IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40767 of 2021

(Arising out of Order-in-Appeal No. 98/2021 (CTA-I) dated 27.07.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals-I), 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Bbazaar Marketing and Advisory Services Pvt. Ltd. : Appellant
Module Number 601, 6th Floor, Tidel Bio Park,
Phase-II, No. 5, CSIR Road,
Taramani, Chennai – 600 113

VERSUS

The Commissioner of G.S.T. and Central Excise : Respondent
Chennai North Commissionerate
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034

APPEARANCE:

Shri Rahul Jain, Chartered Accountant
Ms. Shwetha Vasudevan, Advocate

for the Appellant

Smt. Sridevi Taritla, Authorized Representative

for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40359 / 2022

DATE OF HEARING: 17.10.2022

DATE OF DECISION: 11.11.2022

Order :

Shri Rahul Jain, Learned Chartered Accountant and Ms. Shwetha Vasudevan, Learned Advocate, appeared for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner, appeared for the Revenue.

2. Brief relevant facts, *inter alia*, are that the appellant filed a refund claim for the refund of Rs.19,79,980/- on 09.07.2018 being the excess Service Tax paid for the

period from April 2017 to June 2017; that the original ST-3 return for the above period was filed on 23.08.2017; that a revised ST-3 return was filed on 08.09.2017 by reducing the taxable value; that the CENVAT Credit availed was based on the debit note raised by M/s. A&A Dukaan Financial Services (hereinafter referred to as '**other party'**); that the debit note was consequent to a subsequent agreement entered into by the appellant with the other party; that the Assistant Commissioner issued Show Cause Notice dated 14.08.2019 on the ground that the said debit note was not a valid document as per Rule 9 of the CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") and that consequently, the CENVAT Credit availed was ineligible credit in terms of Rule 9 *ibid.*; that in the above Show Cause Notice, it was proposed that a sum of Rs.10,44,365/- could not be taken into account and therefore, the refund claim to the above extent would be rejected.

3.1 The appellant filed a detailed reply wherein it had placed reliance on various judicial pronouncements, but however, vide Order-in-Original No. 50/2019-R dated 04.12.2019, the Adjudicating Authority rejected the proposed amount while sanctioning the balance claim of refund. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner of G.S.T. and Central Excise (Appeals-I), Chennai. The First Appellate Authority, after hearing the appellant, felt it proper to remand the matter back to the file of the Adjudicating Authority vide Order-in-Appeal No. 31/2020 (CTA-I) dated 21.02.2020 since the appellant had contended that the Adjudicating Authority had not considered the submissions, documents as well as case-laws relied upon, while passing the Order-in-Original. Thereafter, consequent to the directions of the Commissioner (Appeals), the Adjudicating Authority vide *de novo* Order-in-Original No. 07(R)/2021 dated 23.03.2021 rejected the claim of refund of Rs.10,47,890/-.

3.2 Thereafter, the said rejection came to be challenged before the First Appellate Authority, who, vide impugned Order-in-Appeal No. 98/2021 (CTA-I) dated 27.07.2021, upheld the rejection and thereby rejected the appeal filed by the appellant. The First Appellate Authority upheld the rejection *inter alia* on the grounds that:-

- The debit note dated 31.03.2017 was said to be as per the inter-se agreement dated 14.09.2017 between the appellant and the other party, for sharing common expenses;
- The revised ST-3 return filed on 08.09.2017 reflected the revision of Service Tax liability;
- The other party had not shown any debit towards the debit note in question in their ST-3 return;
- The debit note was not one of the prescribed documents as per Rule 9 of the CCR, 2004;
- The remand order in the first round was mainly to examine the debit note *vis-à-vis* the supporting documents;
- In the remand proceedings, the Adjudicating Authority having examined in detail the debit note and the supporting documents, had concluded that the same was not eligible for the purpose of availing credit;
- Rule 3 of the CCR, 2004 requires that for availing CENVAT Credit of the Service Tax paid, a service should be provided and received whereas, in the instant case, there was no service provided by the other party to the appellant and even the debit note talks of just the reimbursement of expenses incurred by the other party, on behalf of the appellant;
- The debit note relied upon by the appellant was also incomplete inasmuch as there was no mention of the

period for which the reimbursement was claimed and there was no mention of the service provided by the other party to the appellant;

- Insofar as the decisions relied upon by the appellant are concerned, it was held that the same were factually distinguishable.

4. Aggrieved by the rejection of its appeal by the First Appellate Authority, the appellant has filed the present appeal before this forum.

5. Learned Chartered Accountant for the appellant would submit, in short, that:-

(i) The impugned order has travelled beyond the Show Cause Notice.

