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

Appeal Nos. ST/Misc./41682 to 41684/2017 and
ST/40657 to 40659/2017

(Arising out of Order-in-Appeal No.252 to 254/2016 STA-II) dated 28.12.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

M/s. Niyatam Solutions Pvt. Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai South Commissionerate Respondent

Appearance

Shri R. Sidharth, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **08.10.2018**

Final Order Nos. **42530-42532 / 2018**

The issue in all these three appeals being the same, they were heard together and disposed by this common order.

2. Brief facts are that the appellants are providing services under the category of information technology software service. They filed refund claim under Rule 5 of CENVAT Credit Rules, 2004. After due process of law, the original authority rejected all the claims on the ground that the appellant had not debited the amount claimed as refund in their CENVAT credit at the time

of filing the claim and therefore credit was ineligible. In appeal, Commissioner (Appeals) upheld the rejection. Hence these appeals.

3. On behalf of the appellant, ld. counsel Shri R. Sidharth submitted that the appellant had initially omitted to debit the amount in their CENVAT account but had later rectified the mistake. The amounts were debited even before the claim was taken up for processing. That therefore the rejection of refund claim stating that the appellant had not debited the amount is erroneous in law. He submitted that in any case the same would be only a procedural lapse and therefore the same has to be condoned. That the substantial benefit cannot be denied for such procedural lapse.

4. The ld. AR Shri L. Nandakumar supported the findings in the impugned order. He also submitted that Revenue has filed an application for change of cause title.

5. Heard both sides.

6. On perusal of the impugned order, it is seen that the rejection of the refund claim is for the reason that the appellants have not debited their CENVAT account at the time of making the refund claim. However, it is brought out from the records that the appellants are providing only export of service and there is no question of utilization of the CENVAT credit. They have later debited from their CENVAT account before processing of the refund claim. If the amount has been debited

before processing of the refund claim and the defect has been rectified the original ought to have considered to sanction the refund claim. The issue stands settled by the decision in the case of Sandoz Pvt. Ltd. Vs. Commissioner of Central Excise, Belapur – 2015 (325) ELT 387 (Tri. Mum.). Following the same and also appreciating the facts on record, I am of the view that the rejection of refund claim is unjustified. The impugned orders are set aside and the appeals are allowed with consequential relief, if any.

7. The miscellaneous applications filed by Revenue for change of cause title are allowed.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex