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

ST/40329 – 40336/2017

(Arising out of Order-in-Appeal Nos. 210-217/2016 dated 28.11.2016 passed by the Commissioner of Service Tax (Appeals-II), Chennai).

M/s. Kellogg and Andelson Management Service Pvt. Ltd. : Appellant

Vs.

CST, Chennai-II : Respondent

Appearance

Shri G. Natarajan, Adv.
for the appellant

Shri S. Govindarajan, AC (AR)
for the Respondent.

CORAM:

Hon'ble P. DINESHA, Member (Judicial)

Date of Hearing/Decision: **23.05.2018**

FINAL ORDER No. **<u>41697-41702/2018</u>**

The appellant in all the above cases is registered as a service provider under the categories of "Business Support Service and Business Auxiliary Service" and the common issue involved relates to the availment of refund of un-utilized Cenvat credit in terms of Rule 5 of CCR, 2004 and Notification No. 27/2012-CE (NT) dated 18.06.2012. The period involved is from

April, 2012 to March 2014. The refund claim made by the appellant of Rs.7,71,820/- relates to the un-utilized input credit, which is as under:-

Sl.No.	Period of claim	Claim filed on	Refund claimed	Refund sanctioned provisionally	OIO No.
1	April '12 to June'12	04.03.2012	139907	111925	73 – 80/2016 dt.12.7.2016
2	July''12 to Sep.'12	04.03.2012	86617	69294	-do-
3	Oct.'12 to Dec.'12	04.03.2012	76529	61223	-do-
4	Jan.'13 to March'13	29.12.2012	79361	63489	-do-
5	April'13 to June'13	27.06.2014	98491	78793	-do-
6	July '13 to Sep.'13	30.09.2014	84789	67831	-do-
7	Oct.' 13 to Dec.' 13	18.12.2014	85277	68222	-do-
8	Jan.' 14 to March 2014	18.12.2014	120849	96680	-do-
		Total	771820	617456	

2. The Revenue issued a SCN dated 28.06.2016 which apparently, is based on the refund claim made by the appellant and the appellant was called upon to show cause as to why:-

(i) The refund claim filed by them for Rs. 84789/- under Rule 5 of the Cenvat Credit Rules, 2004 for the period Julyl'13 to Sep.'13 should not be rejected for non-compliance of Section 11 B of the Central Excise Act, 1944 made applicable to service tax vide Section 83 of the Finance Act., 1944 as stated above and the amount of Rs. 67831/- should not be recovered from the claimant along with appropriate interest from the date of issue of cheque (ie.01.02.2016).

ii) The refund of Rs. 303/- out of the total claim of Rs.84789/- should not be rejected being relatable to ineligible Cenvat credit taken by the assessee as stated above.

iii) The refund claim filed by them for Rs. 84789/- under Rule 5 of CCR, 2004 for the period Jul'13 to Sep.'13 should not be rejected for non-compliance of condition 2 (h) of the Notification No. 27/2012-CE (NT) dated 18.06.2012 as mentioned above.

3. The appellant filed its response through its letters dated 4/07/2016 and 8/07/2016 explaining the position of law and in turn justifying its request for refund. It is the case of the Revenue that the appellant's claim was liable to be rejected for non-compliance with the provisions of Section 11 B of CEA, 1944, made applicable to service tax, to which the appellant has explained in detail in its reply as to its eligibility for refund. After considering the plea and based on the personal hearing, the adjudicating authority passed the OIO dated 12.07.2016 whereby he has rejected all the refund claims as time barred. Having not been able to convince the Commissioner of Central Excise (Appeals-II) in appeal, who vide the common order dated 18.11.2016 rejected the appeal, the appellant is assailing the same in these appeals.

4. Heard the Ld. Counsel for the appellant, Shri G. Natarajan and perused the materials placed in the appeal paper book. During the course of the arguments, the ld. Counsel explained that the appellant had duly filled its sevice tax return in form ST-3 which is placed at page nos. 36 to 43 which apparently has been filed on 20.04.2016. Ld. Counsel further drew my attention specifically to pages 42 and 43 where the appellant has <u>reversed</u> the Cenvat credit. This return in ST-3, according to the ld. Counsel, are part of the Revenue records which is verifiable at any point of time. By this, the ld. Counsel submits that, the requirement of reversal of credit while filing the refund claims was only to avoid double benefit to a claimant. He further explained that this is only to prevent double benefit in as much on the one hand refund of the credit is sanctioned and on the other hand, equal amount of credit retained in the books could also be used. Ld. Counsel fairly submitted that even though the ST-3 returns wherein the reversal reflected was available even during adjudication proceedings, inadvertently, the same was not pointed out either before the adjudicating authority or before the Commissioner (Appeals).

5. Per contra, the Ld. AR Shri S. Govindarajan, AC, appearing for the Revenue fairly submitted that the reversal reflected in the ST-3 returns as claimed by the appellant requires verification.

6. I have considered the submissions of both sides. I am convinced that there is weight in the submissions of the ld. Counsel for the appellant that it has not availed double benefit, but has reversed the credit in its St-3 returns which has been filed even before the issuance of SCN which is dated 28/06/2016 which proves that the appellant itself has reversed the credit, but however, a verification is required to be made to the satisfaction of the Revenue also and, therefore, the matter is remitted back to the file of the adjudicating authority to verify appellant's claim vis-à-vis its return in form ST-3 and, if the same is found in order, grant refund with consequential reliefs, if any, as per law. The adjudicating authority shall adhere to the principles of natural justice as far as providing opportunities to the appellant is concerned.

7. In the above lines, all the appeals are disposed of.

(Operative part of the Order pronounced in the open Court)

(P. DINESHA)
MEMBER (JUDICIAL)

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