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/60378/2013-SM

(Arising out of Order-in-Appeal No. LTU/APPL/40/2013 dated 30.08.2013 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 G.R. Singh, A.R. - for the respondent

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

Final Order No. 56928/2017

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the Ld. Commissioner (Appeals) hold that as per clause 5 of Notification No. 5/2006 dated 14/03/2006, the appellant has claimed excess refund claim.

2. The brief facts of the case are that the appellant is exporter and as Cenvat credit could not be utilised by them, therefore, they filed the refund claim as per Notification No. 5/2006 dated 14/03/2006 for Cenvat credit remain unutilised in their Cenvat credit account. As per clause 5 of the said Notification the appellant calculated the total Cenvat credit as Rs. 76,81,735/- whereas the Ld. Commissioner was of the view that total Cenvat credit availed means the total amount of

unutilised Cenvat credit i.e. 56,96,672/-. Therefore, the dispute arose and refund claim on the basis of that formula was reduced to the extent. Aggrieved to the said order the appellant is before me.

3. Heard the parties and gone through the contents of the notification. For better appreciation the Clause 5 of the Notification No. 5/2006 dated 14/03/2006 is incorporated as under:

> *The refund of unutilised input service credit will be restricted to the extent of the ratio of export turn over to the turnover for the period to which the claim relates i.e.*
>
> *Maximum refund≤ Total CENVAT credit taken on input services during the given period× export turn over ÷ Total turnover*.

4. As per the notification the word as has been mentioned total Cenvat Credit taken on input service during the given period. The Ld. Commissioner (Appeal) has misinterpreted the said term as total Cenvat Credit remained unutilised during the impugned period. This is totally misinterpretation by the Ld. Commissioner (Appeal) in the impugned order where he has observed as under:

"The refund of unutilized 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.

$$\text{Maximum refund} = \frac{\text{Total Cenvat credit taken on Input services during the given period X Export Turnover}}{\text{Total Turnover}}$$

1. Total Amount of unutilised CENVAT Credit- 55, 96,672/- (A)
2. Total Amount of Cenvat Credit disallowed by the original authority- 83,031/- (B)

3. Total Amount of Cenvat Credit= (A-B) 55,96,672/--83,031/-
   =55,13,641/-
4. Total Turnover- 39,62,63m615/- (Export + Domestic)
5. Total Export Turnover Rs. 37,39,35,222/-
6. Amount of refund allowable=55,13,641 X 37,39,35,222 = 52,02,962
   39,62,63,615/-

5. I find that similar issue came before this Tribunal in the case of *D.E. Shaw India Software Pvt. Ltd. V/s CC, CE&ST, Huderabad-II* 2016-VIL-398-CESTAT-HYD-ST wherein this Tribunal has examined the formula and observed as under:

> *12. The Ld. Counsel for appellant in addition has put forward the contention that the refund allowed has been reduced by an amount of Rs. 83,744/- as the original authority wrongly applied the formula provided in condition 5 of the Notification No. 5/2006-CE(NT) dt. 14/03/2006.*

As per the clause 5, the formula is:-

Maximum refund =

Total Cenvat credit taken on Input services during the given period X Export Turnover

Total Turnover

(A) Export turnover of taxable service Domestic turnover of taxable service	=	Rs. 49,21,17,614 Rs. 77,65,716 -------------------
(D) Total Turnover	=	Rs. 49,98,83,330 -------------------
(E) Total credit taken on input services	=	Rs. 65,58,699
Total unutilized credit on input service	=	Rs. 57,58,829

(ii) Refund of input service credit	=	(E × A)/D
	=	$\frac{6558699 \times 492117614}{499883330}$
	=	6456809
(iii) Amount of refund of input tax credit would be (unutilised credit or refund eligible as per Rule 5 whichever is lower)	=	57,58,829

7. As there is a clear mandate that as per the Notification the term is to be read as "total Cenvat Credit availed during the impugned period". It does not be mean that total Cenvat Credit remain unutilised, in that circumstances, the Ld. Commissioner (Appeals) has misinterpreted the formula of the Notification No. 5/2006 dated 14/03/2006. Therefore, the impugned order deserves no merits. Accordingly, the same is set aside. To calculate the Cenvat credit entitled for the appellant the term total credit availed shall be read as " Rs 76,81,735/- after taking that amount for consideration as per Clause 5 of the Notification the refund claim shall be recalculated and after correct calculation refund claim is to be given to the appellant.
8. With these terms the appeal is disposed off.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha