

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

Appeal No. ST/88141/2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/04/18-19 dated 17.04.2018 passed by Commissioner of Central Tax (Appeals-I), Mumbai)

Banyan Tree Finance Pvt. Ltd.

Appellant

Vs.

**Commissioner of C.G.ST
Mumbai South**

Respondent

Appearance:

Shri Alpesh Dodhiya, 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: 21.02.2019

FINAL ORDER NO. **A/85385 / 2019**

Per: S.K. Mohanty

Heard both sides and perused the records.

2. Rejection of refund claim filed under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE (N.T.) dated 18.06.2012 is the subject matter of present dispute. The refund applications filed by the appellant were rejected on the ground that the appellant had failed to debit the Cenvat Credit amount, claimed as refund before filing of the claim application. The other ground assigned for rejection is that the appellant had

not correctly reflected the amount of export invoices in the ST-3 returns.

3. It is a fact on record that before filing the refund claim application, the appellant had not debited the corresponding Cenvat amount from its Cenvat register. However, the amount in question was reversed in the Cenvat account subsequently and such available credit was never utilized by the appellant. When the credit was not utilized for payment of service tax on output service or for any other purpose, it cannot be said that there is any loss of revenue to the government exchequer. Since the department had not specifically objected to the fact of exportation of service by the appellant, the condition of debit of the Cenvat amount belatedly, in absence of its utilization, will tantamount to mere procedural lapse, for which the benefit provided under the notification dated 18.06.2012 cannot be whittle down. Thus, rejection of refund claim on such ground cannot be sustained.

4. With regard to reflection of the credit amount of export invoices in the ST-3 returns for the relevant period, the Learned Consultant appearing for the appellant submits that services were duly exported through proper and valid invoices and due to inadvertence, particulars were reflected in the month of June instead of July 2013. For ascertaining the correct position with regard to the allegation of incorrect reflection of amount in periodical returns, I am of the view that the matter should go

back to the original authority for a proper fact finding that the relevant particulars were reflected in the periodic returns. Accordingly, the matter is remanded to the original authority for carrying out necessary verification of relevant documents. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

5. The appeal is disposed of in above terms.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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