CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos.71182-71185, 71187 of2018-[DB]

[In Service Tax Appeal No.70183 of 2018]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-2003 TO 2006-17-18 dated 28/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Xchanging Solutions Ltd. .....**Appellant**

(A-44/45 Block A, B, C & E, Section 62, Noida-201301)

VERSUS

Commissioner of Central Tax, ...**Respondent**

(Range-9, Noida)

WITH

(i) Service Tax Appeal No.70182 of 2018 (Xchanging Solutions Ltd.)
(ii) Service Tax Appeal No.70184 of 2018 (Xchanging Solutions Ltd.)
(iii) Service Tax Appeal No.70185 of 2018 (Xchanging Solutions Ltd.)
(iv) Service Tax Appeal No.70187 of 2018 (Xchanging Solutions Ltd.)

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-2003 TO 2006-17-18 dated 28/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

APPEARANCE:

Request for Adjournment — for the Appellant
Shri Pawan Kumar Singh,
Supdt, Authorised Representative — for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs-70932-70936 / 2019

Date of Hearing : 26/04/2019
Date of Decision : 26/04/2019

PER: ARCHANA WADHWA

After rejecting the request for adjournment, we proceed to decide the appeals, inasmuch as, a short issue covered by the precedent decision of the Tribunal is involved. Accordingly, we have heard the learned A.R. and have gone through the impugned order.

3. The appellant is 100% EOU, entitled to refund of Cenvat credit of duty availed by them on the input services, in terms of provision of Rule 5 of Cenvat Credit Rules read with Notification No.05/2006. The said refund stands denied to them on the ground that input services have no nexus with their output services.

3. We intend to dispose of all the appeals on the short issue, without going into the detailed discussion on the nexus between the input and output services. Admittedly the Cenvat credit stands availed by the appellant after following the due procedure and by reflecting the same in their Cenvat credit account. Revenue has not objected at the time of availment of said credit and has not sought to deny the credit on the ground of the input services having no nexus with output services. The question as to whether the refund of such accumulated unutilized credit can be denied, without first challenging the admissibility of said credit stands answered by various decisions of the Tribunal. One such reference can be made to Tribunal's decision in the case of Commissioner of Service Tax, Delhi vs. Convergys India Pvt. Ltd. 2009 (16) S.T.R. 198 (Tri.-Del.). Para 6.7 of the said decision read as follows:-

> *"6.7. From the above, it is clear that there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been*

permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or as rebate. Without questioning the credit taken, the eligibility to rebate cannot be questioned."

As is seen from the above, it stands concluded by the Tribunal that where credit has been permitted to be taken, the same has to be refunded to the assessee without raising any issues to the contrary. The said decision of the Tribunal stands confirmed by the Hon'ble Punjab & Haryana High Court when the appeal filed by the Revenue was rejected reported as Commissioner of Service Tax vs. Convergys India Pvt. Ltd. 2010 (20) S.T.R. 166 (P & H).

4. Inasmuch as, the Revenue has not first denied the credit availed by the appellant, the objection of the Revenue as regards nexus, adopted at the time of deciding the refund application, is unsustainable. Accordingly, on this ground itself, we allow all the appeals filed by the assessee with consequential relief to them.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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