CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application (s) Involved:

ST/ Misc./20016/2017 in ST/117/2011-SM

Appeal(s) Involved:

ST/117/2011-SM

[Arising out of No. 601/2010 dated 16/11/2010 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.]

M/s. G.L. COMMUNICATIONS (I) PVT LTD
UMA ADMIRALITY, I GTROUND FLOOR,
NEAR SAGAR APOLLO HOSPITAL
BANNEEGHATTA ROAD, BANGALORE 560029

Appellant(s)

Versus

The Commissioner of Service Tax,
1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS STAND,DOMLUR
BANGALORE-560 071
KARNATAKA

Respondent(s)

Appearance:

Mr. Prakash, Advocate
B.G.CHIDANANDA URS
#520, AMRUTH NIVAS, 7TH MAIN, 13TH CROSS, RMV 11 STAGE, DOLLARS COLONY,
BANGALORE – 560 094.
KARNATAKA

For the Appellant

Ms. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 03/04/2018
Date of Decision: 09/04/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20534 /2018

Per : S.S GARG

Revenue has moved a miscellaneous application for change in cause title consequent to reorganization of GST Commissionerate and also for early hearing and vacation of stay. On hearing both sides, I allow the miscellaneous application for change in cause title in respect of respondent as "Commissioner of Central Tax, Bengaluru South, Queen's Road, Bengaluru - 560 001" and also the miscellaneous application for early hearing and take up the appeal for final disposal.

2. The present appeal is directed against the impugned order dated 16.11.2010 passed by the Commissioner (A) whereby the Commissioner (A) has modified the Order-in-Original and allowed the appeal restricted to the period from 16.5.2008 to September 2008.

3. Briefly the facts of the present case are that the appellants are registered with the Service Tax under the category of 'Scientific and Technical Consultancy Service' and are engaged in export of IT software service. they filed refund claim on 18.12.2008 under the provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.5/2006-CE (NT) dated 14.3.2006 in respect of unutilized CENVAT credit amounting to

Rs.10,47,379/- paid by them on the input services said to have been used by them for the output services exported during the period from October 2007 to September 2008. A show cause notice was issued as their input services do not have any direct nexus with output service, non-registration in the category of 'Information Technology Software Services' and non-taxability of the 'Information Technology Service' prior to 16.5.2008 i.e., the effective date of taxability on software development service, non-correlation of export invoices with FIRC, non-furnishing of the relevant documents and necessary evidences and on the issue of time bar in respect of filing of refund claim. The adjudicating authority rejected the refund. Aggrieved by the Order of the adjudicating authority, the appellant filed appeal before the Commissioner (A) who partially allowed the appeal of the appellant, hence, the present appeal.

4. Heard both the parties and perused the records.

5. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the facts and law in proper perspective. He further submitted that the rejection of refund

claim of the credit availed during October 2007 to 17.12.2007 is unsustainable in law as time limit under Section 11B should be computed from the date of receipt of payment towards exports effected. He further submitted that the time limit of one year cannot be computed from the date of availment of credit and should be computed from the end of the quarter, as the claims of a quarter should be preferred within the period of one year. The claim for the quarter ending October – December 2007 is preferred within one year and the same is within time limit as prescribed under Section 11B of the Act. He further submitted that the Department cannot raise the issue of classification of service in a refund application. The assessee being a 100% Export Oriented Unit (EOU) and having obtained registration with the Service Tax Department under the category of 'Scientific and Technical Consultancy Service', the claim of refund cannot be rejected on the ground that the service rendered was in the nature of 'Information Technology Service'. For this purpose, the appellant relied upon the decision rendered in the case of *Axa Business Services Pvt. Ltd. vs. CST: 2017 (49) STR 556 (Tri.-Bang.)*. It is his further submission that the registration is not a pre-requisite for granting of refund and this issue is no longer *res integra* as held by the jurisdictional High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd. vs. CST: 2012 (27) STR 134 (Kar.)* wherein it was held that exporter is entitled to refund of unutilized credit and the registration with the department is not a pre-requisite for claiming the credit. Learned counsel further submitted that furnishing of CA certificate is not required to file the refund claim in view of the Board's Circular No.120/1/2010 dated 19.1.2000.

6. On the other hand, the learned AR reiterated the findings of the impugned order.

7. After considering the submissions of both the parties and perusal of the material on record and the various judgments relied upon by the appellant, I find that the Commissioner (A) has wrongly rejected the refund claim on the basis that it is time bar as well as non-registration under a particular category by the appellant. Further, I find that the Tribunal in so many decisions has considered the issue of nexus and has held that the professional charges and furniture and fixtures are eligible input service. Further, insofar as time bar is concerned, this issue has been considered by the Larger Bench of this Tribunal and the Larger Bench vide its Interim Order No.4/2018 dated 9.2.2018 in the case of CST vs. Span Infotech (India) Pvt. Ltd. has held that

the relevant date for the purpose of deciding the time limit for consideration of refund claim under Rule 5 of CENVAT Credit Rules may be taken as the end of the quarter in which the FIRCs is received, in cases where refund claims are filed on a quarterly basis. Further, I find that the Division Bench of this Tribunal in the case of *Axa Business Services Pvt. Ltd.* cited supra has held as under:

> *"5. The first ground in which the refund stands rejected is that the services which have been exported were not taxable during the relevant period. The Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 which has been issued under Rule 5 of the Cenvat Credit Rules, 2004 specifically allows refund of Cenvat credit availed on inputs or input services which have been used for providing output services which have been exported. There is no condition in the Notification which prescribes that the refund will be allowable only in cases where the output services exported is liable for payment of service tax. Hence we find that such a view taken by the authorities below is without any basis. In any case the Tribunal in the case of KPIT Cummins Infosystems Ltd. v. CCE reported in 2013 (32) S.T.R. 356 (Tri.) held that Cenvat credit for export of exempted service would be available as refund."*

Further, I find that the rejection of refund claim on the ground of registration is also not sustainable in law in view of the judgment of the Karnataka High Court in the case of *mPortal India Wireless Solutions Pvt. Ltd.* cited supra. Further, the appellant has also relied on a number of decisions in their grounds of appeal to support their claims and the said decisions are reproduced herein below:

- *CCE vs. Suresh Synthetics: 2007 (216) ELT 662 (SC)*
- *Sandoz Pvt. Ltd. vs. CCE: 2008 (232) ELT 538 (T)*

- *CCE vs. Simplex Pharma Pvt. Ltd.: 2008 (229) ELT 504 (P&H)*
- *Sandvik Asia Ltd. vs. CIT: 2006 (196) ELT 257 (SC)*
- *M/s. Punjab Stainless Steels Industries vs. CCE: 2008-TIOL-1004-CESTAT-DEL*
- *CCE vs. ANZ International: 2009 (233) ELT 40 (Kar.)*
- *Jobelle vs. CCE: 2006 (203) ELT 627 (T)*
- *Cbay Systems (India) Pvt. Ltd. vs. CCE: 2010-TIOL-1188-CESTAT-MUM*
- *M/s. CGI Information Systems & Management Consultants Pvt. Ltd. vs. CCE: 2010-TIOL-1463-CESTAT-BANG.*

8. In view of the discussions above and the decisions of the Larger Bench, I remand the present case to the original authority to decide the refund claim of the appellant in view of the law declared by the Tribunal in various decisions cited supra, after examining and verifying various documents which may be produced by the appellant in support of their submissions and thereafter decide the refund claim of the appellant. Accordingly, the appeal is allowed by way of remand after setting aside the impugned order.

(Order was pronounced in Open Court on **09/04/2018.**)

S.S GARG
JUDICIAL MEMBER

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