Tax Management India .com https://www.taxmanagementindia.com

2024 (11) TMI 55 - CESTAT BANGALORE

M/S. CJK KNOWLEDGEWORKS GLOBAL INDIA PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, BANGALORE

Service Tax/Additional Evidence No. 20286 of 2023 in Service Tax Appeal No. 21188 of 2014 and Service Tax Appeal No. 21188 of 2014 with Service Tax/Additional Evidence No. 20285 of 2023 in Service Tax Appeal No. 21189 of 2014 And Service Tax Appeal No. 21189 of 2014 and Service Tax/Additional Evidence No. 20287 of 2023 in Service Tax Appeal No. 21190 of 2014 and Service Tax Appeal No. 21190 of 2014

Order No. - FINAL ORDER NO. 21037 - 21039 / 2024

Dated: - 17-10-2024

Entitlement to cash refund of accumulated CENVAT credit - **Nature of services provided by the appellant** - appellant is a 100% EOU unit and provided export services which includes typesetting, composition, artwork, proof reading, project management, XML conversions, multimedia services and page designing, proof reading etc., to overseas clients

HELD THAT:- Department had allowed the refund claims for the earlier period from January 2008 to March 2008 and also for the subsequent period from October 2010 to September 2013 i.e., much after the rejection of the present refund claims i.e., in the year 2019. The department has not raised any issue of the services provided by them while sanctioning the refund claims for the period October 2010 to September 2013. We find that the principle laid down in the case of mPortal India Wireless Solutions [2011 (9) TMI 450 - KARNATAKA HIGH COURT] is subsequently applicable to the facts of the present case, the Appellant being an 100% EOU.

Similar observations of the CESTAT Chennai Bench in the case of Suthernland Global Services Pvt. Ltd [2018 (3) TMI 771 - CESTAT CHENNAI] has upheld by the Hon'ble Madras High Court [2021 (3) TMI 238 - MADRAS HIGH COURT]

Documentary evidence to support their claim - Chartered Accountant submits that necessary Foreign Inward Remittance Certificate (FIRC) has been submitted before the adjudicating authority and it was not considered solely on the ground that the relevant export invoices have not been reflected in the said FIRC. Responding to the said observation, the learned Chartered Accountant submitted that in the FIRC, the amount is not shown against a particular invoices, therefore, the export invoice numbers are not reflected in the said certificate. Further to correlate, they have submitted one certificate dated 16.04.2009 indicating the number of invoices involved for each FIRC and the said foreign currency that has been received. Therefore, the export of goods against foreign remittances has been established by the appellant.

Judgment / Order

DR. D.M. MISRA, MEMBER (JUDICIAL)

Shri Sanjay Chhabria and Shri Anurag Hans, CAs for the Appellant

Shri K. A. Jathin, Deputy Commissioner (AR) for the Respondent

ORDER

These three miscellaneous applications are filed seeking to introduce additional grounds to the appeals filed earlier. Learned Chartered Accountants appearing for the appellant has submitted that these grounds relate to question of law and not elaborated in the earlier grounds, hence, may be allowed to be taken on record. Learned Authorised Representative for the Revenue has no objection. Consequently, the miscellaneous applications are allowed and the grounds now mentioned in the miscellaneous applications shall be part of the grounds of appeals.

2. These three appeals are filed against Order-in-Appeal No.65 to 67/2014-ST dated 13.01.2014 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

3. Briefly stated the facts of the case are that the appellants are registered with the Service Tax department for providing Business Auxiliary Service and Business Support Service during the relevant period i.e., from April 2008 to September 2009. They had filed cash refund of accumulated CENVAT credit for the quarters April 2008 to September 2008, October 2008 to March 2009 and April 2009 to September 2009 amounting to Rs.12,60,068/-; Rs.10,92,723/- and Rs.6,41,042/- respectively under Rule 5 of CENVAT Credit Rules (CCR), 2004 read with Notification No.5/2006-CE (NT) dated 14.03.2006. The refund claims were rejected by the adjudicating authority. Aggrieved by the said order, they filed appeals before the learned Commissioner (A) who upheld the Orders-in-Original and rejected their appeals. Hence, the present appeals.

4. At the outset, the learned Chartered Accountant for the appellant has submitted that they are an 100% Export Oriented Unit (EOU) registered with the Software Technology Park of India (STPI) since March 2000. They are engaged in providing services relating to e-publishing activity which includes typesetting, composition, artwork, proof reading, project management, XML conversions, multimedia services and page designing, etc., for printable books and journals. He has submitted that the publishers abroad outsourced these activities of publishing to the appellant. For this purpose, the overseas publishers send the manuscript through e-mail and also through courier; and the appellant after carrying out the activities, send the final documents to them through online or courier, as the case may be. The services are either provided to their overseas customers through their group entity situated abroad or to their customers directly. He has submitted that they availed CENVAT credit on Service Tax paid on various input services viz., office rent, consultancy and professional services, tele-communication/internet services, manpower recruitment consultancy services, housekeeping services, repair and maintenance, courier charges, security services, Tour Operator Services, printing and stationery, Bank charges, etc. On export of the service, they filed a refund claim of accumulated CENVAT credit as per Rule 5 of CCR, 2004. It is his contention that the learned adjudicating authority rejected their refund claims for three quarters solely on the ground that the appellants are providing Business Auxiliary Service and in particular, the activity is relating to printing, therefore, exempted under Notification No.14/2004-ST dated 10.9.2004. It is his contention that the services provided by them is not relating to printing but these are all editing, indexing, etc., hence not covered under Business Auxiliary Services. Further, he has submitted that in the show-cause notice proposing to reject the refund claims it has not raised about the inadmissibility of the refund claim stating the ground that since they are providing Business Auxiliary Service, therefore, it cannot be Business Support Service, which is an exempted service, therefore, refund claims cannot be allowed. Further, he submits that for the period January 2008 to March 2008 and for the period from October 2010 to September 2013, cash refund of the accumulated credit had been allowed by the department vide Refund Orders dated 20.12.2019 and 30.07.2019, respectively. He submits that, therefore, refund claims are admissible to the appellants. In support, he has referred to the judgment of this Tribunal in the case of **Commissioner of Service Tax, Chennai vs. Sutherland Global Service Pvt. Ltd.: 2018 (3) TMI 771 – CESTAT CHENNAI** later upheld by the Hon'ble Madras High Court as reported at **2021 (3) TMI 238 – MADRAS HIGH COURT** and by the Hon'ble Karnataka High Court in the case of **mPortal India Wireless Solutions (P) Ltd. vs. Commissioner of Service Tax: 2011 (9) TMI 450 – KAR-HC; KPTI Cumins**

Infosystems Ltd. vs. Commissioner of Central Excise, Pune-I: 2013 (32) STR 356 (Tri.-Mum.); **M/s. Infosys Technologies Ltd. vs. CCE & ST, BBSR: 2018 (11) TMI 918 – CESTAT KOLKATA.**

5. Per contra, the learned Authorised Representative for the Revenue reiterated the findings of the lower authorities.

6. Heard both sides and perused the records. The short issue involved in the present appeals for consideration is whether the appellant is entitled to cash refund of accumulated CENVAT credit for the quarters April 2008 to September 2008, October 2008 to March 2009 and April 2009 to September 2009. Undisputed facts are that appellant is a 100% EOU unit and provided export services which includes typesetting, composition, artwork, proof reading, project management, XML conversions, multimedia services and page designing, proof reading etc., to overseas clients. They availed CENVAT credit on various input services which are not disputed for ineligible service. On export of these services, they claimed cash refund of accumulated credit under Rule 5 of CCR, 2004. The lower authorities had rejected their refund claims solely on the ground that these services provided by the appellant are in the nature of Business Auxiliary Service particularly printing and hence, being an exempted service under Notification No.14/2004-ST dated 10.09.2004, hence not admissible. The claim of the appellant on the other hand is that even though they are registered under both Business Auxiliary Services as well as Business Support Services, by mistake they have mentioned in their refund application that the services provided to the overseas entity are in the nature of Business Auxiliary Services. It is their argument that, in fact, the services provided by them are in the nature of Business Support Services, hence, not covered under the Notification No.14/2004-ST dated 10.09.2004. Further, it is their contention that even if the services rendered are exempted, however, refund claim cannot be denied under Rule 5 of CCR, 2004 in view of the judgment of Karnataka High Court in the case of mPortal India Wireless Solutions (supra). It is also argued that though in the show-cause notice it has proposed to reject refund claims on certain grounds but the grounds on which the adjudicating authority rejected their refund claims are different and never proposed; hence, the order of the rejection of refund is bad in law. From the records, I find that the department had allowed the refund claims for the earlier period from January 2008 to March 2008 and also for the subsequent period from October 2010 to September 2013 i.e., much after the rejection of the present refund claims i.e., in the year 2019. The department has not raised any issue of the services provided by them while sanctioning the refund claims for the period October 2010 to September 2013. I find that the principle laid down by the Hon'ble High Court of Karnataka in the case of mPortal India Wireless Solutions (supra) is subsequently applicable to the facts of the present case, the Appellant being an 100% EOU. Their Lordships observed as:

> "**6**. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee."

7. Similar observations of the CESTAT Chennai Bench in the case of Suthernland Global Services Pvt. Ltd. (supra) has upheld by the Hon'ble Madras High Court.

8. On the issue of documentary evidence to support their claim, the learned Chartered Accountant submits that necessary Foreign Inward Remittance Certificate (FIRC) has been submitted before the adjudicating authority and it was not considered solely on the ground that the relevant export invoices have not been reflected in the said FIRC. Responding to the said observation, the learned Chartered Accountant submitted that in the FIRC, the amount is not shown against a particular invoices, therefore, the export

invoice numbers are not reflected in the said certificate. Further to correlate, they have submitted one certificate dated 16.04.2009 indicating the number of invoices involved for each FIRC and the said foreign currency that has been received. Therefore, the export of goods against foreign remittances has been established by the appellant.

9. In view of the above finding, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court.)

Citations: in 2024 (11) TMI 55 - CESTAT BANGALORE

1. The Commissioner of GST & Central Excise, Chennai Versus M/s. Sutherland Global Services Pvt. Ltd., - 2021 (3) TMI 238 - MADRAS HIGH COURT
2. mPortal India Wireless Solutions (P.) Ltd. Versus Commissioner of Service Tax - 2011 (9) TMI 450 - KARNATAKA HIGH COURT
3. M/s Infosys Technologies Ltd. Versus Commissioner of Central Excise & Service Tax, BBSR - 2018 (11) TMI 918 - CESTAT KOLKATA
4. Commissioner of Service Tax, Chennai Versus M/s. Sutherland Global Service Pvt. Ltd. - 2018 (3) TMI 771 - CESTAT CHENNAI
5. KPIT CUMMINS INFOSYSTEMS LTD Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I - 2013 (7) TMI 124 - CESTAT MUMBAI