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

Appeal No. ST/87597, 87802, 87603, 87625/2018

(Arising out of Order-in-Appeal No. PK/127 to 128/ME2018 dated 26.02.2018 and PK/107 to 110/ME/2018 dated 15.02.2018 passed by Commissioner of CGST & Central Excise (Appeals), Mumbai)

Saba Software India Pvt. Ltd. **Appellant**
Vs.

Commissioner of GST & Central Excise Mumbai East **Respondent**

Appearance:

Shri Aditya Jain, C.A. for appellant
Shri S.K. Hatangadi, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 11.01.2019

FINAL ORDER NO. **A/85329-85332/2019**

Per: S.K. Mohanty

These appeals are directed against the impugned orders dated 15.02.2018 and 26.02.2018 passed by the Commissioner (Appeals II), CGST and Central Excise, Mumbai, wherein the adjudication orders were upheld in denying the refund benefit to the appellant. The refund claim filed under Rule 5 of Cenvat Credit Rules, 2004, read with Notification No.27/2012-CE (NT) dated 18.06.2012 was denied on the ground that the said claims are barred by limitation of time; that CENVAT Credit availed on input credit service have no nexus with the output service exported by the appellant; and that the appellant had adopted wrong formula prescribed under notification dated 18.06.2012 for claiming the disputed refund amount.

2. Learned Consultant appearing for the appellant submits that rejection of refund applications on the ground of limitation is not sustainable inasmuch as the relevant date should be computed from the last day of the quarter, in which the FIRC was received. In this context, the learned Consultant has relied on decision of Larger Bench of this Tribunal in the case of *CCE., CUS. & S.T., Bengaluru vs. Span Infotech (India) Pvt. Ltd.– 2018 (12) GSTL 200 (Tri. – LB).* He further submitted that without affording reasonable opportunity of hearing, the original authority had adjudicated the matter, which is against the coordinal principles of natural justice. Thus, he prayed that the matter should be remanded to the original authority for submission of desired documents to establish that the appellant is entitled for refund of service tax paid on input services, used for exportation of output services.

3. On the other hand, the learned D.R. appearing for Revenue reiterates the findings of the impugned order.

4. Heard both sides and perused the records.

5. I find that the refund applications filed by the appellant were rejected by the original authority on the ground that it had not produced the relevant documents to substantiate such claim. Considering the submissions of the learned Consultant of the appellant that adequate opportunity of personal hearing was not granted and the claim applications were rejected, I am of the view that ends of justice would be met, if the matter is remanded to the original authority for proper adjudication of the matter.

6. Therefore, after setting aside the impugned order, the matter is remanded to the original authority for deciding the issues involved therein afresh. The original authority should also consider the recent Larger Bench decision of this Tribunal in the case of *Span Infotech (India) Pvt. Ltd.* (supra) for consideration of the limitation aspect. The appellant is at liberty to produce the documents / records to show that the requirement of statutory provisions have been duly complied with in support of claim of refund of service tax paid on input services.

7. In the result, the appeals are allowed by way of remand to the original authority.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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