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

Appeal No. ST/86473/2018

(Arising out of Order-in-Appeal No. MKK/499/RGD APP/2017-18 dated 05.01.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), CBD Belapur, Navi Mumbai)

3DPLM Software Solutions Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Tax, **Respondent**
CGST, Central Excise & ST, Raigarh

Appearance:

Shri Prasad Paranjape, Advocate for appellant
Shri O.M. Shivdikar, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 28.08.2018

FINAL ORDER NO. **A/87226/2018**

Per: S.K. Mohanty

In this case, the appellant is a 100% Export Oriented Unit (EOU), registered under STPI Scheme. The entire output services are exported by the appellant to its clients located abroad. The taxable service namely, Information Technology Service provided by the appellant is categorized as a taxable service, as per the definition provided under the Finance Act, 1994. The appellant avails CENVAT Credit in respect of various input services used / utilized for providing such output service. Since the appellant exports its entire output service, there was no scope for utilization of CENVAT Credit for payment of service tax on the output service. Therefore, during the disputed period, the appellant had filed refund application under Rule 5 of the Cenvat Credit Rules, 2004, claiming refund of accumulated CENVAT Credit in respect of input services. Refund benefit claimed for the period April 2011 to June 2011 was denied by the authorities below, on the ground that the credit particulars in respect of the input services were reflected in the ST-3 Returns for the period March 2012, which is after the date of export.

2. Learned Advocate appearing for the appellant submits that the Cenvat particulars on the input services reflected in ST-3 Returns for the month of March 2012, were in fact relatable to the period prior to June 2011. However, he submits that due to inadvertent, instead of showing the credit particulars in the relevant period, the same was reflected in the Returns filed subsequently. Learned Advocate also submits that the appellant had maintained adequate records to demonstrate that the credit particulars were relatable to the export of service during the period April to June 2011. Thus, he contended that for mere procedure lapses of non-reflecting the credit particulars for the period from April to June 2011, substantive right for the refund claim cannot be whittled down.

3. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order. He further submits that since the appellant had not produced any documents to demonstrate that input services, in dispute, were utilized for the services exported during the period April to June 2011, rejection of refund benefit by the authorities below is proper and justified.

4. Heard both sides and perused the records.

5. On perusal of the impugned order, I find that the learned Commissioner (Appeals) has upheld the adjudication order on the ground that the input credit has not been reflected in the relevant ST-3 Returns filed for the period April to June 2011. However, the appellant contended that due to inadvertence, the credit particulars were not reflected during such relevant period but the same were duly entered in the accounting records maintained by the appellant. In the Cenvat regime, there is no specific requirement regarding maintenance of statutory records in the prescribed registers, which were hitherto provided under erstwhile Central Excise Rules, 1944 and the MODVAT statute. Since the appellant contended that the disputed credit was availed during the period April to June 2011 for export of service effected during such quarter, the benefit of refund in terms of Rule 5 cannot be denied on mere non-reflection of the credit

particulars in the ST-3 Returns for such relevant period. Further, I find that the appellant had not produced any records to show that the credit particulars were really reflected in the Books of Accounts and were relatable to the services exported by the appellant during the period April to June 2011. Thus, I am of the view that the matter should be remanded to the original authority for verification of the accounting records maintained by the appellant, to satisfy himself that the credit was availed during the relevant period and services were utilized for providing the exported output service during such period. The original authority while adjudicating the matter afresh, should not insist the appellant for establishing the nexus between the input services and the output service, provided by it inasmuch as, the appellant is a 100% EOU and no services were provided to the domestic clients. Thus, it cannot be said that the appellant had not used the input service for export of the output service.

6. Therefore, after setting aside the impugned order, I remand the matter to the original authority for passing of fresh adjudication order in line with the above observations. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

7. In the result, the appeal is allowed by way of remand.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk