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

Appeal(s) Involved:

ST/20811/2017-SM

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-276-16-17 dated 31/08/2016 passed by the Commissioner Of Central Excise, Customs and Service Tax, Cochin (Appeals)]

ISPG Technologies (I) Pvt. Ltd.
28/118A, Parapillil Lane, Panampilly Nagar
Kochi – 682 036
Kerala

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax, Cochin
C.R Building,
I.S Press Road, Ernakulam,
Cochin - 682 018
Kerala

Respondent(s)

Appearance:

Mr. Cherian Punnoose, Advocate
#311-312,'Commerce House'
Above Hotel Chandrika, 9/1,
Cunningham Road,
Bangalore – 560 052
Karnataka

For the Appellant

Mr. Pakshirajan, Assistant Commissioner (AR)

For the Respondent

Date of Hearing: 08/03/2018
Date of Decision: 08/03/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20482 / 2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 31.08.2016 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellant is a Private Limited Company engaged in providing internet and web solution. The appellant provides end to end web solutions to their customers and their activities are classifiable under taxable category of 'Information Technology Software Service'. During the period in dispute i.e. April 2011 to September 2011, the appellant has undertaken the activity of development of websites and other information technology services for various clients located within India as well as abroad. For the services rendered abroad, the appellant received the consideration in foreign currency in terms of Rule 4 of Export of Service Rules and some of the services were exported without payment of service tax. The service tax on the domestic services was paid by debiting the cenvat credit account. The appellant exported some of the services on payment of service tax and for that they filed a rebate claim on 10.04.2012 in terms of Rule 5 of Export of Services Rules 2005 read with Notification No. 11/2005 ST dated 19.04.2005 for the service tax paid by them amounting to Rs. 20,13,729/- (Rupees Twenty Lakhs Thirteen Thousand Seven Hundred and Twenty Nine only). Along with rebate application applicant filed all the documents. Thereafter the Department issued a show-cause notice dated 04.05.2012 proposing to reject the rebate claim on the ground that no document was produced to show that the amount shown as service tax in ST-3 return includes the value

of taxable services exported on payment of service tax and consequently under Rule 4A invoices were prepared after the receipt of FIRC and service tax was also paid after receipt of FIRC which is in violation of the Notification No. 11/2005. After following the due process, the Assistant Commissioner vide Order-in-Original dated 26.09.2012 confirmed the proposal in the show-cause notice and rejected the rebate claim of Rs. 20,13,729/- (Rupees Twenty Lakhs Thirteen Thousand Seven Hundred and Twenty Nine only). Aggrieved by the said order, appellant filed appeal before the Commissioner and the Commissioner rejected the appeal. Hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order passed by the Commissioner (Appeals) is not sustainable in law as the same has been passed without appreciating the factual and legal position in proper perspective. He further submitted that both the authorities have rejected the claim on the ground that in the ST-3 returns, the appellant have not mentioned the services exported on payment of service tax. To counter this, the appellant submitted that in the ST-3 return filed for the period April 2011 to September 2011, the gross amount received in money against the service provided was declared as Rs. 7,39,13,224/- (Rupees Seven Crore Thirty Nine Lakhs Thirteen Thousand Two Hundred and Twenty Four only) in which the appellants declared the amount of Rs. 4,27,68,892/- (Rupees Four Crores Twenty Seven Lakhs Sixty Eight Thousand Eight Hundred and Ninety Two only) as value on which service tax was exempted/not payable on

account of export of services. The balance amount of Rs. 3,11,44,332/- (Rupees Three Crores Eleven Lakhs Forty Four Thousand Three Hundred and Thirty Two only) was declared as taxable value for the period. He also submitted that the value of Rs. 3,11,44,332/- (Rupees Three Crores Eleven Lakhs Forty Four Thousand Three Hundred and Thirty Two only) declared as taxable value in the ST-3 return for the period included the value of services provided to domestic customers as well as value of service provided to foreign customers on which service tax was discharged by the appellant. it is his further submission that ST-3 return prescribed by the Board does not provide for any column for exhibiting the value of service exported on which service tax was discharged. Therefore, the appellant included the same along with the value of services provided to the domestic customers. He also submitted that the value of services exported on which service tax was paid by the appellant was Rs. 1,95,50,854/- (Rupees One Crore Ninety Five Lakhs Fifty Thousand Eight Hundred and Fifty Four only) and the value of domestic service provided during the period in dispute was Rs. 1,15,93,478/- (Rupees One Crore Fifteen Lakhs Ninety Three Thousand Four Hundred and Seventy Eight only). He further submitted that the original authority has rejected the rebate claim on the ground that the debit of cenvat credit was made by the appellant only after the payment in foreign exchange pertaining to the particular invoices were received and therefore the appellants have not satisfied the conditions under Notification. To counter this objection, the appellant submitted that there is no restriction under the Notification that service tax has to be paid at the time of provision of service. He further submitted that there is no condition neither under Rule 5 nor under

Notification wherein it is stipulated that the service tax and cess has to be paid on the date on which invoices are raised for the services exported. The only criteria under Rule and the Notification is that service tax should have been paid on the services exported which has not been disputed in the present case that the appellant has paid the service tax on the services exported by debiting the cenvat credit. Further he submitted that the export of service is complete only when the FIRC is received. He further submitted that the rebate of service tax paid on services exported is a beneficial provision to the exporter and the same has to be interpreted liberally and the claim of the assessee should not be rejected on mere technicalities.

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

5. After considering the submissions of both the parties and perusal of the material on record, I find that in the present case it is not disputed that the service tax has been paid on the services exported. The Revenue has raised the objection that service tax has been paid after receipt of FIRC which is in violation of the Notification. I have seen the Notification and the conditions under Notification 11/2005 and I find that there is no such restriction under the Notification that the service tax has to be paid at the time of provision of service. Rather as per Export of Service Rules service is completed only on receipt of the FIRC and therefore the payment of service tax by way of cenvat credit paid on receipt of the FIRC is not wrong and therefore the rejection of rebate on this ground is not sustainable. Further as

far as objection of the Revenue that the appellant has not separately shown the taxable service which is exported on payment of service tax in this regard I find that the appellant has produced before me the ST-3 return for the period April 2011 to September 2011 wherein he has shown the value of Rs. 3,11,44,332/- (Rupees Three Crores Eleven Lakhs Forty Four Thousand Three Hundred and Thirty Two only) has been declared as taxable value for the said period. This includes the value of services provided to domestic customers as well as value of services provided to foreign customers on which service tax is paid. Therefore, the appellant has included the said service along with the value of service provided to the domestic customers and the learned counsel has submitted that he has already provided the value of service exported on which service tax was paid and the same comes to Rs. 1,95,50,854/- (Rupees One Crore Ninety Five Lakhs Fifty Thousand Eight Hundred and Fifty Four only). For verification of this amount, the matter needs to be remanded back to the original authority for verification of the rebate amount on the basis of the documents submitted before the authorities while filing the rebate claim. Therefore, in view of my discussion above, I allow the appeal of the appellant and remand the matter for verification and sanctioning of the rebate. Appeal is accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **08/03/2018**)

(S.S GARG)
JUDICIAL MEMBER

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