

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77778 of 2018

(Arising out of Order-in-Appeal No.205/S.Tax-I/Kol/2018 dated 16.03.2018 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Acclaris Business Solutions Private Limited

(201, Tower-2B, Eco Space, New Town,
Rajarhat, Kolkata-700107.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

(180, Rajdanga Main Road, Shantipally,
Kolkata-700107.)

APPEARANCE

Shri Pawan Maloo, Chartered Accountant for the Appellant (s)

Shri K.Chowdhary, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75400 / 2020

DATE OF HEARING : 4 November 2019

DATE OF DECISION : 10 September 2020

P.K.CHOUDHARY :

The instant appeal has been filed by assessee, M/s. Acclaris Business Solutions Pvt. Ltd, against denial of refund of accumulated credit on input services availed for export of services during the period from April 2012 to June 2012 vide Original Order dated 15.04.2016, as also upheld by the learned Commissioner (Appeals), Kolkata, vide Order-in-Appeal dated 16.03.2018, which is under challenge in this appeal.

2. Briefly stated, the facts of the case are that the appellant is a 100% exporter of services and is engaged in providing claim process services including basic coding activities for claims processing for customers located outside India. The said service qualifies as export of

services which is not in dispute. For the period in dispute, the appellant claimed refund of accumulated Cenvat Credit under Rule 5 of the CENVAT Credit Rules, 2004 (Credit Rules). Both the authorities below have denied the refund of an amount of Rs. 3,47,183/- while applying the formula prescribed for maximum permissible refund of credit amount. In the said formula, the authorities have included the value of export invoices for which payment has not been received in the relevant period while considering the value of “total turnover” so as to grant the refund proportionately.

3. Shri Pawan Maloo, learned Chartered Accountant, appeared for the appellant and Shri K. Choudhury, learned Authorized Representative appeared for the Revenue.

4. The learned Chartered Accountant submitted that the authorities have wrongly included the amount of export invoices raised in the relevant period for which collection has not been received while arriving at the value of total turnover, which is against the formula prescribed in Rule 5 of the Credit Rules. He also submitted that no other services have been provided by them and that they are engaged in rendering 100% export of services to customers located outside India. He relied on the decisions of the Tribunal in the case of M/s Kellogg and Andelson Management Service Pvt. Ltd vs. CST, Chennai 2018-TIOL-1775-CESTAT-MAD as well as Musigma Business Solutions Pvt Ltd. vs. CST, Bangalore 2018 (1) TMI 57 – CESTAT-Bangalore. He accordingly prayed that they be allowed the refund of the accumulated credit.

5. The learned Authorized Representative appearing for the Revenue supported the impugned order and reiterated the findings made by the learned Commissioner (Appeals) and prayed that the appeal filed by assessee do not have any merit inasmuch refund would be permissible only to the extent payment has been received for export invoices.

6. Heard both the sides and perused the appeal records in detail.
7. I find that the only issue for consideration before me is the ascertainment of eligible refund amount in terms of the formula prescribed in Rule 5 of the Credit Rules. The relevant portion of Rule 5 providing the formula for maximum permissible refund of Credit amount, as was applicable during the period in dispute is reproduced below:-

Refund amount	=	(Export turnover of goods + Export turnover of services)	×	Net CENVAT credit
		Total turnover		

- 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 sub-rule (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.....

On perusal of the above formula provided in the Credit Rules, it transpires from the perspective of a service provider that:-

(i) refund is allowed of the net Credit availed amount proportionate to the value of export of services.

(ii) the ratio for calculation of the proportionate refund is arrived at by considering the export value of services in the numerator and the total turnover in the denominator.

(iii) in the numerator, the export value would comprise of the value of export invoices issued during the relevant period for which payment has been received plus, the export invoices issued in the preceding period for which payment is received in the relevant period less, the advance amount received in the relevant period for which services have not been completed.

(iv) in the denominator, the total turnover would include the export value as derived in (iii) above plus "value of all other services". In my view, value of all other services would necessarily mean the value of domestic services rendered by the service provider as it would be quite possible that the service provider would be engaged in rendering both export services as well domestic services. The law intends to restrict refund only to export services by way of above formula and not for the domestic services.

In the instant case, the lower authority has allowed refund of Rs.4,73,929/- and rejected the balance refund of Rs.3,47,183/-. While arriving at the total turnover, they have taken the aggregate of the value of export invoices for which payment has been received (Rs.6,79,78,169/-) and the value of export invoices for which payment has not been received in the relevant period (Rs.4,62,61,441/-), i.e.

total Rs.11,42,39,610/- in the denominator, whereas, in the numerator, they have considered Rs.6,79,78,169/- i.e. the value of export services as above.

8. In my view, in both the numerator and denominator, the amount of export turnover have to be considered i.e. Rs.6,79,78,169/- when there is no domestic services rendered by the assessee appellant inasmuch as the “value of all other services” would be ‘NIL’ in the given case. There is no reason to consider the aggregate of the value of export turnover payment of which has been received and those for which payment has not been received, since not required in the prescribed formula above. When the value of export services has been considered for which payment has been received, in that case the refund is automatically allowed to that extent and therefore, there is no further need to add the value for which payment has not been received since not required as per the formula.

If at all, the contention of the lower authority is accepted, the assessee will never be allowed refund of the “Cenvat credit amount availed in the relevant period” inasmuch as the refund in the subsequent period would be allowed by considering the ‘net Cenvat Credit’ availed in that period. That is neither the intention of the law nor prescribed in the formula above.

9. In view of the above discussions, it is my considered view that the refund claim of Rs.3,47,183/- is admissible. The appeal is thus allowed with consequential relief as per law.

(Order pronounced in the open court on 10 September 2020.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)