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

S.No.	Application/ Appeal No.	Appellant	Respondent
1.	ST/Misc/40794/2017 & ST/346/2012	CGST & Central Excise, Chennai South Commissionerate	Flextronics Technologies (India) Private Ltd.
2.	ST/Misc/40795/2017 & ST/347/2012	-do-	-do-
3.	ST/Misc/40796/2017 & ST/350/2012	-do-	-do-
Arising out of Order-in-Appeal No.52 to 55/2012 (MST) all dt. 15.03.2012 passed by the Commissioner of Central Excise (Appeals), Chennai			

Appearance :

Shri K.P. Muralidharan, AC (AR)
For the Appellant

Shri Srikanth Balakrishnan, Consultant
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of hearing / decision : 16.03.2018

FINAL ORDER No. 40974-40976 / 2018

Per Bench

The MAs filed by Revenue for change of cause title are allowed.

2. The above appeals are filed by the department aggrieved by the order of Commissioner (Appeals) who set aside the order passed by the original authority rejecting the refund claim filed by the respondent (assessee) on various grounds.

3. On behalf of the appellant, Ld. A.R. Shri K.P. Muralidharan reiterated the grounds of appeal stated in the appeals filed by the department.

4.1 On behalf of respondent, the Ld. Consultant Shri Srikanth Balakrishnan explained that respondent is a 100% EOU filed refund for unutilized cenvat credit in terms of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.5/2005-CE (NT) dt. 1.3.2006. The original authority rejected the refund claim on various grounds which are as under :

(i) The refund claims are hit by time bar since the refund claims for the period 2008-09 have been filed by the respondent in the year 2011.

(ii) Credits were availed before registration of the premises.

(iii) Credits availed for Rent-a-cab service and outdoor catering services are not eligible for credit since the activities have no nexus with the output service.

(iv) While computing the total turnover, the adjudicating authority added the turnover of the SEZ units also thereby reducing the eligibility of the refund amount.

4.2 He further argued that Commissioner (Appeals) has rightly analyzed the issues as well as the case laws. Following the ratio of those case laws, he granted refund to the respondent.

5. We have gone through the records and heard the submissions made by both sides.

6. With regard to the issue of time bar, Ld. Consultant appearing for the assessee has submitted that Board's Circular No.120/01/2010-ST dt. 19.1.2010 clarifies in para-3.3 that as regards the quarterly filing of refund claim and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. So also, it is noted that in the case of service providers exporting 100% of their services, there should not be any dispute with regard to time bar. Taking note of the aforesaid circular, we hold that the Commissioner (Appeals) has rightly granted the relief, wherein the refund claim is not hit by time bar.

7. The issue whether respondent is eligible for credit before registration of the premises is decided in the case of *m-Portal India Wireless Solutions P. Ltd*. Vs CST Bangalore – 2011-TIOL-928-HC-KAR-ST = 2012 (STR) ELT 134 (Kar.). Following the same, we hold the issue in favour of respondent.

8. With regard to the issue of adding the turnover of the SEZ units to that of the total turnover of the respondent the Commissioner (Appeals) has discussed in para 5.2 we find that the formula applied by the Commissioner (Appeals) excluding the turnover of the SEZ units is correct and proper.

9. The next issue is with regard to the credit allowed on services mainly outdoor catering services, Rent-a-cab services, the period involved is prior to 1.4.2011 and the definition of 'input services' during the relevant period had a wide ambit as it included the words *"activities relating to business"*. In various decisions, the Tribunal as well as the Courts have held that the said services are eligible for credit if it is established from records that assessee has used the said service for providing the output services. Accordingly, we hold that allowance of credit on these services by Commissioner (Appeals) is sustainable. From the above discussions, we find no ground to interfere with the decision of the Commissioner (Appeals), the appeals filed by the department are dismissed.

(dictated and pronounced in court)

(V. Padmanabhan)	**(Sulekha Beevi C.S)**
Member (Technical)	**Member (Judicial)**

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