IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 30.5.2017
Date of Pronouncement: 22.9.2017

Appeal No. ST/57902/2013-DB

(Arising out of Order-in-Appeal No. 58/ST/DLH/2013 dated 28.2.2013 passed by the Commissioner of Central Excise, (Appeals), New Delhi)

M/s Jaguar Overseas Ltd. Appellant

Vs.

CCE, New Delhi Respondent

Appearance

Shri Vikas Khandelwal, CA - for the appellant

Ms. (Dr.) Neha Garg, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 56701/2017

Per V. Padmanabhan :

The appeal is against the Order-in-Appeal No. 58/2013 dated 28.2.2013. The appellant filed a refund claim dated 7.7.2010 seeking refund of unutilised Cenvat credit lying in their account during the period January 2010 to March, 2010. The claim was made on the ground that they have used various input services in providing the output service of works contract service which was exported out of India. The claim, made under Rule 5 of the Cenvat Credit Rules, 2004 was partially allowed by the adjudicating authority. Against the part of the refund which was rejected, the case was agitated before the Commissioner (Appeals) who, vide the impugned order upheld the original order. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Vikas Khandelwal, CA for the appellant as well as Dr. Neha Garg, D.R.

3. The submission of the appellant is that they have used input services for providing the output service which has been exported, but also for providing exempted services such as trading within the country. However, it is his submission that the Cenvat credit has been availed by them only in respect of the input services used in the export of service. Accordingly, it is their claim that they are entitled to the refund of the entire unutilised Cenvat credit in their account during the period of claim. He further submitted that the refund claim has been unfairly restricted in terms of clause 5 of the appendix to the Notification No. 5/2006-CE(NT) dated 14.3.2006. He further submitted that vide section 74 of the Finance Act, 2010 the illustration given under clause 5 as above has been deleted with retrospective effect from the date of issue of notification i.e. 14.6.206.

4. The ld. DR justified the impugned order. She submitted that even though the illustration under clause 5 was deleted, the

requirement of restricting the input service credit to the extent of the ratio of export turn over to the total turnover for the given period continues in the notification. Accordingly, she justified the restriction imposed on the refund claim.

5. We have considered the submissions made by both the sides as well as perused the appeal record.

6. Refund of unutilised Cenvat credit is allowed to be sanctioned in terms of Rule 5 of Cenvat Credit Rules. The Notification No. 5/2006 dated 14.3.2006, spells out the procedure, conditions and limitations for grant of such refund. The controversy is with reference to Condition No. 5 in the said notification which reads as follows :

> "5. The refund of unutilised input service credit will be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.
>
> ~~{[i.e. Maximum refund – Total CENVAT credit taken on input services during the given period x export turnover Total - turnover~~
>
> ~~Illustration: If total credit taken on input services for a quarter = Rs. 100~~
>
> ~~Export turnover during the quarter = Rs.250~~
>
> ~~Total Turnover during the quarter = Rs.509~~
>
> ~~Refund of input service credit under Rule 5 of the CENV AT Credit Rules, during the quarter 100*250/500 i.e. Rs. 50)~~...deleted with retrospective effect from the date

of issue of notification (i.e. 14.6.2006) vide section 74 of Finance Act, 2010}

Explanation : For the purposes of condition no. 5,-

1. "Export turnover" shall mean the sum total of the value of final products and output services exported during the given period in respect of which the exporter claims the facility of refund under this rule.

2. "Total turnover" means the sum total of the value of,-

(a) all output services and exempted services provided, including value of services exported;

(b) all excisable and non-excisable goods cleared, including the value of goods exported;

(c) The value of bought out goods sold, during the given period."

6. From the above, it is seen that even though the illustration regarding the maximum refund permissible stands deleted vide Finance Act, 2010, the restriction of refund to the extent of the ratio of export turn over to the total turnover still remains in the condition.

It is an admitted fact on record that the appellant has rendered output services which are exported as well as exempted services for which no service tax is payable. Consequently, in terms of the above condition 5 of the said notification, the restriction applied on the refund claim is justified.

7. The claim of the appellant is that the restriction as discussed above cannot be imposed on the refund claim for the reason that the appellant is already maintaining separate books of account for taxable and exempted services and, therefore, Cenvat credit taken by them as per Rule 6(2) pertains to export of services only. This aspect has been discussed in the impugned order as follows :

> ***"As per the provisions of Rule 6 ibid, the appellants exercised their option of maintaining separate accounts for taxable and exempted services. The right of the appellants to exercise this option has not been challenged by the adjudicating authority. But the said rule is independent of the applicability of the conditions of both of Rule 5 of Cenvat Credit Rules, 2004 and of Notification No. 5/2006-CE(NT) dated 14.3.2006. The safeguards, conditions and limitations set out in the Appendix to the above notification nowhere mentions that service tax paid on services used for exempted services should be excluded for the purpose of ascertaining the total Cenvat credit taken on input services during the given period."***

8. We are in agreement with the findings of the lower authority as above. Hence, we find no reason to interfere with the impugned order which is sustained and the appeal dismissed.

(Pronounced in Court on 22.9.2017)

(S.K. Mohanty) (V. Padmanabhan)
Member (Judicial) Member (Technical)

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