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

Appeal No. ST/85784 & 85787/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-595-17-18 dated 03.11.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

Visteon Technical & Services Center Pvt. Ltd. **Appellant**

Vs.

CCE & ST **Respondent**
Pune I

Appearance:

Shri Amit Agarwal, C.A. for appellant
Shri Atul Sharma, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 17.07.2018

FINAL ORDER NO. A/**86965-86966/2018**

Per: S.K. Mohanty

The issue involved in both the appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Denial of refund claim filed under Rule 5 of the Cenvat Credit Rules, 2004 is the subject matter of present dispute. The authorities below have rejected the refund claim filed by the appellant on the ground that the input services have no nexus with the output service exported by the appellant. Other

reasons were also assigned by the lower authorities for rejection of the refund benefits.

3. Heard both sides and perused the records.

4. Rule 5 of the Cenvat Credit Rules, 2004 was substituted by Notification No. 15/2012 dated 17.03.2012, with effect from 01.04.2012. The effect of such substitution was that the formula was prescribed under the amended rules, which the manufacturer or the service provider should follow for claiming the refund benefit. Consequent upon amendment of Rule 5 ibid, the Tax Research Unit (TRU) of CBEC has issued clarification dated 16.03.2012 providing that establishment of nexus between the input service and output service should not be insisted upon and the refund should be processed and considered on the basis of formula prescribed under the said Rule. The relevant clarification issued by TRU is extracted herein below:-

> *"F. Cenvat Credit Rules, 2004 :*
>
> *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."*

5. On perusal of the statutory provisions read with the clarification furnished by TRU, it transpire that for consideration of the refund application, it has to be only ensured that the refund claim is in consonance with the prescribed formula. Since there is no specific requirement under the Rule for establishing the nexus between input services and output service exported by the assessee, the nexus between the services cannot be insisted upon by the refund sanctioning authority.

6. In view of the fact that the authorities below have denied the refund benefit mostly on the ground that there is no nexus between input services and output service provided by the appellant, I am of the view that matter should go back to the original authority for consideration of the provisions of the amended Rule 5 read with TRU letter dated 16.03.2012 and thereafter, to determine whether the appellant is eligible for the benefit of refund as per the prescribed formula. The adjudicating authority should also consider other aspects of the issue mainly availment of excess benefit etc., before deciding the issue afresh.

7. In the result, the appeals are allowed by way of remand to the original authority for passing of denovo adjudication order in light of the above observations. Needless to say, that

opportunity of hearing should be granted to the appellant, before deciding the issue afresh.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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