CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/20335/2019-SM

[Arising out of Order-in-Appeal No. 498/2018-CT dated 03/12/2018 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

M/s Inguest Technologies Software Pvt Ltd 1st Floor Shankarnarayan Building No 2 No 25/1 M G Road BANGALORE - 560001 KARNATAKA	Appellant(s)

VERSUS

Commissioner Of Central Tax, Bangalore North No-59, HMT Bhawan Ground Floor, Bellary Road BANGALORE - 560032 KARNATAKA	Respondent(s)

Appearance:

Mrs. Lakshmi Menon & Mr. Harish Bindumadhavan, Advocates PRESTGE TRADE TOWER LEVEL 14, 46 FLOOR, PALACE ROAD, HIGH GROUNDS, BANGALORE - 560001 KARNATAKA	For the Appellant
Mr. Gopa Kumar, Joint Commissioner, AR	For the Respondent

CORAM:

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

Final Order No. 20455 / 2019

Date of Hearing: 04/06/2019

Date of Decision: 04/06/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 03.12.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in Export of Services under the category of 'Information Technology Software Services' and is registered with the Service Tax Department. The appellant had filed a refund claim for Rs.6,13,322/- under Rule 5 of the CENVAT Credit Rules and under Notification No. 27/2012-CE (NT) dated 18.06.2012 for refund of accumulated and unutilized CENVAT credit on various input services which were used for provision of output services which were exported without payment of tax, with the Assistant Commissioner of Central Tax, Division-1, North Commissionerate, Bangalore on 27.03.2018. During the scrutiny of the refund claim, it was inter alia noticed that the appellant had not submitted documents towards Proof of Reversal of Refund Claimed amount and Declaration of non-carry forward of CENVAT credit to Tran-1 etc. The original authority vide the impugned order dated 08.06.2018 rejected the refund claim. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals) who also rejected the appeal of the appellant.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents. She further submitted that non-submission of duly signed ledger extract is just a procedural lapse and does not affect the eligibility of claiming the refund. She further submitted that refund was filed on 27.03.2018 and the amount towards refund claim was debited on 31.03.2018 just three days after the date of filing the refund claim. She further submitted that delay in debiting the CENVAT account after filing the refund claim is permissible in view of the decision in the case of *Sandoz Pvt. Ltd. v. Commissioner of C.Ex., Belapur [2015 (325) ELT 387 (Tri. Mumbai)].* She also submitted that no reversal in

Service Tax could be made since at the time of filing of the refund claim the Service Tax was abolished and GST was in place and hence no returns for Service Tax could be filed. She further submitted that the appellant had filed NIL TRAN-1 Return under GST and had not carried forward any input credit. They have also submitted the duly signed copy of the same with the Department. She fairly conceded that the CENVAT credit balance at the end of the quarter and the CENVAT credit balance at the time of filing of refund claim was Rs.5,13,086/- and she has restricted their refund claim to the said amount of Rs.5,13,086/-. Further, she did not press for refund of CENVAT credit of 'Club and Association Services' amounting to Rs.1,595/-. She further submitted that Voucher No. 23 dated 27.03.2018 showing the reversal of refund claim amount but both the authorities have not accepted this document on the ground that the same is not signed and attested by the claimant. She also produced Voucher No. 26 dated 31.03.2018 vide which they have reversed the refund claim amount but both the authorities have mentioned one Voucher No. (24) dated 31.03.2018 which is not related with this refund claim at all. She further submitted that this discrepancy of co-relation of Voucher can be verified by the original authority if the matter is remanded to the original authority.

5. On the other hand, Learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that as far as refund of Rs.5,13,086/- is concerned, the appellant is entitled to the same as per the CENVAT credit balance at the time of filing the refund claim which both the authorities have also fairly conceded that the refund should be restricted to Rs.5,13,086/-. Further, I find that the rejection of the refund by both the authorities on the ground that the appellants have not debited the CENVAT account before filing the refund claim which is in violation of Para 2(h) of the Notification No. 27/2012 dated 18.06.2012 is not sustainable in law in view of the judgment of the Mumbai Bench in the case of *Sandoz Pvt. Ltd*. (supra) the CENVAT credit was debited in the present case on 31.03.2018 vide Voucher No. 26 which is also placed on record but the same was not considered by both the authorities. Further, I find that in the impugned order, there is a

reference to Voucher No. 24 dated 31.03.2018 but this Voucher number is not connected with this appeal, in fact, there are two Vouchers 23 & 26 which are concerned with the present refund claim. Further, I find that the appellant had filed NIL TRAN-1 Return under GST and had not carried forward the input credit.

7. In view of my discussion above, I am of the opinion that the appellant is entitled to the refund claim to the extent of Rs.5,13,086/- but remand the matter to the original authority with a direction to verify the documents pertaining to reversal of credit in terms of Para 2(h) of Notification No. 27/2012 dated 18.06.2012. The appeal is accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **04/06/2019**)

S.S GARG
JUDICIAL MEMBER

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