Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
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Appeal No. E/61120/2018

(Arising out of OIA-LUD-EXCUS-001-APP-797-18 DATED 28.03.2018 passed by the Commissioner of Central Excise and Service Tax-LUDHIANA)

M/s Ind Swift Ltd. : Appellant (s)

Vs

CCE, Ludhiana : Respondent (s)

Represented by:
For Appellant (s) : Shri Surjeet Bhadu, Shri Abhinav Kansal, Advocates
For Respondent (s): Shri H. Singh, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)

Date of Hearing/Decision: 04.10.2018

ORDER No.A/63224/2018

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the Ld. Commissioner (Appeals) has remanded the matter back to the adjudicating authority to follow the principal of natural justice.

2. The brief facts of the case are that the appellant is an 100% EOU and availing cenvat credit on inputs and input services after exporting the goods certain amount of cenvat credit remain unutilized in their cenvat credit account accumulated for which under Rule 5 of CCR, 2004 the appellant filed refund claim. The refund claim was sanctioned partly, but, partly was rejected on the ground that the appellant is not entitled to avail cenvat credit on some inputs/input services. The said order was challenged before the Ld. Commissioner (Appeals) on the ground that no show cause notice has been issued to the appellant to deny cenvat credit
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on inputs/input services in question, the refund claim cannot be rejected. Instead of answering the said query, the Ld. Commissioner (Appeals) remanded the matter back to the adjudicating authority to pass fresh order after following the principle of natural justice.

3. Ld. Counsel for the appellant submits that the appellant has filed refund claim of accumulated cenvat credit in their cenvat credit account being 100% EOU under Rule 5 of CCR, 2004. The appellant was availing cenvat credit on inputs and input services and filing their regular returns showing the admissibility of the cenvat credit of inputs and input services in question. No rejection of cenvat credit on inputs and input services was raised before filing the refund claim. Moreover, no show cause notice was issued to the appellant to deny cenvat credit on inputs and input services in question, in that circumstances, refund claim cannot be rejected. He relied on the decision of this Tribunal in the case of ***Verisign Services India Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore-I 2018 (12) G.S.T.L 161 (Tri.-Bang.).***

4. On the other hand, the Ld. AR for the Revenue submits that admittedly no show cause notice has been issued for rejection of refund claim and same can be issued by invoking the extended period of limitation for denying of cenvat credit. Therefore, the Ld. Commissioner (Appeals) has rightly remanded matter back to the adjudicating authority.

5. Heard the parties and considered the submission.

6. It is admitted the position that no show cause notice has been issued to the appellant either for denial of cenvat credit on inputs and input

services or for rejection of refund claim. After adjudication, the revenue cannot take law in their hand to issue the show cause notice by invoking extended period of limitation. Therefore, understanding by law by departmental officer is misconceived. Admittedly, no show cause notice has been issued to deny cenvat credit on inputs and input services in question, the denial of rejection of refund claim does not arise as held by this Tribunal in the case of ***Verisign Services India Pvt. Ltd. (*****supra)** wherein it was observed as under:-

> *"7. Further, I observed that at the time of availment of these services, it was not questioned to the appellant that these are not 'input services' therefore they are not entitled to avail cenvat credit. The issue has been raised at the time of filing of refund claim under Rule 5 of Cenvat Credit Rules 2004 by the appellant. Availment of cenvat credit cannot be disputed on the later stage. In that circumstances by relying on the decision Technip India Ltd. 2017-TIOL-3708-CESTAT-MUM , I hold that refund claim cannot be denied merely on the premise that services in question on which cenvat credit remained unutilized in cenvat credit are not 'Input Services'. In view of the above analysis, I hold that appellants are entitled for refund claim filed under Rule 5 of Cenvat Credit Rules, 2004. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any."*

In that circumstances, I hold that the appellant is entitled for refund claim in dispute and accordingly the adjudicating authority is directed to sanction the refund claim of the appellant within 30 days of the date of receipt of this order.

7. Appeal is disposed off in the above terms.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.