CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SMB
Court – I

Appeal No. ST/30756/2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-004-APP-0347 & 0348-16-17 dated 28.02.2017 passed by Commissioner of Service Tax (Appeals), Hyderabad)

Value Labs L L P **…..Appellant(s)**

Vs.

Commissioner of Customs, Central Excise
& Service Tax, Hyderabad - IV **…..Respondent(s)**

Appearance
Shri R. Sudhakar, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. P. Venkata Subba Rao, Member (Technical)

Date of hearing: 16/05/2018
Date of decision: 16/05/2018

FINAL ORDER No. A/30573/2018

[Order per: P. Venkata Subba Rao]

The appellant had filed an application for refund of CENVAT credit under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) for the period April, 2014 to

March, 2015 and produced necessary documents. The Deputy Commissioner issued an show cause notice dated 30.10.2015 calling upon the appellant to explain why the refund claim under Rule 5 of the CENVAT Credit Rules, 2004 should not be denied. After following due process, the Deputy Commissioner issued Order-in-Original No. 07/2016-17-ST(Tech-II)-Refund dated 27.04.2016 sanctioning refund of Rs.1,34,98,634/- and rejecting an amount of Rs. 12,37,997/-, on the ground that some input goods or services cannot be deemed to be used for providing the output services. Aggreived, the appellant filed an appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. HYD-EXCUS-004-APP-0347 & 0348-16-17 dated 28.02.2017, examined if each of those services can be claimed as input services and allowed refund in respect of some and disallowed the rest. The present appeal of the appellant is against is Order-in-Appeal explaining the various input services for which the refund was disallowed by the Commissioner (Appeals). The Learned Counsel for the appellant reiterated the arguments made in the appeal. He also argued that the application is for claiming of refund under Rule 5 of CENVAT Credit Rules, and not about denial of credit or recovery of erroneously taken credit they should be governed only by the formulae given in Rule 5 and the Notification No. 27/2012-CE.

2. The Learned Departmental Representative reiterated the arguments made in the Order-in-Appeal and Order-in-Original and he vehemently opposed the appeal.

3. I find that Rule 5 of CENVAT Credit Rules has a formula for sanction of refund of CENVAT credit when goods or services are exported. In this scheme, proportionate refund on the CENVAT credit availed by the appellant during the particular period on input services or goods is available whether or not these goods and services are related to the exported output goods or services. Rule 5 of CENVAT Credit Rules reads as follows:

> **"5. Refund of CENVAT Credit**. –
>
> (1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:
>
> $$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services})}{\text{Total turnover}} \times \text{Net CENVAT credit}$$
>
> Where,-
>
> (A) " Refund amount" means the maximum refund that is admissible;
>
> (B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;
>
> (C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
>
> (D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-
>
> Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;
>
> (E) "Total turnover" means sum total of the value of –
>
> (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
>
> (b) export turnover of services determined in terms of clause (D) of subrule (1) above and the value of all other services, during the relevant period; and
>
> (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed."

In view of the above, once input credit is allowed, the exporter is entitled to refund of proportionate amount of CENVAT credit. If the export turnover of the exporter is say 40% of his total turnover during the period, 40% of the net CENVAT credit can be refunded to them. It does not matter which components of the CENVAT credit pertains to which input goods or services. Even if one input service is exclusively used for export and another used for their domestic transactions, the exporter is entitled only the proportionate amount is total CENVAT credit. Notification No. 27/2012 issued under Rule 6 also does not deviate from this scheme. Therefore, the Deputy Commissioner should have calculated the total net CENVAT credit and applied the formula and allowed the refund accordingly. If the assessee has, in fact availed CENVAT credit on input goods or services wrongly which needs to be recovered, then such amount should have been recovered through a notice under Rule 14 of CENVAT Credit Rules, 2004 and any other relevant provisions and following the appropriate procedure. Rule 5 of CENVAT credit Rules is not an instrument for the purpose. I, therefore, find it proper to remand the matter back to the Deputy Commissioner to decide the refund amount applying the formula given in Rule 5 of CENVAT Credit Rules.

4. In conclusion, I remand the matter back to the Deputy Commissioner to decide the refund claim of the appellant applying

the formula given in Rule 5 of the CENVAT Credit Rules. The appeal is allowed by way of remand.

(Order pronounced and dictated in open court)

(P. VENKATA SUBBA RAO)
MEMBER(TECHNICAL)

Lakshmi….