

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.60287 of2023

[Arising out of Order-in-Appeal No.86/ST/CGST-APPEAL-GURUGRAM/SKS/2022-23 dated 16.02.2023 passed by the Commissioner (Appeals), CGST, Gurugram, Haryana]

M/s KPMG Advisory Services Pvt. Ltd.

8th Floor, Building No.10, Tower-B, DLF Cyber City,
Phase-II, Gurugram, Haryana-122002

.....Appellant

VERSUS

**Commissioner of CGST and Central
Excise, Gurgaon**

CGST Commissionerate, 1st floor, GST Bhawan, Plot
No.36-37, Sector-32, Gurugram, Haryana-122001

.....Respondent

APPEARANCE:

Ms. Krati Singh, Advocate for the Appellant

Shri Aneesh Dewan and Shri Narinder Singh, Authorized Representatives
for the Respondent

CORAM: HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60096/2025

DATE OF HEARING: 20.01.2025

DATE OF DECISION: 20.01.2025

The present appeal is directed against the Order-in-Appeal dated 16.02.2023 wherein the learned Commissioner (Appeals) has remanded the case back to the original adjudicating authority, who has held that the IGST paid by the appellant in lieu of the service tax dues pending are in order, for quantification; however, while

passing the order, the learned Commissioner has also setup a new case holding that the appellants are not eligible to avail CENVAT credit of the said IGST paid by them subsequently in lieu of the service tax payable by them.

2. Ms. Krati Singh, learned Counsel for the appellant submits that the issue relating to denial of CENVAT credit was not the part of the Show Cause Notice; learned Commissioner (Appeals), while discussing the appeal, has framed the main issues in the case and decided them in favour of the appellants; however, adverting to the appellant's submissions that the entire issue is revenue neutral appellate authority observed that the appellants are not eligible to avail the CENVAT credit of the IGST paid by them. In addition, the learned Commissioner (Appeals) has also remanded the matter back to the original authority with a finding that such CENVAT credit is not admissible to the appellants; therefore, the impugned order is beyond the scope of the Show Cause Notice is not maintainable and adversely effects the interests of the appellants and therefore to that extent, the impugned order requires to be modified.

3. Shri Aneesh Dewan, learned Authorized Representative for the Department, assisted by Shri Narinder Singh, reiterates the findings of the impugned order.

4. Heard both sides and perused the records of the case. I find that while passing the Order-in-Appeal, learned Commissioner (Appeals) has framed the following questions:

(a) What is the correct value of taxable amount, on which service tax has been alleged to be short paid by the appellant?

(b) What is the correct value of service tax on the aforesaid taxable amount?

(c) Whether the appellant has discharged from service tax liability?

5. On going through the records of the case and the impugned order, I find that learned Commissioner has answered all these issues in favour of the appellants and remanded the matter to the original authority to verify the amount paid by the appellants as IGST towards service tax liability. I find that learned Commissioner (Appeals) has gone to discuss the admissibility of CENVAT credit of the IGST and finds that such CENVAT credit is not admissible and further remands back the matter with a direction not to allow the CENVAT credit which implies that the appellants are not eligible to avail CENVAT credit.

6. I find that learned Commissioner (Appeals) has gone beyond the scope of the Show Cause Notice and also beyond questions he has himself framed while proceeding with adjudication of the case. I

find that learned Commissioner (Appeals) is not free to set up a new case during the appellate proceedings only because of the fact that the appellants have raised the issue of neutrality to substantiate their argument on the payment of IGST in lieu of service tax proceedings. The impugned order traverses beyond the scope of the Show Cause Notice and this portion of the impugned order is liable to be set aside and I do so. Other parts of the order are not interfered with.

7. The appeal is allowed in above terms.

(Dictated and pronounced in the open court)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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