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

Appeal No. ST/87373/2018

(Arising out of Order-in-Appeal No. V2(A)STII/208/2016 dated 09.03.2018 passed by Commissioner of CGST & Central Excise Belapur)

Vistaar System Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, Mumbai West **Respondent**

Appearance:

Shri D.H. Nadkarni, Advocate for appellant
Shri S.B. Mane, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 03.10.2018

FINAL ORDER NO. **A/88207 / 2018**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in providing various taxable services, defined under the Finance Act, 1994. It is an EOU and exports the entire output service to the over-seas entities. The appellant availed CENVAT Credit of service tax paid on input services used / utilized for providing the output services. Since the appellant was not in a position to utilize the CENVAT Credit for payment of service tax on the output services, it had filed refund applications before the jurisdictional Service Tax authorities, claiming refund of service tax paid on 'input services'. The said applications were filed under Rule 5 of the Cenvat Credit Rules, 2004. The original authority had accepted the refund application in respect of some of the input services and denied the benefit of refund in some cases, on the ground that there were no nexus between the input services and the output service exported by the appellant. On appeal, the learned Commissioner (Appeals) has also allowed the refund benefit in certain cases and denied such benefit in respect of the disputed services namely, Security Agency, Renting of Immovable Property, Erection/Commission and Installation, Business Auxiliary and Real Estate Agency Services on the ground that there were no sufficient nexus between the input service and the output service exported by the appellant. Further, the refund benefit was also denied on the ground that the relevant invoices were not produced by the appellant to demonstrate that the disputed services were in fact, used for exportation of the output services.

2. Learned Advocate appearing for the appellant submits that the disputed services are confirming to the requirement of Rule 2(l) of Cenvat Credit Rules, 2004 for consideration as input service and since those input services were used / utilized for exportation of the output service, the refund benefit should be available to the appellant. To support such stand, the learned Advocate has relied on the following decisions of this Tribunal:-

(a) Affinity Express India Pvt. Ltd. – 2014 (40) STR 808(T)

(b) R.K. Marbles Pvt. Ltd. – 2017 (49) STR 434 (T)

(c) India Trimmings Pvt. Ltd. – 2016 (42) STR 552 (T)

(d) Toyota Kirloskar Motors P. Ltd. – 2017 (47) STR 106 (T)

(e) Axis Bank Ltd. – 2017 (3) GSTL 427 (T)

(f) Knoah Solutions Pvt. Ltd. – 2016 (44) STR 628 (T)

(g) Hinduja Foundries Ltd. – 2017 (52) STR 190(T)

3. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order. He further submits that the invoices submitted at this juncture cannot be taken into records for the reason that those documents were not produced before the authorities below for their appreciation, since the issue is fact based. Thus, he pleaded that the matter should be remanded to the original authority for verification of the relevant documents to be submitted by the appellant.

4. Heard both sides and perused the records.

5. The appellant has submitted the invoices to show that there was nexus between the input and the output services, for the benefit of refund. However, I find from the observations of the learned Commissioner (Appeals) that the said documents were neither produced before him or the original authority for proper appreciation. For consideration of the refund benefit,

since the invoices were required to be verified, which admittedly were not made available before the authorities below, I am of the view that the matter should go back to the original authority for verification of the invoices, which should be produced by the appellant before him for proper adjudication of the mater. On the basis of the documents, the original authority should decide the issue, whether benefit of refund is available to the appellant. For the said purpose, he should also examine the above referred decisions relied upon by the appellant.

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

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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