CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

CHENNAI

ST/439/2009

(Arising out of Order-in-Appeal No.19/2009 (MST) dated 02.06.2009 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.Zenta Knowledge Services Pvt Ltd — Appellant

Vs

Commissioner of Service Tax, Chennai — Respondent

Appearance

Shri.R.Raghavan Ramabhadran, Advocate — For the Appellant
Shri.K.P.Muralidharan, AC (AR) — For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : **08.08.2017**

FINAL ORDER No. 41661/2017

Per Bench

The appellant is aggrieved by the rejection of refund claim filed under Rule 5 of Cenvat Credit Rules, 2005.

Customs, Excise & Service Tax Appellate Tribunal

2. The appellants are engaged in providing export of real estate back office processing services. They filed refund claims for refund of unutilized credit of service tax on various input services. The appellant had registered under the category of Business Auxiliary Services. The refund claims pertain to the period as under :

S.NO.	Period involved	Amount involved
1	April 2005 to July 2005	Rs.7,51,031/-
2	August 2005 to Feb 2006	Rs.23,31,007/-
3	Mar 2006 and April 2006	Rs.7,48,108/-

3. After scrutiny of claim, the refund sanctioning authority rejected the claim for two reasons : (i) That the output services provided by the appellant do not fall under BAS but fall under Business Support Services; and such services have become taxable only with effect from 1.5.2006. Therefore, the credit cannot be allowed as input services which are used for exempted services. (ii) Secondly, that appellant had taken registration with the department only on 1.9.2006 and therefore credit is not eligible for the period prior to registration.

4. On behalf of appellant, Ld.Counsel Shri.R.Raghavan took us to the Master agreement, its addendum and such other documents. He pointed out that the services rendered by appellant would fall within BAS only. With regard to the second issue, the Ld.Counsel submitted that the same is covered by the judgement in the case of Commissioner of Service Tax, Chennai Vs M/s.Scioinspire Consulting Services (India) Pvt Ltd 2017-TIOL-798-HC-MAD-ST.

Customs, Excise & Service Tax Appellate Tribunal

5. The Ld.A.R. Shri.K.P.Muralidharan reiterated the findings in the impugned order. He strongly argued that the activities of appellant would fall only under BSS and not under BAS.

6. Heard both sides.

7. We have perused the Master Services Agreement and Addendum furnished in appeal records. The said agreement is entered between the appellant and the client abroad (Global Realty Outsourcing inc., USA). As per this agreement the appellant has to collect and provide various data/services with regard to property etc. Sub clause (iv) of the definition of BAS provides that 'procurement of goods or services which are inputs for the client' would be an activity falling under BAS. The data/services collected and furnished by appellant to their client according to appellant are inputs for the client for the services of Real Estate carried out by the client. Further the addendum to the agreement clearly stipulate that appellant has to provide services on behalf of the client. From the records, we do not find any material so as to completely exclude the activities from the category of BAS. We therefore are of the view that rejection of refund claim observing that the output services are only BSS is incorrect and cannot be sustained. The second ground on which the refund has been rejected is covered by the judgement of Hon'ble jurisdictional High Court as pointed out by the counsel for appellant and applying the same the rejection of refund on second ground is also unjustified. We therefore find that the rejection of refund is not legal or proper.

Customs, Excise & Service Tax Appellate Tribunal

8. The impugned order rejecting the refund claim is set aside. Appeal is allowed with consequential reliefs, if any.

(Operative portion of the order was pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi C.S.

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

cl 1

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
6/9
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai