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

Appeal No. ST/42306/2018

(Arising out of Order-in-Appeal No. 318/2018 – (CTA-II) dated 29.6.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

M/s.DTDC Enterprise Services India Pvt. Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai South Respondent

Appearance

Shri Harish Bindu Madhavan, 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: **04.02.2019**

Final Order No. **40223 / 2019**

Brief facts are that the appellants who are providing Information Software Technology Services and other services filed a refund claim on 13.7.2017 for Rs.23,92,239/- under Rule 5 of CENVAT Credit Rules, 2004 r/w Notification 27/2012-CE(NT) dated 18.6.2012 for refund of the CENVAT credit of various input services for the quarter July 2016 to September 2016. After due process of law, the original authority rejected the refund claim observing that the appellant has not fulfilled condition in para 2(h) of the said notification. The said refund was upheld by the Commissioner (Appeals). Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri Harish Bindumadhavan submitted that para 2(h) contemplates that the appellant ought to have debited the amount claimed as refund in the CENVAT account before filing the refund claim. The appellant has fulfilled the said condition. He adverted to page 120 wherein the relevant CENVAT account register copy was annexed and argued that the dates would show that the appellant has debited the amount on 12.7.2017. The authorities below have rejected the refund claim observing that the appellant has not reversed the amount in the ST-3 returns. In fact, para 2(h) of the said notification contemplates debit in the CENVAT account and not with regard to reflecting in the ST-3 returns. In fact, during the relevant period there was much confusion as how to refund the balance CENVAT credit. Even then the appellant has debited the amount prior to filing of the refund claim and also reversed the amount which was reflected in the ST-3 returns. The ld. counsel also submitted that for the subsequent period, Commissioner (Appeals) has observed that reversal in the ST-3 returns is not necessary when the appellant has debited in the CENVAT account. The refund application was

remanded by the Commissioner (Appeals) to the adjudicating authority for processing of the same.

3. The ld. AR Shri L. Nandakumar submitted that the appellants have not brought to the notice of the authorities below that they have debited the CENAT account on 12.7.2017. He submitted that the refund claim has not been considered with respect to other issues and therefore requires to be remanded.

4. Heard both sides.

5. After hearing both sides and on perusal of the records, it is seen that the only ground for rejection of refund claim is the observation made by the authorities below that the appellant has not fulfilled para 2(h) of Notification 27/2012-CE(NT) dated 18.6.2012. The ld. counsel has pointed out that they have already debited the CENVAT account on 12.7.2017. In page 2 of the order in original, it is seen that the appellant has filed declaration vide letter dated 12.7.2017 disclosing such debit made by them. The said letter has been enclosed along with the refund claim. From the evidence, it is brought out that the appellant has debited the amount in the CENVAT account prior to filing of the refund claim and has fully satisfied para 2(h) of the above notification. For these reasons, rejection of the refund claim is unjustified. However, it is seen that the authorities below have not considered other issues with regard to the

refund claim. On such score, I am of the view that the matter requires to be remanded to the refund sanctioning authority who is directed to process the refund claim in accordance with law. The impugned order is set aside and the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

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

Rex