IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:09.03.2018

Service Tax Appeal No.1559/2011-ST (SM)

[Arising out of Order-in-Original No.256/S.Tax/D-II/2011 dated 21.07.2011 passed by the Commissioner of Central Excise (Appeals), New Delhi]

M/s. H & S Software Development and Knowledge Management Centre Pvt.Ltd. Appellants

Vs.

CCE, Delhi-I Respondent

Appearance:

Rep. by Shri Sumit Jain, C.A. for the appellant.
Rep. by Shri K. Poddar,AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No.51047/2018

Per S.K. Mohanty:

Heard both sides and perused the case records.

2. Rejection of refund claim under Rule 5 of Cenvat Credit Rules, 2004 is the subject matter of present dispute. The ld. Commissioner (Appeals) while upholding the rejection of refund claim by the Original Authority, has held that in respect of four refund applications, the same were filed beyond the limitation period provided under Notification No.5/2006-CE (NT) dated 14.03.2006. The remaining refund applications filed for the period April, 2008 to December, 2008 were rejected on the ground that cenvat credit is not eligible due to payments made for the taxable services in the subsequent quarters.

3. The appellant is engaged in the business of providing services of computer software and I.T. services. The appellant is also registered with Service Tax

Department as 100% Export Oriented Unit. The appellant is eligible to export its services without payment of service tax. During the disputed period, the appellant had availed cenvat credit of service tax paid on the input services received by it. In respect of the service tax paid under Reverse Charge Mechanism, the appellant also availed the cenvat credit of such amount for utilization towards the output service. However, since the appellant was a 100% EOU, there was no scope for utilization of the cenvat credit and accordingly, the appellant had filed the refund application under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No.5/2006-CE (NT) dated 14.03.2006. With regard to limitation period, for filing the refund application, the notification dated 14.03.2006 vide paragraph-6 provides that the refund claim application has to be filed in proper format before the expiry of the period specified in Section 11 B of the Central Excise Act, 1944. In this case, the appellant as recipient of service, deposited the service tax under Reverse Charge Mechanism on 5.6.2008 and thereafter, filed the refund application on 4.11.2008. For consideration of the relevant date, for the purpose of Section 11 B of the Act, the appellant submits that the statutory requirement is one year from the date of payment of service tax. On perusal of the statutory provision, I also find that it has been specifically provided that the relevant date should be considered as the date of payment of duty/service tax. Since the service tax amount in question was paid on 5.6.2008 and the refund application was filed on 4.11.2008, in my considered view, the same is not barred by limitation of time, having been filed within one year from the relevant date. The decision of this Tribunal in the case of **Scioinspire Consulting Services (I) P. Ltd. – 2017 (47) STR 188 (Tribunal-Chennai)** and **Contata Solutions Pvt. Ltd. – 2017 (51) STR 423 (Tribunal-**

Allahabad) are distinguishable from the facts and circumstances of the present case. Inasmuch as, the relevant date prescribed under Section 11 B of the Act has not been discussed in those decided cases. Thus, I hold that the appellant is entitled for the refund of service tax paid for the period Jan. 2006 to March, 2006, July, 2006 to September, 2006, Jan. 2007 to March, 2007 and October 2007 and December, 2007.

4. With regard to denial of refund claim on the ground that the cenvat credit is not eligible due to payment made in subsequent periods, I do not find any justifiable reasons placed by the appellant, at this juncture, for accepting such contentions in its favour. However, since the appellant has submitted a chart showing that after payment of service tax, the refund claim was filed by the appellant, I am of the view that the matter should go back to the Original Authority for verification of the payment particulars and the date of filing the refund application. If, after payment of service tax, the appellant had filed the refund application, the benefit of refund should be granted to the appellant. Before deciding this issue afresh, the appellant should be given opportunity of hearing to explain its case. Accordingly, with regard to refund application filed for the period Jan. 2008 to December, 2008, the matter is remanded to the Original Authority for necessary verification of the documents.

5. The appeal is disposed of in the above terms.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

Ckp.