

TAX FLASH NEWS

25 September 2019

CENVAT Credit of services sold to employees can be availed by the employer – CESTAT, Hyderabad

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has recently held¹ that employer shall be eligible to avail CENVAT credit on input services which are sold by the employer (appellant) to its employees for a consideration.

Facts of the case

During the course of an audit it was alleged by the revenue that the appellant had wrongly availed CENVAT Credit on certain services viz. internet services, mobile phone services, employee insurance services and mediclaim insurance services etc., which are primarily procured for personal consumption of the employees.

The allegation was contested by the appellant on the grounds that employees, as far as the disputed services are concerned, are the service recipients. Consideration with respect to such services are being recovered from the employees along with the applicable service tax. Service tax collected are also deposited in government treasury. Further, in order to render the said services to the employees, the appellant had to use the input services and accordingly, they have availed the credit attributable on such services.

The grounds of the appellant were rejected and demand along with penalty was confirmed both by the adjudicating and the first appellate authority.

Order by CESTAT

CESTAT in its order has made the following observations –

- No CENVAT credit can be availed on any input services used for personal consumption of an employee

- The services provided to an employee in the instant case is not used for personal consumption, as these services are been sold to the employees
- As far as the services are concerned, the employees are the service recipient and the employer is a service provider
- There is no employer-employee relationship as far as these services are concerned
- If employees were not the service recipient, no amount would have been recovered from them and no service tax would have been paid. Conversely, the appellant cannot get any exemption from payment of service tax if it had rendered the services
- As far as these services are rendered, the appellant is bound to pay service tax on the services rendered for a consideration.

Accordingly, it was held that the appellant is entitled to avail credit of taxes paid on such input services.

Our comments

The issue of eligibility of CENVAT credit on expenses reimbursed from the employee has been highly debated under the erstwhile service tax regime. The ruling by the CESTAT is welcome, and this may also set precedence under the GST regime, where supplies made by an employer to an employee is specifically covered under the scope of the term 'supply'.

¹ Ultra Tech Cement vs. Commissioner of Central Tax – Tirupati – GST [2019-VIL-603-CESTAT-HYD-ST]

home.kpmg/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala,
Bengaluru – 560 071.
Tel: +91 80 3980 6000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only