

Issue of admissibility of CENVAT credit cannot be raised at the time of refund processing: CESTAT

4 March 2021



Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chandigarh, in a recent case held that if the CENVAT credit of service tax paid on rent a cab service was not disputed at the time of availing the service, it cannot be objected at the time of entertaining the refund claim filed of such CENVAT credit availed.

Facts of the case

- The appellant¹ is an export oriented unit (EOU) engaged in provision of services.
- While providing these services, the appellant requires certain services to be availed from outside on which it is liable to pay service tax under reverse charge mechanism (RCM).
- It avails CENVAT credit of service tax paid under RCM and filed a refund claim² for CENVAT Credit lying unutilized in their CENVAT Credit Account.
- The refund claim in relation to CENVAT credit pertaining to rent a cab service was denied on the ground that the vehicles which have been taken on rent are not registered in the name of the appellant. Therefore, it is not entitled to take CENVAT Credit as these are not capital goods³.
- Therefore, the appellant filed an appeal against the order denying refund claim⁴.

CESTAT's observations and ruling⁵

- **CENVAT credit not disputed:** The entitlement of CENVAT credit was never disputed at the time of availment.
- **Sanction of refund is disputed:** The dispute in the matter is of sanction of refund claim of unutilized CENVAT credit in their account and not the issue of availment of the CENVAT credit on the input service.
- **Issue of admissibility can't be raised:** Since the appellant's entitlement to CENVAT Credit was not objected at the time of availment, the issue of admissibility of CENVAT Credit cannot be raised at the time of entertaining the refund claim.
- **Order set aside:** Therefore, the CESTAT set aside the order denying refund claim and allowed the appeal.

¹ M/s CNS Comnet Solution Pvt Ltd

² under Notification no. 27/2012 dated 18 June 2012

³ under Rule 2(l) of the CENVAT Credit Rules, 2004

⁴ Order-in-Appeal No. 133, 134, 135-CE-CGST-APPEAL-GURUGRAM-SG-2019, dated: 30.09.2019

⁵ 2021-TIOL-94-CESTAT-Chandigarh-Service Tax (Finance Act 1994)

Our comments

This is an important and welcome judgment by the Chandigarh CESTAT that will help resolve long-drawn litigations and also clear working capital blockages due pendency of huge refund claims for businesses.

An analogy can be drawn even under the GST regime as most of the definitions/provisions under the GST law have been borrowed from the erstwhile laws.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 11th Floor, Tower II One International Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 2nd Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309-312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2021 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.