IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/85733/2018

(Arising out of Order-in-Appeal No. PK/101/APPEAL THANE/TH/2017 dated 08.11.2017 passed by Commissioner of CGST & Central Excise (Appeals), Mumbai)

Accelya Kale Solutions Ltd. **Appellant**

Vs.

Commissioner of CGST & CE Mumbai **Respondent**

Appearance:

Shri Harish Bindu Madhavan, Advocate for appellant
Shri Aakash Sarda, C.A
Shri V.R. Reddy, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 29.05.2018

FINAL ORDER NO. A/86926/2018

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in providing the taxable services under the category of 'Business Auxiliary Service' 'Information Technology Service' and 'Maintenance and Repair Service', defined under the Finance Act, 1994. During the period April to June '2013, the appellant had filed refund application in terms of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated

18.06.2012, in respect of the service tax paid on the input services, which were used in output service, exported by the appellant. While adjudicating the refund claim amount of Rs.39,51,995/- filed by the appellant, the original authority had allowed the refund benefit for Rs.32,22,487/- and rejected the balance amount of Rs.7,29,508/- on the ground that the disputed input services have no nexus with the output services provided by the appellant and that the disputed services are not confirming to the definition of 'input service' defined under Rule 2(l) of Cenvat Credit Rules, 2004. On appeal, the learned Commissioner (Appeals) has allowed the refund benefit for Rs.3,89,143/- and rejected the balance amount of Rs.3,40,065/- on the ground that no nexus have been established between the input and the output services. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Heard both sides and perused the records.

3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No. 18/2012-CE (NT) dated 17.03.2012, with effect from 01.04.2012. The said substituted rule has prescribed the formula for claiming refund of service tax by the service provider. Under such amended rule in vogue, there is no requirement of satisfying the nexus between the input services

and the output service provided by the service provider. Consequent upon substitution of the said Rule in the Union Budget – 2012, the Tax Research Unit (TRU) of CBEC vide letter dated 16.03.2012 has clarified as under:-

"F.1. Simplified scheme for refunds:

1. *A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of Cenvat Credit Rules, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.*
2. *... "*

3. On perusal of the statutory provisions read with the clarifications furnished by the TRU, it transpires that under the substituted Rule 5 of the rules, there is no requirement of showing the nexus between the input service and the output service provided by the assessee. Since the refund under the said amended rule is governed on the basis of receipt of export turnover to the total turnover, the establishing the nexus between the input and output service cannot be insisted upon for consideration of the refund application.

4. Therefore, I do not find any merits in the impugned order in denying the refund benefit to the appellant. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

Nsk