IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

APPEAL No.ST/87008 to 87014/2018

(Arising out of Order-in-Appeal No.MKK/567-573/RGD-APP/2017-18 dated 23/02/2018 & MKK/625-627/RGD-APP/2017-18 dated 22/03/2018 passed by the Commissioner of Central Excise & Service (Appeals), Navi Mumbai)

WTW Global Delivery and Solutions India Pvt.Ltd. : **Appellant**

VS

C.C.G.S.T, Navi Mumbai : **Respondent**

Appearance

Ms.Manasi Patil, Advocate for Appellant
Shri.Dilip Shinde, Asst. Comm. (A.R) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing : 31/08/2018
Date of decision : 31/08/2018

ORDER NO. A/87312-87318/2018

1. The learned Commissioner (Appeals) vide this common impugned order dated 23/02/2018 has disposed of various adjudication orders, rejecting the refund claims filed by the appellant under Rule 5 of the Cenvat Credit Rules, 2004. Since the issue arising out of the impugned order is common in respect of all these appeals,

the same are taken up for hearing together and a common order is being passed.

2. The appellant, in this case, is a 100% EOU and is engaged in the business of providing back office services, primarily computerized data processing services in areas of insurance and re-insurance Services. The entire output services are exported by the appellant to its group companies located in various parts of the globe. The appellant avails Cenvat Credit of Central Excise duty paid on the inputs/ capital goods and service tax on the input services for utilization towards the output services provided by it. Being a 100% EOU, there was no scope on the part of the appellant to utilize the Cenvat Credit for payment of service tax on the output services provided by it. Therefore, during the disputed period, the appellant had filed the refund applications under Rule 5 of the rules, claiming refund of accumulated Cenvat Credit available in its books of accounts. The refund applications filed by the appellant were adjudicated by the original authority in allowing the refund benefit of service tax paid on some of the input services. He had denied the refund benefit in respect of certain input services on the ground that those services are neither confirming to the requirement of Rule 2 (l) of the rules for consideration as input service, nor the documents based on which the credit availed are in conformity with the statutory provisions. The original authority also denied the refund benefit in respect of CVD paid on capital goods. On appeal against the adjudication orders, the learned Commissioner (Appeals) vide impugned order has denied the refund benefits of

service tax paid on Air Travel Agent service on the ground that the said service does not qualify as input service. He has also denied the refund claim in respect of CVD paid on the capital goods, holding that Rule 5 of the rules does not consider capital goods credit for the purpose of refund benefit. Ld. Commissioner (Appeals) also denied refund benefit in respect of certain invoices, on the ground that the appellant did not satisfy the requirement of Rule 9 (6) of the rules, entitling itself to claim refund of service tax paid on the input services.

3. Ld. Advocate appearing for the appellant submits that Rule 5 of the rules permits a service provider to claim refund of accumulated Cenvat Credit available in the books of accounts, which cannot be utilized in case of exportation of service. Thus, she submits that since there is no embargo/stipulation in Rule 5 of the rules for establishing whether the disputed service is confirming to the definition of input service, denial of refund claim on air travel agent service cannot be sustained. With regard to CVD paid on capital goods, she concedes that the appellant is not contesting denial of refund claim by the authorities below. With regard to the ground of rejection of refund applications for non-compliance of the requirement of sub-rule (6) of Rule 9, learned Advocate contended that being a service tax registered assessee, the appellant had complied with all the statutory requirements for availing the Cenvat Credit and since the credit has been rightly availed, on exportation of output service, the benefit of refund of accumulated Cenvat Credit cannot be denied.

4. On the other hand, the learned DR appearing for revenue reiterates the findings recorded in the impugned order. He further submits that sanction of refund claim filed under Rule 5 of the rules is subject to fulfillment of the conditions namely, eligibility for credit under Rule 2 (l) of the rules, establishing nexus between the input and output services etc., and that upon proper analysis of the statutory provisions, since the refund benefit has been denied by the authorities, such denial is in conformity with the statutory provisions.

5. Heard both sides and perused the records.

6. Rule 5 of the Cenvat Credit Rules, 2004 entitles a provider of output service to claim refund of service tax paid on the input services, used for exportation of the output service. Such refund is subject to fulfillment of the conditions mentioned in the said rule read with notifications issued there under. Rule 5 specifies the formula for claiming refund of service tax paid on the input services. On reading of the said rule, it transpires that there is no specific mention that the taxable service should conform to the requirement of Rule 2 (l) for consideration, whether such service is a input service or not and whether, such service has the nexus with the output service. Since Rule 5 of the rules is silent on these aspects, I am of the view that denial of refund benefit for air travel agent service on the ground that the said service does not qualify as input service, shall not stand for judicial scrutiny. Therefore, denial of refund benefit on such service is not proper and justified.

7. The appellant admits that it is not entitled for refund of CVD amount paid on the capital goods. Thus, I am of the view that the impugned order, denying the refund benefit of CVD amount cannot be interfered with at this juncture. Accordingly, the impugned order sustains, so far as it denied the refund benefit on the CVD amount claimed by the appellant.

8. With regard to denial of refund benefit on the ground that the requirements of Rule 9 (6) of the rules have not been complied with by the appellant, I find from the submission of the appellant that it had paid the service tax on the input services and those services were used for export of the output service. However, such submissions of the appellant have been negated in the impugned order. Thus, it is evident that there are contradictions between the findings vis-a-vis the submissions. Thus, in order to meet the ends of justice, I am of the considered view that the matter should be remanded to the original authority for a proper fact finding, whether the requirement of Rule 9 (6) of the rules have in fact been complied with by the appellant in true letter and spirit. It is made clear that the appellant should effectively participate in the fresh adjudication proceedings, without seeking for any undue adjournments.

9. In view of above discussion and analysis, the appeals filed by appellant are disposed of in following terms:

(a) Refund benefit on air travel agent service is available to the appellant. Thus, the impugned order denying such benefit is set aside and the appeal is allowed in favour of appellant.

(b) The impugned order sustains, so far as it denied the refund benefit on the CVD amount claimed by the appellant.

(c) As regards other issues, the matter is remanded to the original authority for fresh adjudication, as per the observations recorded in paragraph 8 above.

(Pronounced and dictated in court)

(S K Mohanty)
Member (Judicial)

PJ