CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench

Court – I

Appeal No. ST/31215/2018

(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-30-18-19 dt.24.07.2018 passed by CCT (Audit), Guntur)

M/s Control Component India Pvt Ltd
No.900, North R-1, Sri City SEZ,
Satyadev Mandal, Chitthoor District,
Andhra Pradesh – 517 588 **......Appellant**

VERSUS

Commissioner of Central Tax, Tirupati-GST
West Church Compount, MR Palli Road,
Chitthoor, Andhra Pradesh – 517 507 **......Respondent**

and

Appeal No. ST/31017/2018

(Arising out of Order-in-Appeal No. TTD-EXCUS-000-APP-005-18-19 dt.27.04.2018 passed by CCT (Audit), Guntur)

M/s Control Component India Pvt Ltd
No.900, North R-1, Sri City SEZ,
Satyadev Mandal, Chitthoor District,
Andhra Pradesh – 517 588 **......Appellant**

VERSUS

Commissioner of Central Tax, Tirupati-GST
West Church Compount, MR Palli Road,
Chitthoor, Andhra Pradesh – 517 507 **......Respondent**

Appearance

Shri P. Venkata Prasad, Chartered Accountant for the Appellant.
Shri A.V.L.N. Chary, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30653-30654/2019

Date of Hearing: 03.07.2019
Date of Decision: 03.07.2019

[Order per: P.V. SUBBA RAO.]

1. These two appeals are filed by the appellant on the same issue and hence are being disposed of together.

2. Heard both sides and perused the records.

3. The appellant herein is a unit in SEZ engaged in export of control valves and desuperheaters including parts and accessories classifiable under Chapter 81 of the Central Excise Tariff Act, 1985. Appellant claimed refund of service tax paid on services used for SEZ authorized operations in terms of Notification 12/2013-ST dated 01.07.2013 amounting to Rs.1,38,62,091/- (95,75,300 + 42,86,791). After issuing show cause notices and adjudication the claims of the appellant were partly allowed and partly denied by the original authority. On appeal, in the impugned orders, the first appellate authority allowed some other amounts which were denied by the original authority but still denied some amounts of refund. The details of these are as per the table below:

S.No.	Particulars	ST/31215/2018	ST/31017/2018	Total
1	Applied for refund	95,75,300	42,86,791	1,38,62,091
2	Refund denied as per OIO	15,25,153	9,01,722	22,26,875
3	Refund denied as per OIA	**4,38,489**	**1,04,008**	**5,43,289**

4. It is the denial of refund of Service Tax on these input services which are in dispute. There is no departmental appeal with respect to the amounts already refunded to the appellant by the original authority as well as by the first appellate authority and therefore the issue has reached finality to that extent. The reasons for denial of various services given by the lower authorities are as follows:

<u>In Appeal ST/31215/2018:</u>

S.No.	Nature of service	Amount	Reason for denial
1	Banking and Financial Services	1,74,214	Bank advices do not contain the name of the Appellant
2	General Insurance Services	1,27,094	Services availed are not general insurance but life & health insurance which are not in approved list
3	Rent a Cab service	62,780	Services availed prior to UAC approval
4	Technical Inspection and certification services	43,072	Documentary Evidence for payment to vendor
5	Technical Inspection service	23,404	Invoices are dated prior to the refund period
6	Maintenance or Repairs Services	6,677	Services not listed in approved list
7	Manpower recruitment and Supply Agency Services	754	Invoice was not submitted evidencing the receipt of manpower agency
8	Transport of goods by Road services	336	
9	Cleaning Activity Service	87	Lack of Documentary Evidence
10	Courier services	70	Services not utilized in the appellants unit
	Total	**4,38,489**	

<u>In Appeal ST/31017/2018</u>, the only denial is on the Banking & Financial Services to the tune of Rs.1,04,008/- stating that Bank advices do not contain the name of the Appellant.

5. Of the ten grounds on which the appellant was denied refund of services tax, Learned Chartered Accountant (CA) representing the appellant submits that he concedes that refund of general insurance services amounting to Rs.1,27,094/- is not admissible as the same appeared to be health insurance and specifically excluded from the entitlement of Cenvat credit. He also submits that he is not pressing for refund of amount of Rs.6,677/- on maintenance or repair services. He also said that he is not pressing the Manpower Recruitment and Supply Agency services, Transport

of goods by road services, Clearing Activity services and Courier Service as the amounts are petty. This leaves with the remaining 4 grounds on which refund was sought to be denied. After hearing both sides, I find these services as follows:

