IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/328/2010-ST[SM]

(Arising out of Order-in-Appeal No. 340/CE/APPL/NOIDA/2009 dated 08/12/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Cleave Global e-Service Ltd. **Appellant**

Vs.

Commissioner of Customs & Central Excise, Noida **Respondent**

Appearance:

Shri Sanjay Kumar, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision : 19/03/2018

FINAL ORDER NO.**70453/2019**

Per: Anil Choudhary

The issue in this appeal is, whether the appellant is entitled to rebate under the provisions of Rule 5 of Export of Services Rules, 2005 read with Notification No. 12/2005–ST dated 19/04/2005 under the fact that admittedly the appellant filed the required declaration under Para 3.1 of the said notification belatedly at the time of processing of their rebate claim.

2. The brief facts are that the appellant is a unit approved by STPI, Noida was engaged in providing output services namely Business Process Outsourcing (BPO) falling under the

category of ‘Business Auxiliary Services’. They filed a refund claim for rebate of Rs.11,51,410/- under the provisions of Rule 5 of Export of Services Rules, 2005, in respect of Service Tax paid on input services used in providing output services which were exported by them during the period September, 2006 to April, 2007.

3. The Show Cause Notice dated 29th August, 2008 was issued to the appellant. As it appeared to Revenue that appellant had failed to comply with the procedure as laid down under Notification No. 12/2005–ST dated 19/04/2005, which prescribes the procedure relating to rebate of Service Tax and Cess paid on input services used in providing taxable services wherein at Para 3.1 of the said Notification, which stipulates that “the provider of taxable service to be exported shall, prior to date of export of taxable service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise, describing the taxable service intended to be exported with;

(a) Description, quantity, value, rate of duty and amount of duty payable on inputs actually required to be used in providing taxable service to be exported.

(b) Description, value and the amount of Service Tax and Cess payable on input services actually required to be used in providing taxable service to be exported.” The Show Cause Notice also objected to taking of input credit on certain services like - Cleaning Service, Telephone Service, etc. is not admissible to the appellant as the same do not appear to be necessary for running day to day business of the claimant and have no direct nexus with the services exported by the appellant. Some of the duty paying documents with respect to input service was also found to be improper in terms of Rule 9 of Cenvat Credit Rules, 2004. Accordingly, the appellant was required to show cause as to why the claim for rebate be not rejected under Rule 5 of Export of Services Rules, 2005. The Show Cause Notice was adjudicated on contest by Order-in-Original dated 1st July, 2009, rejected the refund claim along with the rejection of certain input services as not eligible and/or rejected for want of prescribed documents. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who has been pleased to uphold the order of rejection, observing that clause 3.1 Notification No. 12/2005–ST dated 19/04/2005 provides that – the exporter of taxable service to be exported shall, prior to export of date of taxable service, file a declaration with jurisdictional Assistant Commissioner of Central Excise, describing the taxable service intended to be exported.

4. Thus, relying on the ruling of Hon'ble Supreme Court in the case of M/s Eagle Flask Industries Ltd. *Versus* Commissioner of Central Excise reported at 2004 (171) E.L.T. 296 held that conditions are to be strictly complied with, which is not an empty formality, it is the foundation for availing the benefits under the notification. The consequences

are denial of non-compliance or denial of benefits under the notification.

5. Being aggrieved by the said order, the appellant is in appeal before this Tribunal on the ground that the condition of filing declaration is to be filed prior to export is only procedural. There is no license or permission required to be obtained from the Judicial Authority before export of service. Further, relying on the ruling of Division Bench of this Tribunal in the case of Commissioner of Service Tax, Delhi *Versus* Convergys India Pvt. Ltd. 2009 (16) STR 198 (Tri. – Delhi) where also, in case of rebate for export of services which was denied on the ground of delay in filing the relevant declaration the Division Bench held – late filing of declaration only a procedural lapse and substantial concession is not deniable. Further, observing that liberal views required to be taken in case of export. Further, observed that eligibility to credit was not under dispute. So far as the disallowance of Cenvat credit on certain inputs services is concerned. The Division Bench referred to the term input service of the services used in connection in setting up premises and services used in connection with repairs of premises considered as input services. Further, services used for in-between activity namely day to day maintenance also as to be considered as a part of input service under Rule 2(k) of Cenvat Credit Rules, 2004. It was, further, observed that the eligibility to credit of duty paid on inputs and tax paid on

input services is not contingent on whether services are exported or not. Criteria for credit eligibility is same whether entire services exported or same services provided to domestic customers in full or in part.

6. Accordingly, the learned Counsel prays for allowing the appeal with consequential benefits.

7. The ld. A. R. for Revenue have relied on the impugned order.

8. Having considered the rival contentions and on perusal of the facts on record, I find that the issue herein is squarely covered in favour of the appellant by the ruling of Division Bench of this Tribunal in the case of Commissioner of Service Tax, Delhi *Versus* Convergys India Pvt. Ltd. 2009 (16) STR 198 (Tri. – Delhi) (supra). Accordingly, the impugned order is set aside and the matter is remanded back to the file of the Adjudicating Authority for the limited purpose of calculation of the refund claim by following the ruling of Division Bench of this Tribunal in the case of Commissioner of Service Tax, Delhi *Versus* Convergys India Pvt. Ltd. 2009 (16) STR 198 (Tri. – Delhi) (supra).

(Dictated in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ansari