

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CENTRAL EXCISE APPEAL NO. 72 OF 2018

The Commissioner of Service Tax – VI,
Mumbai .. Appellant

Versus

M/s. DBOI Global Services P Ltd .. Respondent

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- Mr. Swapnil Bangur a/w Mr. J.B. Mishra for the Appellant
 - Mr. Sushanth Murthy i/by Rima Oke for the Respondent
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CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : NOVEMBER 28, 2018.

P.C.:

1. This appeal under Section 83 of the Finance Act read with Section 35G of the Central Excise Act, 1944 (“**the Act**” for short) challenges the order dated 7.10.2016 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (“**the Tribunal**” for short).

2. The Revenue has urged the following questions of law for our consideration:-

“ Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that for the period 2008 to

2011, the input services in respect of event management services, pandal or shamiana contractor's services mandap keeper services and health and fitness services would be an input services having nexus with its exported output services, thus allowing for refund against export of the output services in respect of above input services?"

3. The impugned order of the Tribunal dated 7.10.2016 allowed the respondent's appeal holding in principle that the respondent is entitled to refund of the tax paid on the four input services viz. event management services, pandal or shamiana contractor's services, mandap keeper services and health and fitness services used in the exported output services. This after holding that all the above input services would be covered by the definition of input services, both pre and post amendment made thereto w.e.f. 1.4.2011 in the Central Credit Rules 2004. However, the refund applications were restored on the issue of quantification and verification of the refund claim to the adjudicating authority.

4. The grievance of the Revenue before us is that all the four input services viz. event management services, pandal or shamiana contractor's services, mandap keeper services and health and fitness services did not have any relation to

the export of services done by the respondent. It is submitted by Mr. Bangur, the learned counsel for the appellant, that the export of services would take place even in absence of the above four input services are claimed by the respondent. Thus, the appeal requires consideration.

5. We find that the impugned order of the Tribunal has examined all the four services and its use in the business of respondent assessee. On the above examination, it came to the conclusion that all these services have been used in providing output services and there is nexus between the input services and output services in these facts. In support, the Tribunal relied on various orders of its co-ordinate benches that all these services would be considered to be input services. The submissions on behalf of the Revenue that the definition of input services under the Cenvat Credit Rules 2004 would as be satisfied only when it is shown to be necessary for providing output services. This is not the legislative mandate. The only requirement under the Cenvat Credit Rules 2004 to satisfy the definition on input services is the use in providing of output services. Therefore, where the

input services are used in providing output services and there is some nexus, then invoking the test of necessity would be adding words to the rule which is not permissible in a fiscal statute. We find that on facts the Tribunal has come to the view that all the above services have nexus and have been used in providing output services. Thus, on these facts, the view of the Tribunal is a possible view and calls for no interference. Consequently, the question as proposed does not give rise to any question of law. Thus, not entertained.

6. Accordingly, the appeal is dismissed. No order as to costs.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]