(ii) The eligibility of credit could not be questioned at the time of sanctioning the refund.

(iii) The eligibility of credit could not be questioned in the hands of the service recipient once the Service Tax paid by the service provider is accepted by the Revenue.

(iv) The agreement/arrangement between the appellant and the other party is in the nature of cross-charge / shared business services and hence, the credit should not have been denied.

6.1 *Per contra*, Learned Additional Commissioner for the Revenue would submit that the allegation as to the impugned order having travelled beyond the Show Cause Notice was not correct since the very proposal in the Show Cause Notice itself was the ineligibility of the debit note in terms of Rule 9 *ibid*. She would clarify that there was violation of Rule 9 since the document relied upon was not

any of the documents specified under Rule 9 of the CCR, 2004 and therefore, the credit sought to be availed would become ineligible credit, the refund of which was rightly rejected.

6.2 She would also refer to the contents of the debit note which reflects only the reimbursement of expenses incurred on behalf of the appellant and nothing about the provision of any service and that therefore, the same stands hit by the proviso to Rule 9(2) *ibid*.

7.1 The other party namely, M/s. A&A Dukaan Financial Services, appears to be the lessee in respect of some premises. The other party is stated to be related to the Appellant [termed as the associate company in the agreement dated 14.09.2017 – Annexure 2]. This immovable property is apparently owned by a third party, to whom the other party appears to have paid rent. The relevant rental agreement is not placed on record before this forum. It is the Appellant's contention that the Appellant occupies a portion of that premises, and that it therefore incurs rental expenditure in favour of the other party. The only evidence supporting this alleged expenditure is a debit note dated 31.03.2017 raised by the other party on the Appellant for the sum of Rs. 3,58,98,977/- in respect of which the service tax is Rs. 53,84,847/-. Admittedly, no tax invoice was raised by the other party.

7.2 The Appellant further contends that this debit note was subsequently ratified / legitimised by an agreement between the Appellant and the other party dated 14.09.2017 which is on the record. This agreement purports to take effect retrospectively from 15.06.2016. The effect of this agreement appears to be to record and sanctify the sharing of perhaps various costs and expenditure between the Appellant and the other party, amongst which the rent is one.

7.3 For the tax period from 01.04.2017 to 30.06.2017, the Appellant filed a return in Form ST-3 on 23.08.2017. This return made no claim in respect of this rent or the relevant debit note. However, by a revised return on 08.09.2017, the Appellant made a claim for CENVAT credit on the ground that it had made excess payment of Service Tax relatable to the debit note raised by the other party on the Appellant. This, together with other items, resulted in the Appellant making a claim for refund of Rs.19,79,980/- on 05.07.2018. Show Cause Notice dated 14.08.2019 issued by the Assistant Commissioner *inter alia* proposed for the rejection of partial amount of Rs.10,47,890/- touching the very Rule 9 of the CCR, 2004 on the ground that the debit note was not recognized under the Rule *ibid*.

8. The issue in dispute concerns the allowability of the claim for CENVAT credit, being the alleged input tax in respect of the debit note of 31.03.2017.

9.1 The Adjudicating Authority rejected the claim in respect of this amount. In first appeal, the first appellate authority reached the following findings:-

(a) From a reading of Rule 9 of the CCR, 2004, the debit note is not a valid document for taking CENVAT Credit.
(b) The Hon'ble High Courts of Telangana and Rajasthan and the CESTAT Benches of New Delhi and Bangalore have held that when the debit note discloses all essential particulars of a statutory invoice, CENVAT Credit could not be denied.
(c) The appellant had claimed that the Adjudicating Authority had not considered the supporting documents, as extracted in the table at paragraph 7 (page 4) of the Order-in-Appeal No. 31/2020 (CTA-I) dated 21.02.2020.
(d) There was no finding in the impugned order regarding the submission of original invoices and verification of the above records.

9.2 He thereafter remanded the matter to the Adjudicating Authority for fresh adjudication. Once again, the Appellant's claim met with the same fate. In the second round, the First Appellate Authority held as observed by me at paragraph 3.2 of this order.

