct 2010 to Mar 2011	Credit card, debit card & other payment card services (Bank Charges)	30,018/-
		Event Management Services	1,053,199/-
		Total	1,083,217/-
		Grand Total	5,361,952/-

2. Briefly the facts of the present case are that the appellants are engaged in providing Information Technology Software Services and Business Auxiliary Services and are registered under the Service Tax. The appellant filed refund claims for different quarters as stated in the table above under Notification No.27/2012-CE dated 18.06.2012 read with Rule 5 of CENVAT Credit Rules 2004 and Service Tax Rules 1994 for refund of unutilized CENVAT credit of Service Tax said to have been paid by them on the input services availed by them for providing output services viz. Information Technology Software Services and Business Auxiliary Services which are exported during the relevant periods. After following the due process of law, the Original Authority or Sanctioning Authority sanctioned

certain portion of the refund of CENVAT credit of service tax availed on input service said to have been used for provision of export services, which have been exported during the various quarters and rejected the CENVAT credit on certain other input services on various grounds. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) to the extent of rejection of CENVAT credit by the Sanctioning Authority on various grounds and the Commissioner (Appeals) has also rejected the refund claimed by the appellant on certain services but allowed the refund on certain input services which were denied by the Original Authority. Aggrieved to the extent of rejection by the learned Commissioner, the appellants have filed these appeals before me.

3. Heard both the parties and perused the records of the case.

4. Learned Counsel for the appellant submitted that the impugned orders passed by the learned Commissioner are not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the CENVAT credit on these input services have been rejected mainly on the ground that the appellants have failed to establish nexus of input service with the output services and further the said services are excluded from the definition of Input Service under Clause C of Rule 2(I) of CCR 2004. Learned Counsel further submitted that all the services on which CENVAT credit has been availed have been used by the appellant for providing the output service and in the absence of these input services, it would not have been possible for the appellant to render the output service. Learned Counsel further submitted that each of the input service for which refund has been rejected has been held to be input service by various decisions of the Tribunal and the High Court. He further referred to each input service and submitted that as far as Architectural Service is concerned, the learned Commissioner has rejected the refund on the ground that the said input service is used in relation to construction of a building or civil structure and is excluded from definition of input service under Rule 2(I) of CCR 2004. To rebut this finding, Learned Counsel submitted that, in fact, the Architectural Services were used by the appellant for the purpose of designing the office premises from where the output services of the

appellant were being rendered. In order to support his submission, he relied upon the following decisions:

- *Mentor Graphics India Pvt. Ltd. v. Commissioner of ST, Final Order in STA/30579/2018*
- *Arm Embedded Technologies Pvt. Ltd. v. CCE, Cus & ST, Bangalore, 2016 (45) S.T.R. 133 (Tri. - Bang.)*

Appellant has also produced on record invoices to justify their claims.

4.1. As far as Event Management Service is concerned, the learned Counsel submitted that refund has been rejected on the ground that the appellant has failed to establish that the input service was used in or in relation to manufacture of final products/providing output services. To counter this, the learned Counsel submitted that, in fact, Event Management Services were used for business events and conferences which are essential for conduct of the business of the appellant and this service has been held to be an Input Service in the following case laws:

- *DBOI Global Services Pvt. Ltd. v. Commissioner of ST, Mumbai, 2017 (48) STR 157 (Tri-Mumbai)*
- *Commissioner of ST v. DBOI Global Services Pvt. Ltd., 2019 (20) GSTL 351 (Bom.)*
- *Delphi Automotive Systems Pvt. Ltd. v. CCE, Noida, 2013 (30) STR 311 (Tri-Del)*
- *ICICI Prudential Asset Management Co. Ltd. v. Comm. of CGST, Mumbai, 2020 (43) GSTL 209 (Tri-Mum)*
- *Gateway Terminals Pvt. Ltd. v. CCE, Raigad, 2015 (39) STR 1027 (Tri-Mumbai)*
- *CCE, New Delhi v. Convergys India Services Pvt. Ltd., 2017 (48) STR 173 (Tri-Chand)*
- *Accenture Services Ltd. v. Commissioner of ST, Mumbai, [2015] 63 taxmann.com 235 (Mumbai - CESTAT)*

4.2. With regard to General Insurance Service, the learned Counsel submitted that the refund has been rejected on the ground that the appellants failed to establish nexus with the output service. Learned Counsel further submitted that General Insurance Services were taken in relation to insurance for safeguarding assets, building and property and employees' health and life and for this he relied upon the following case laws:

- *Anglo French Drugs & Industries Ltd. v. CCE, ST & Cus, Bangalore, 2017 (3) GSTL 147 (Tri-Bang)*
- *DBOI Global Services Pvt. Ltd. v. Commissioner of ST, Mumbai, 2017 (48) STR 157 (Tri-Mumbai)*

4.3 With regard to Works Contract Service, the learned Counsel submitted that the learned Commissioner has rejected the refund on the ground that these services involved is in relation to construction of a building or civil structure and is excluded from the definition of input service under Rule 2(I) of CCR 2004 whereas the fact of the matter is that these services were mainly used in relation to repairs and maintenance of equipment, fixed assets, premises etc. used by the appellant and the same has been held to be input service in the following decisions:

- *Red Hat India Pvt. Ltd. v. Principal Commissioner of ST, Pune, 2016 (44) STR 451 (Tri-Mum)*
- *Alliance Global Services IT India v. Commissioner, (2016) 71 taxmann.com 82 (Hyderabad- CESTAT)*

Appellant has produced on record the invoices to justify their claims.

