

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Appeal No. ST/75799 & 75800/2018

(Arising out of Order-in-Appeal No. 310-311/ST-I/KOL/2017 dated 20/11/2017 passed by the Commissioner of Central Excise (Appeals-I), Kolkata.

M/s. Acclaris Business Solution (P) Ltd.

Appellant (s)

Vs.

Commissioner of Service Tax, Kolkata

Respondent (S)

Appearance:

Mr. Chandani, Authorised Representative, for the Appellant
Shri K. Chaudhary, Suptd. (A.R.) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -24.08.2018

Order No. FO/77264-77265/2018

PER SHRI P. K. CHOUDHARY

As the facts, grounds and legal issues involved in both of the appeals are same, so they have been taken together for disposal. Briefly stated, facts of the case are that the Appellant is engaged in business of providing "Claim Processing" including "Basic Coding Activities," required for the claim processing to its customers located outside India. The appellant had filed two applications for refund of unutilized CENVAT credit amounting to Rs.15,64,887/- for the period July, 2014 to September, 2014 and Rs.12,95,324/- for the period January, 2013 to March, 2013 in terms of Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18/06/2012.

2. After issuing show cause notices to the assessee, the Assistant Commissioner of Service Tax North Division, Kolkata had disallowed the refund claimed by the assessee for Rs.7,26,777.00/- and Rs.4,92,453.00/- respectively, vide his order-in-original No.

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107/Refund/ND/ST-1/Kol/16-17 dated 21/09/2016 and 108/Refund/ND/ST-1/Kol/16-17 dated 21/09/2016 out of which the assessee is challenging for Rs. 5,77,703/- and Rs.2,03,935/- respectively in the present appeals, claiming that the disallowance of the refund on the unavailed CENVAT Credit is unwarranted.

The assessee had filed two appeals before the Commissioner of Central Excise (Appeals), Kolkata-II, which were dismissed vide the impugned orders upholding the order-in-original. Hence, the present appeals before this Tribunal.

3. The authorized representative of the assessee argued that the authorities below have illegally rejected the refund claim of unutilised CENVAT Credit on the grounds:-

(i) That the appellant did not submit the original copies of invoices and therefore, the CENVAT Credit amounting to Rs. 4,15,205/- and Rs. 1,35,001/- respectively was disallowed taking the plea that the CENVAT Credit cannot be availed on the basis of photocopies of invoices.

(ii) The assessing officer had disallowed the benefit for Rs. 27,558/- on the ground that the STC number of vendors was not mentioned on the invoices.

(iii) The assessing officer had also disallowed the benefit to the assessee on the ground that the assessee did not submit the payment challans made under the Reverse Charge Mechanism. Hence, CENVAT Credit for Rs. 72,724/- and 22,267/- cannot be availed.

(iv) The assessing officer also rejected the CENVAT Credit on the input services for professional fees of Rs. 61,586/- and 2,954/- respectively.

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(v) The assessing officer had also disallowed CENVAT Credit of Rs. 43,718/- on a discrepancy.

He further argued that the appellant had submitted all the original invoices before the adjudicating authority at the time of hearing, so disallowance of Rs. 4,15,205/- and Rs. 91,501/- was unjust in facts and circumstances of the case.

It was further argued that assessing officer had committed an error when he disallowed the refund claim in respect of reverse charges payments because all challans were duly submitted by the assessee before the adjudicating authority.

It is also argued that assessing officer cannot deny the benefit of tax paid on account of professional fee, as all the bills were submitted before the assessing officer.

He further submits that there is no provision for submission of the original bills for claiming refund. He further stated that the copies of TR 6 challans have been produced in the paper book of the present appeal.

He relied upon following judgments:

1. Ness Technologies (I) (P) Ltd. Vs CST, Mumbai [2016] (41) STR 984 (Tri.- Mumbai)
2. Megma Design Automation (I) Pvt. Ltd. Vs CST, Bangalore [2015] (40) STR 800 (Tri.-Bang.)
3. Mercedes Benz Research & Development India Pvt. Ltd. Vs. CST, Bangalore [2017] (49) STR 227 (Tri.-Bang.)
4. The Ld. D.R. re-iterates the orders of the Lower Authorities.
5. Heard both sides and perused the appeal records.
6. I find force in the arguments advanced by the counsel for the assessee and I also find that the present appeals are squarely covered by the decisions as relied upon by the appellants. The assessing officer did

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not have any valid ground for rejecting the refund claims of Rs. 5,77,073/- and Rs. 2,03,935/- respectively, for which the assessee is legally entitled to.

7. In view of the above discussions, the impugned orders cannot be sustained and are therefore set aside. The appeals are allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court.)

**Sd/-
(P.K. Choudhary)
Member (Judicial)**

Pooja