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

Appeal No.ST/629-631/2011

[Arising out of Order-in-Appeal No.150 to 152/2011 (MST) dt. 29.08.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Service Tax,
Chennai — Appellant

Versus

Hexaware Technologies Ltd. — Respondent

Appearance :

Shri A. Cletus, ADC (AR)
For the Appellant

Ms. S. Sridevi, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 18.04.2018

FINAL ORDER No. 41194-41196 / 2018

Per Archana Wadhwa

All the three appeals filed by Revenue are being disposed of by a common order.

2. As per facts on record, the respondents are engaged in export of the services and filed refund claims of service tax paid on various input services, in terms of provisions of Rule 5 of Central Credit Rules, 2004.

3. Proceedings were initiated against them for denial of the cenvat credit on the ground that the services in question cannot be held to be eligible input services for the purposes of cenvat credit. Proceedings stands culminated against the assessee by the order of the original adjudicating authority. It may be seen here that one of the additional grounds for such denial of refund was that the respondents have not been able to establish that the service provider has deposited service tax with the Revenue.

4. On appeal against the said order, Commissioner (Appeals) allowed the refunds by treating the services in question to be cenvatable services. However, after allowing the appeal, he has further observed that "*Since the mandatory declaration in the proper format duly signed by the Chartered Accountant as required under Circular No.120/2010 dt. 19.01.2010 for the sanction of the refund claims was not produced before the adjudicating proceedings and were not verified at any point of time, I direct the Lower Adjudicating Authority to verify the above declaration and sanction the refunds as per law*".

5. We note that the said operative part of the impugned order of Commissioner Appeals is self-contradictory. In one para, he is allowing the appeal by setting aside the impugned orders and in the very next paragraph, he has remanded the matter to the lower authority for verification of the certificate of the Chartered Accountant. We really fail to understand as to how refund can be allowed before such verification done by the lower authorities. Presuming theoretically, if the Chartered Account certificate so produced by the assessee is found to be incorrect, the refund would not be admissible, in which case, that part of the impugned order of Commissioner (Appeals) allowing the refund claims would operate diagonally opposite to the result of the verification. In view of our foregoing discussions, we deem it fit to set aside the impugned order and remand all the matters to the adjudicating authority to reconsider the refund claims after verification of the Chartered Accountant declaration. We make it clear that as regards eligibility of various input services, we have not expressed any opinion on the same.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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