4.4. With regard to Supply of tangible goods, the CENVAT credit has been rejected or refund has been rejected on the ground that these services were used for organizing events and meetings which has no direct nexus with the output service and to counter this finding, learned Counsel submitted that these input services were mainly used in relation to hiring of equipment such as video conferencing equipment, projection equipment, LCD and such equipment were used for the purpose of business events and meetings.

4.5. As far as Membership of Club is concerned, the refund has been rejected on the ground that the said services were availed in relation to applying for the membership of the trade association and bodies and have been used by the employees which is excluded from the Clause C of Rule 2(I) of CCR 2004. For defending the availment of CENVAT credit, the learned Counsel submitted that the membership of club was used in relation to applying for the membership of the trade association and bodies. The next service is the Credit Card, Debit Card & Other Payment Card Services (Bank Charges), the refund has been rejected on the ground that the said services

received were in the nature of welfare service meant for personal consumption and directly or indirectly has no nexus with the export services rendered. To counter this, Learned Counsel submitted that these services were used for booking official travels, meal cards and accommodation for the appellant's employees who had to travel within or outside India on official projects, which directly contributes to the business operations and has a direct nexus to the output service.

4.6. With regard to Photography Services, the refund has been rejected on the ground of lack of nexus whereas the learned Counsel submitted that photography services were availed by the appellant for capturing the business events which are necessary to keep record of the events conducted as well as services as a reference for future business events. He further submitted that in terms of the provisions of Rule 5 of CCR 2004, the assessee is eligible for refund of unutilized portion of CENVAT credit on export of services and such refund cannot be denied when the availment of CENVAT credit has not been questioned. In support of this, he relied upon the decision in the case of CST, Delhi v. Convergys India Pvt. Ltd. [2009-TIOL-CESTAT-DEL= 2009(16) STR 198 (Tri.)] wherein it was held that "without questioning the availment of CENVAT credit, the eligibility to rebate/refund cannot be denied" and that "there cannot be two different yardstick, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or rebate. Without questioning the credit taken, the eligibility to rebate cannot be questioned." He further submitted that C.B.E. & C. vide its Circular No. 120/01/2010-S.T., dated 19-1-2010 clarified that the condition of nexus should be read liberally and in a harmonious manner, consistent with the intention of the legislature to provide refund to the exporters and the said intention was further reflected in the Notification No. 5/2006. On the other hand learned AR reiterated the findings of the Commissioner.

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that here it is pertinent to mention the definition of Input Service as contained in Rule 2(I) of CCR 2004:

2(I) "input service" means any service, -

(i) Used by a provider of taxable service for providing an output service, or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal.

And includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement of sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;"

6.1. Further, I find that the learned Commissioner, mainly, has rejected the CENVAT credit on the ground of lack of nexus of the input service with the output service exported and secondly the learned Commissioner has held that the said input service has been excluded from the definition of Input Service under Rule 2(I) of CCR 2004. Further, I find that the learned Counsel appearing for the appellant has given full justification that the said services have been used for providing the output service and I also find that the services viz. Architectural Service, Event Management Service, Works Contract Service, Supply of Tangible Goods Service, has been specifically held to be input service by various decisions rendered by the Tribunal and the High Court and relied upon by the appellant cited supra. As far as General Insurance Service, in Appeal No. ST/20027/2020, I find that the appellant has not been able to bifurcate the Insurance Service availed on the assets of the company and on the lives of the persons working in the said company. In the absence of clear bifurcation and lack of documentary evidence, I deny the CENVAT credit on General Insurance Services only in Appeal No. ST/20027/2020. Further, I find that in the Club Membership Service, the learned Commissioner, though, has admitted that the said

services is in relation to applying for the membership of the trade and association but still hold the same is for the benefit of the employees only. This finding of the learned Commissioner is wrong because the membership of the club was used in relation to promoting the trade and hence it falls within the definition of Input Service. As far as Photography Service is concerned, I find that the Photography Services were availed by the appellant for capturing the business events which are necessary to keep record of the events conducted as well as for future reference hence this service also falls within the definition of Input Service. Further, with regard to Credit Card and Debit Card Services are concerned, I find that these services were used for booking official travels, meal cards and accommodation for the appellant's employees who had to travel within or outside India on official projects which directly contributes to the business operation and has a direct nexus to the output service. Hence, I hold that the said service also falls within the definition of Input Service.

7. In view of my discussion above, I am of the considered view that except General Insurance Service in Appeal No. ST/20027/2020, all the other input services fall in the definition of Input Service as provided under Rule 2(I) of CCR 2004 and the appellants are entitled to CENVAT credit and consequently the refund of the said amount under Notification No. 27/2017-CE dated 18.06.2017 read with Rule 5 of the CCR 2004. Accordingly, all the appeals are disposed of on above terms.

(Order pronounced in the open court on 16/04/2021)

(S.S GARG)
JUDICIAL MEMBER