10. It is thus that the Appellant is before this Tribunal in appeal.

11. For brevity, the contentions of both the parties are summarized as under:-

For the Appellant:

a. The impugned order travelled beyond the Show Cause Notice inasmuch as the denial of the claim was founded on different reasoning than that alleged in the Show Cause Notice.
b. The eligibility to credit could not be questioned at the time of sanctioning refund.
c. The eligibility to credit could not be questioned once the Service Tax paid by the service provider has been accepted by the Revenue.
d. The agreement between the Appellant and the other party is in the nature of cross charge/ shared business services, entitling the Appellant to credit.
e. Reliance was placed on the decision of the Hon'ble jurisdictional High Court in *M/s. Modular Auto Ltd. v. Commissioner of Central Excise, Chennai [2018 (8) TMI 1691 (Madras High Court)]*, and on the order of this Tribunal in *M/s. Gates Unitta India Co. Pvt. Ltd. v. Commissioner of G.S.T. & C.Ex., Chennai Outer Commissionerate [2021 (55) G.S.T.L. 364 (Tribunal – Chennai)].*

For the Revenue:

a. Considering that the allegation in the Show Cause Notice was that the tax arising from the debit note in question was ineligible to credit, the order could not be said to have travelled beyond the scope of the Show Cause Notice.
b. The appellant has not brought out anything on record as to the nature of service rendered by the other party to the appellant.
c. There was violation of Rule 9 of the CENVAT Credit Rules, 2004 (hereafter, "CCR, 2004") as the debit note was not a document specified in Rule 9.
d. The debit note speaks only of reimbursement of expenditure and says nothing about the rendition of any services.

12. I have heard counsel for the parties and perused the material on the record including the judicial pronouncements relied upon. From the arguments advanced, the following issues arise for my consideration.

(i) Do the judgement in the case of *M/s. Modular Auto Ltd. (supra)* and the order in *M/s. Gates Unitta India Co. Pvt. Ltd. (supra)* cover the case at hand?;
(ii) Did the Order-in-Original traverse beyond the Show Cause Notice?;
(iii) Was there any violation of Rule 9 of the CCR, 2004 so as to disentitle the Appellant to its claim for input tax credit in respect of the debit note?;
(iv) Is the Appellant otherwise entitled to such credit?

13. I take up these issues in seriatim.

14.1 The first issue is whether the judgement in the case of *M/s. Modular Auto Ltd. (supra)* and the order in *M/s. Gates Unitta India Co. Pvt. Ltd. (supra)* cover the case at hand.

14.2 The facts in *M/s. Modular Auto Ltd. (supra)* (as noted in paragraphs 4 and 5 of the judgement) may be appreciated. BSNL and Reliance Communications Ltd. rendered Multi-protocol Label Switching (MPLS) services to BIL, a company for whom the assessee was a job worker. BIL used these services for communicating with and retrieving data from its job workers such as the assessee therein. BIL raised tax invoices on the assessee therein (M/s. Modular Auto Ltd.) seeking that it be reimbursed for the amounts paid by it to BSNL and Reliance Communication. It was the allegation of the Revenue that the sums therein did not constitute payments for services rendered, but only for reimbursement of expenditure, and that therefore the requirements of Rule 3 of the CCR, 2004 were not met as services were not received by the assessee. Crucially, in that case, the document issued by BIL in favour of the assessee was a tax invoice, and the judgement of the Hon'ble High Court specifically records (at paragraph 2 in the first substantial question of law) that BIL was assessed to service tax in respect of the services rendered to M/s. Modular Auto Ltd.

14.3 In these facts, the Hon'ble High Court held that there has been a service by BIL to M/s. Modular Auto Ltd. and that the legality or otherwise of the tax paid by the service providers (in that case, BIL and in this case, the other party) cannot be called into question in the case of the service receiver. This, the High Court held at paragraph 17, would amount to officers enjoying jurisdiction over the service recipient exercising power in respect of the service provider. It also negatived the contention of the Revenue that the amounts paid were mere reimbursements.

14.4 In my opinion, the facts of the present case are clearly distinguishable from those before the Hon'ble High Court. In M/s. Modular Auto's case, there was no dispute that the service provider had been assessed to tax in respect of the services in question. In the present case, beyond the debit note, which, particularly concerning the

Appellant and the other party, which are related parties, can be treated as a self-serving document, there is no evidence on the record to demonstrate that the relevant amounts had been offered to tax in the hands of the other party. There are also clear findings to this effect by both the lower authorities. Further, in M/s. Modular Auto's case, the document raised by BIL was a tax invoice. Therefore, the Hon'ble High Court was never called upon to consider the question of whether input tax credit could be claimed on the basis of a debit note.

14.5 The only reasoning in M/s. Modular Auto's case which could come to the assistance of the Appellant herein is that merely because an amount is a reimbursement at cost, it cannot be stated that no service was rendered. That dimension is, however, considered in adjudicating upon the last (fourth) issue.