(1) Banking and Financial Services:

a. Refund of amount of Rs.1,74,214/- was denied to the appellant in appeal ST/31215/2018 and refund of Rs.1,04,008/- was denied to the appellant in appeal ST/31017/2018 under this head on the ground that bank advices issued by the bank based on which the appellant sought refund of service tax did not contain the name of the appellant at all. Learned CA submits that in terms of Rule 4A of Service Tax Rules [Proviso to Sub-Rule (1)], in case provider of taxable service is banking company or financial institution including non-banking or financial company provide service to any person an invoice, a bill or as the case may be, Challan shall include any document by whatever name called whether or not serially numbered, whether or not containing the address of the person receiving taxable service but containing other information in such documents as required under this Sub-Rule. He would submit that in case of banks, no individual invoices are often issued and hence sufficient latitude has been given by the law itself to claim service tax credit as well as refund. Learned CA took the Bench through some of the bank statements based on which they had claimed credit but it is not clear from the statements whether they pertain to the appellant or not. On this point, Learned departmental representative (DR) submits that exception given to the banking services under Rule 4A of Service Tax Rules is only that they may or may not be serially numbered and may or may not contain the address of the person receiving taxable services but they must contain all the other relevant information. In this case, the documents in question do not even have the name of the appellant. Therefore, no credit of service tax or refund of service tax is admissible on such services because it lacks the basic information essential even for the banking services.

b. Learned CA submits that he would be in a position to collect relevant information to substantiate his claim that these documents pertain to the services received by them. Accordingly, he prays that for this purpose the matter may be remanded to the original authority before whom they will produce all available evidence to satisfy him. I, therefore, find it proper to remand the matter to the original authority to examine the documents that may be produced by the appellant.

(2) <u>Rent a Cab Service</u>:

a. The amount of Rs.62,780/- denied as refund to the appellant on the ground that the services were availed prior to the UAC approval. He submits that this denial was only in appeal ST/31215/2018. In appeal ST/31017/2018 the first appellate authority himself has given refund of service tax paid on Rent a Cab services holding that the approval received by the appellant post availment of services is sufficient. Accordingly, the refund of service tax paid on Rent a Cab services may be allowed in appeal ST/31215/2018 also.

b. Learned DR concurs with the factual position that the first appellate authority has allowed refund of this service in appeal ST/31017/2018. Accordingly, I find no reason to deny refund of service tax paid on Rent a Cab services on this ground. I, therefore, hold that the appellant is entitled to refund of Rent a Cab services.

(3) <u>Technical Inspection and Certification services</u>:

a. This refund amounting to Rs.43,072/- was denied to the appellant on the ground that they had not produced any evidence of payment to the vendor. Learned CA submits that they have a running account with the vendor and they keep availing benefit of the services and keep paying them money periodically in the running account. Therefore, it is difficult to establish a one to one correlation between particular payment and particular invoice. This should not deprive them of either the credit of service tax paid or its refund.

b. Learned DR confirms that the service tax refund on this service was denied only on the ground that they were not able to produce evidence of payment against particular invoices. Learned CA submits that they can get a confirmation from the vendor that they had received payments in respect of all the disputed invoices and produce such confirmation before the original authority if the matter is remanded. It is my considered view that the original authority should get an opportunity to examine the evidence that may be produced by the appellant and decide about the entitlement of refund of service tax in respect of these invoices.

(4) Technical Inspection service:

In respect of these services an amount of Rs.23,404/- was sought to be denied on the ground that the invoices are dated prior to the refund period. Learned CA submits that they had claimed refund in terms of Notification 12/2013-ST which does not require the invoices to be dated during the period of claim of refund. It only requires that only one claim of refund is made during the quarter. In respect of the disputed invoices, although the invoices were raised on dates prior to the period of refund they had received these invoices only during that quarter and hence could only claim with respect to that quarter. In view of the clarification provided by the learned CA, I hold that appellant is entitled for refund of service tax in respect of this amount.

6. In view of the above, the appeals are disposed of as below:

i. Banking and Financial services in both appeals: The matter is remanded to the original authority in respect of which the appellants may present evidence before the original authority to demonstrate that the tax paid documents pertain to them.

ii. Rent a Cab services in appeal ST/31215/2018: Refund of service tax is allowed even in respect of services availed prior to the approval of UAC.

iii. Technical Inspection and Certification services in ST/31215/2018: The matter is remanded to the original authority to enable the appellant to produce evidence to establish that they have paid to the vendor with respect to each of the invoices.

iv. <u>Technical Inspection services in appeal ST/31215/2018</u>: The refund of the Service Tax is allowed.

The remaining part of the impugned order is upheld.

7. The two appeals are partly allowed, partly rejected and partly remanded to the original authority to examine the evidences that may be produced by the appellant and pass a reasoned order after following principles of natural justice.

(Operative part of this order was pronounced in the open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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