

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 06.03.2018

Appeal No. ST/53943/2014- [DB]

[Arising out of the Order-in-Appeal No. 26-SM-ST-D-II-14 dated 17/04/2014 passed by the Commissioner of Service Tax-SERVICE TAX - DELHI]

Target Sourcing Services India Pvt Ltd ...Appellant

Vs.

C.S.T.-Service Tax - Delhi ... Respondent

Appearance:

Present Shri Deepak Jain, Advocate for the appellant

Present Shri Amresh Jain, DR for the respondent

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

FINAL ORDER No. 51087/2018

Per S.K. Mohanty

1. This appeal is directed against the impugned order dated 17/04/2014 passed by the Commissioner (Appeals), New Delhi.
2. Brief facts of the case are that the appellant is registered with the Service Tax Department for providing the taxable services namely, Business Auxiliary Service and Erection Commissioning and Installation Service. During the period March 2008 to June 2009, the appellant had filed the refund application under Notification No. 05/2006-CE (NT) dated 14/03/2006, claiming refund of Rs. 1,04,01,103/-. The refund application was filed on the ground that due to export of service, the appellant could not utilize the Cenvat Credit and the same were lying unutilized in its books of account. The refund application filed by the

appellant was rejected by the authorities below on the ground that invoices issued by the service provider were in the different address than the address shown in the registration certificate issued to the appellant. Further, the authorities below have also held that the appellant did not produce the relevant invoices before them for scrutiny, and as such, the benefit of refund is not available.

3. Heard both sides and perused the records.
4. We find that taking of Cenvat Credit by the appellant in respect of the disputed services was not objected to by the appellant. Since due to exportation of service, the appellant was not in a position to utilize the Cenvat Credit and the input services have the nexus with the output services provided by it, denial of refund benefit on the procedural ground that the invoices did not mention the correct address, cannot be sustained. Accordingly, we hold that the appellant should be entitled for refund of Cenvat Credit in respect of the services used/ utilized for the exported taxable service. However, we find that some of the refund claimed amount has been rejected on the ground that the appellant did not produce the relevant invoices before the Adjudicating Authority. For consideration of the refund benefit since the invoices were required to be verified, we are of the view that rejection of refund claim by the authorities below cannot be faulted with. However, since the Ld. Advocate for the appellant, at this juncture, submits that the appellant can produce the original documents before the Original Authority, we are of the view that the matter should go back to the Original Authority for verification of the invoices to be produced by the appellant.

Therefore for the limited purpose of verification of the invoices, we remand the matter to the Original Authority. Upon verification of the invoices if the Original Authority is satisfied that the required particulars are available therein, then the refund benefit should be granted to the appellant.

5. The appeal is disposed of in above terms.

[Order dictated and pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

Rekha