14.6 Now this Tribunal's order in *M/s. Gates Unitta India Co. Pvt. Ltd. (supra)*. In that case, a Division Bench of this Tribunal held at paragraph 5 that CENVAT credit cannot be denied when the credit is availed on debit notes if such note contains all the mandatory particulars as prescribed in the Service Tax Rules. It followed this Tribunal's decision in *M/s. Shree Cement Ltd. V. CCE [2013 (29) S.T.R. 77 (Tribunal – Delhi)]* and also relied on the decisions in *Commissioner v. M/s. Bharati Hexacom Ltd. [2018 (12) GST 123 (Raj.)]* and *M/s. Gabriel India Ltd. v. Commissioner [2017 (48) S.T.R. 492 (Tribunal – Delhi)].*

14.7 The Bench in *M/s. Gates Unitta India (supra)* then followed the judgement in *M/s. Modular Auto Ltd. (supra)* to hold that the sum is not merely a reimbursement so as to pass on the cost incurred.

14.8 Therefore, while *M/s. Gates Unitta India (supra)* has, undoubtedly held that credit can be availed on the basis of debit notes, again, in that case, no dispute was raised as to whether services were rendered at all. Neither *M/s. Gates Unitta India (supra)* nor *M/s. Modular Auto Ltd.*

(supra) does away with the requirement that services must be rendered to the assessee so that the assessee may claim input tax credit.

14.9 Therefore, my considered view is that these two decisions do not directly cover the case in hand. The principles laid down therein may, however, be of assistance.

15.1 The second issue is whether the Order-in-Original traverses beyond the Show Cause Notice.

15.2 The very foundation, as could be seen from the Show Cause Notice, was the satisfaction of Rule 9 *ibid*. When a claim for refund is made, it is but natural for the authorities to meticulously examine such claim and compliance of the claim with the statutory requirements because their primary duty is to safeguard the interest of the Revenue. Hence, while examining such claims, the authorities below here, in this case, have explored the available options in the context of the requirements of Rule 9 *ibid.* I find that the final conclusion by the lower authorities are concurrent inasmuch as they have only held that there has been violation of Rule 9, i.e., the document relied upon by the claimant is not one prescribed under the said Rule. It is not the case that they have arrived at a different finding than what was proposed in the Show Cause Notice. For the above reasons, I am of the view that no finding of the lower authorities has gone beyond the Show Cause Notice.

16.1 The third issue is whether there was any violation of Rule 9 of the CCR, 2004. It has been noted above that the consensus on this question is that a debit note may be a document on the basis of which input tax credit is claimed provided that it contains all the particulars required by Rule 9 of the CCR, 2004. Rule 9(2), in turn, refers to the Service Tax Rules, 1994. Proviso to Rule 9(2), which is relevant, reads thus:-

"Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit."

16.2 It is thus clear that the document in the case on hand, i.e., the debit note, should contain *inter alia* the details of Service Tax payable, taxable service, etc., but here, as rightly pointed out by the Learned Departmental Representative, in the 'Particulars' column, it is mentioned as "being reimbursement of expenses incurred on behalf of A&A Dukaan Insurance Web Aggregator Private Limited". A perusal of Annexure-3, which is the so-called debit note, which is placed on record, reveals that it does not contain the nature of taxable service *per se* provided by the other party to the appellant, which is the condition precedent in terms of the proviso to Rule 9(2) *ibid*. Hence, I am of the view that in the present scenario, the debit note, which is incomplete, cannot be considered as a document specified in Rule 9 *ibid*.

17.1 The fourth issue is whether the Appellant is otherwise entitled to credit. From the facts, it is seen that the debit note is alleged to have been raised on 31.03.2017. However, in the original return filed on 23.08.2017, there is no reference to this debit note. It finds mention for the first time in the Appellant's revised return

of 08.09.2017. The debit note is said to find its strength from an agreement dated 14.09.2017, drawn up with retrospective effect after both the returns were filed. This state of the facts does not inspire confidence as to the legitimacy of the debit note, and also as to whether the debit note in fact existed on 31.03.2017 at all. The Appellant also relies on a certificate of a Chartered Accountant, which is placed at Annexures 4 and 5 of the Appeal Memorandum. However, this is dated 28.09.2021, after even the impugned Order-In-Appeal was passed. There are concurrent findings of the authorities below that the debit note was not reflected in the returns filed by the other party. The Appellant and the other party are, admittedly, related parties. Also, no rental agreement between the Appellant and the other party is placed before me.

17.2 Therefore, in my opinion, the preponderance of probability is that the debit note is a self-serving document which was not executed (as it purports to have been) on 31.03.2017. No material is placed on record to dislodge the concurrent findings of the lower authorities that the other party did not, in fact, render any services to the Appellant, and therefore the requirements of Rule 3 of the CCR, 2004 have not been met. This, in my opinion, disentitles the Appellant to the claim for credit.

18. In view of my discussions hereinabove, I do not find any reasons to interfere with the findings in the impugned order, for which reason the appeal stands dismissed.

(Order pronounced in the open court on **11.11.2022**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd