CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/51422/2017-CU [SM]

[Arising out of Order-in-Appeal No. 203/ST-DLH/2017-18 dated 18.05.2017 passed by the Commissioner of CGST (EAST), New Delhi.]

M/s. Syntech Technology (P) Ltd. …Appellant

Vs.

C.S.T., Delhi-II … Respondent

Appearance:
None (Filed written Note) for the Appellant
Mr. G.R. Singh, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing.14.11.2017
Date of Decision._24.11.2017

Final Order No. 58064 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 18.05.2017 passed by the Commissioner (Appeals) Central Excise New Delhi.

2. Brief facts of the case are that the appellant is registered with service tax Department under the taxable category of Business Auxiliary Service and Business Support Service, classified under Section 65(19) and Section 65(104c) read with Sub-Section (105) (zzb) & (105) (zzzq) receptively of the Finance Act, 1994. The appellant avails cenvat credit in respect of the

input services used for providing the output service. During the period October 2015 to December 2015, the appellant had filed the refund application on 10.08.2016 in terms of the Notification No. 27/2012-CE (NT) dated 18.06.2016 issued under Rule 5 of the Cenvat Credit Rules, 2004. The ld. Adjudicating authority sanctioned partial refund claim and denied the claim amounting to Rs. 5,78,163/-, on the ground that the services mentioned in the invoices by the service providers are not used as input service by the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the adjudication order, holding that the disputed services on which the credit has been taken by the appellant are not used in providing output services and also do not qualify as input service.

3. None appeared for the appellant. Filed written submission, with the prayer for deciding the appeal on the basis of the submissions made therein. The ld. DR appearing for the respondent reiterated the finding recorded in the impugned order.

4. The disputed services namely, rent-a-cab, Outdoor Catering, Legal Service were not considered by the authority below as input service for the purpose of availment of cenvat credit by the appellant on the ground that the said services are not confirming to the definition of input service and also not used for providing the exported output services. On perusal of the definition of input service contained in Rule 2(l) *ibid*, it reveals that all the disputed service are covered under the inclusive part of such definition for the purpose of the cenvat benefit. Further

under the amended definition of the input service w.e.f 01.04.2012, there is no requirement of use of the input service for providing the output service exported by the assessee. Since the present definition of input service allows the taxable services, excepting the services falling under the excluded category itemized therein, it cannot be said that input services used for export of goods should not merit consideration for the refund benefit. Since the requirement for use of taxable service for export of output service under the amended definition of input service, is absent w.e.f. 01.04.2012, the service tax refund on the disputed services cannot be denied, on the ground that those services were not exclusively used for exportation of output service.

5. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favor of the appellant.

(Pronounced in the open court on __24.11.2017__)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi