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

Date of Hearing/Decision: 25.09.2017

Appeal No. ST/51119/2014-SM

(Arising out of Order-in-Appeal No. LTU/APPL/CE/44/2013 dated 18.11.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, New Delhi)

Exl Services Com India Pvt Ltd. Appellant

Vs.

CCE & ST-Ltu Delhi Respondent

Appearance

Shri Rachit Jain, Advocate - for the appellant

Shri R.K. Mishra, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56924/2017

Per Ashok Jindal :

1. The appellant is in appeal against the impugned order wherein the refund claim filed under Rule 5 of the Cenvat Credit Rules, 2004 has been denied.

2. The brief facts of the case are that the appellant is an exporter of services and filed refund claim of unutilised Cenvat Credit lying unutilised in their Cenvat Credit Account under Rule 5 of the Cenvat Credit Rules, 2004 for export of services. The refund claim filed by the appellant has been rejected by the authorities below on the premise that the services in question on which Cenvat Credit availed by the appellant are not input service as per Rule 2(l) of the Cenvat Credit Rules, 2004, therefore they are not

entitled to avail Cenvat Credit. Aggrieved to the said order, the appellant is before me.

3. Heard the parties and considered submissions.

4. In this case it is an admitted fact that at the time of availment of Cenvat Credit, it has not been disputed to the appellant that these are not input services on which they have availed Cenvat Credit. Only at the time of filing of refund claim under Rule 5 of the Cenvat Credit Rules, 2004, it has been disputed that the input services of which Cenvat Credit was taken and lying unutilised is not admissible to the appellant as the services are not input services as per Rule 2 (l) of the Cenvat Credit Rules, 2004. As at the time of availment of Cenvat Credit, it has not been disputed, therefore, the refund claim can't be denied merely on the ground that of services in question were not input services as held by this Tribunal in the case of *EXL Service. Com (India) Pvt. Ltd. Versus Commissioner of Central Excise, Noida* 2017 (8) TMI 1002-CESTAT ALLAHABAD.

5. Therefore, I hold that at this stage it cannot be challenged that services on which Cenvat Credit was availed by the appellant are not input service.

6. In these terms, I set aside the impugned order, and allow the refund claim filed by the appellant.

7. In result, the appeal is allowed with consequential relief.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha