CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50879 of 2021-SM

(Arising out of order-in-appeal No. 183-186, 189 & 190/ST/APPL-I/EAST/2017 dated 05.02.2018 passed by the Commissioner (Appeals-I), Central Tax, Goods & Service Tax and Central Excise, New Delhi).

M/s RMS Risk Management Solutions India Pvt. Limited **Appellant**
A-41, Mohan Co-operative Industrial
Estate, New Delhi-110044.

VERSUS

Commissioner, Central Excise **Respondent**
Room No. 134, Central Excise
I.P. Estate, New Delhi.

APPEARANCE:

Sh. Abhinav Kalra, Chartered Accountant for the appellant
Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50262/2022

DATE OF HEARING/DECISION: 09.03.2022

ANIL CHOUDHARY:

The issue involved in this appeal relates to rejection of refund under Rule 5 of Cenvat Credit Rules are:-

(i) Whether limitation has been rightly computed; and

(ii) Whether rejection of few input service without issue of notice under Rule 14 of Cenvat Credit Rules is justified.

2. The appellant is provider of Information Technology Software Service exporting 100% of their services. As the appellant is unable to utilise the input service credit with regard to input services/ inputs, which are received for rendering the output service, they filed

periodical refund applications for each quarter. The dispute relates to the period July, 2013 to June, 2015. Against total amount of refund claimed for the period under dispute Rs. 42,22,829/-, refund was allowed in part amounting to Rs.26,08,677/- and the balance amount of Rs. 16,14,152/- have been rejected by the impugned order-in-appeal. Part of the refund have been rejected on the ground that input services namely vehicle parking charges, photocopy charges and rent-a-cab service appear to have no nexus with the output services provided. Part of the refund has also been rejected on the ground that from the date of invoice for export service, the claim filed is hit by limitation (one year). The Adjudicating Authority has held that para 3(b) of Notification No. 27/2012-CE (NT) prescribes that, the application alongwith documents shall be filed before the expiry of the period specified in Section 11B of the Central Excise Act. Accordingly, he found that some of the invoices relating to export made for which claims were filed, the period exceeded more than one year from the date of invoice/ export.

Sl. No.	OIO No.	Period of dispute	Amount of refund claimed	Allowed	Rejected
1	6	July 2013 – Sept.2013	4,37,017	2,75,678	1,61,339
2	7	October, 2013 – Dec. 2013	7,10,834	4,34,114	2,76,720
3	8	Jan. 2014 – March, 2014	7,63,523	4,52,959	3,10,564
4	9	April 2014 – June, 2014	8,02,612	4,55,530	3,47,082
5	13	July 2015 – Sept. 2015	9,46,169	6,31,307	3,14,862
6	14	April 2015 – June 2015	5,62,674	3,59,674	2,03,585
		Total	44,22,829	26,08,677	16,14,152

3. Learned Counsel for the appellant urges that under Rule 3(2) of Export of Service Rules, 2005, it is provided that for completion

of the transaction for export of service, it is essential that the service provider should have received the remittance in convertible foreign exchange. Thus, the relevant date for computation of limitation under section 11B of the Act, shall start from the date of receipt of payment. It is further urged that under the provisions of Rule 5 of Cenvat Credit Rules read with Notification No. 27/2012-CE, only one refund claim has to be filed for each quarter. Thus, for all completed export transaction during a quarter, the limitation shall start only from the end of the quarter when the right to file refund claim crystalises. Thus, from the facts on record, if limitation of one year is calculated from the end of the quarter, it is evident that all the refund claims have been filed in time.

4. Learned Counsel also relies on the ruling of this Tribunal in their own case being Final Order No. 70647/2019 dated 19.03.2019 in Appeal No. ST/70616/2018-ST (SM), wherein the Allahabad Bench under similar facts and circumstances have taken notice that by subsequent amendment Notification No. 14/2016-CE (NT) dated 01.03.2016, the Notification No. 27/2012-CE was amended to the effect that the time limit fixed – one year for claiming such refund of accumulated cenvat credit shall be calculated from the date of receipt of payment in convertible foreign exchange.

5. Heard the parties on this issue.

6. Considering the rival contentions, I hold that the Court below have erred in rejecting the part of refund on the ground of

limitation. Accordingly, this ground is decided in favour of the appellant.

7. The next ground relates to rejection of cenvat credit taken by the appellant, on the services namely photocopy charges, vehicle parking charges and rent-a-cab service.

8. So far rejection of cenvat credit on the aforementioned services is concerned, I find that the Court below have not followed the prescribed procedure i.e. issue of notice under Section 14 of Cenvat Credit Rules for rejection of cenvat credit taken.

9. In this view of the matter, I hold that rejection of cenvat credit in part is bad and accordingly the same is set aside and this ground is decided in favour of the appellant.

10. Accordingly, in view of my findings recorded above, the appeal is allowed and set aside the impugned order, so far as rejection of part of refund claim. The appellant is held entitled to grant of refund of Rs. 16,14,152/-. The Adjudicating Authority is directed to grant the balance amount of refund with interest as per rules within a period of 45 days from the date of receipt of a copy of this order, with interest under Section 11BB of the Central Excise Act. Thus, the appeal is allowed.

(Operative part of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant