CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 88455 & 88459 of 2018

(Arising out of Order-in-Appeal No. PVNS/60-61/Appeals Thane/ME/2018-19/3521 dated 7-5-2018 passed by the Commissioner of CGST & C.Ex. (Appeals).)

M/S. COLGATE GLOBAL BUSINESS SERVICE PVT LTD ....Appellant
8,9 & 10th Floor, Tower B-Gate No.5,
L-T Business Park, Saki Vihar Road,
Powai, Mumbai-400072.

VERSUS

Commissioner of C.G.ST, ...Respondent
Mumbai East,
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel (E)
Mumbai – 400 012.

<u>APPERANCE:</u>

Shri Chirag Shetty, Advocate for the Appellant
Shri Sudhir B. Mane, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85889-85890/2019

Date of Hearing: 9-5-2019
Date of Decision: 9-5-2019

ANIL CHOUDHARY:

1. The issue in this appeal is whether the adjudicating authority while granting the refund, whether have legally disallowed credit on some of the input services without issuing any show cause notice under rule 14 of CCR 2004.

2. The appellant is an exporter of service providing to the associate company located outside India, rendering services under CBS, information technology support service etc. The appellant is entitled to refund of the input services under rule 5 of CCR 2004 read with notification No. 27/2012 – CE dated 18 June 2012. Accordingly the appellant filed refund claims for 2 different quarters as follows:

Sl. No.	Appl. No.	Date of filing appeal	Order-in-Original No.& date	Refund claimed (Rs.)	Period	Claim disallowed (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	F.No.V2(A)ST-II/1140/16-17	01-03-2017	AC/R-93/DN-1/ST.VII/BNP/16-17 dated 30.12.2016	71,59,865.	Oct.15 to Dec. 15	20,22,710.
2.	F.No.V2(A)ST-II/1141/16-17	01-03-2017	AC/R-103/DN-1/ST.VII/BNP/16-17 dated 30.12.2016	74,28,941.	Jan. 16 to Mar.16	17,13,937.

3. Pursuant to filing of the refund claims, the assistant Commissioner fixed date of hearing in the refund matter and thereafter disallowed part of the refund as evident from the table above and granted the balance refund. The denial of refund in part was on account of disallowance of credit on certain input services. Being aggrieved the appellant had preferred appeal before the Commissioner (Appeals) who vide the common impugned order for both the appeals was pleased to uphold the orders in original rejecting the appeals.

4. Being aggrieved the appellant is before this Tribunal. The Learned Counsel draws my attention to the CENVAT credit rules particularly rule 14 which provides that wherever the revenue wants to object and/or disallow any CENVAT credit taken under section 3 of the CENVAT credit, the authority is required to issue show cause notice in terms of rule 14. In the facts of the present appeal admittedly no show cause notice was issued for denial of CENVAT credit. Accordingly prays for allowing the appeal with consequential benefits.

5. There revenue relies on the impugned orders. He further states that the adjudicating authority had granted personal hearing by fixing hearing in the refund matter, during which the appellant had appeared.

6. Having considered the rival contentions I hold that under the scheme of the Act and the Rules, particularly Rule 14 of the CENVAT credit rules, unless the adjudicating authority serve the notice for the intended disallowance of CENVAT credit, no CENVAT credit can be disallowed. Accordingly the impugned order is set aside so far it has upheld the disallowance of refund in part, of the CENVAT credit. So far the amount of ₹ 37,030 is concerned where the appellant have taken CENVAT credit, as service tax was paid under reverse charge and is for receipt of works contract service, the appellant is directed to file the copy of challan and the copy of the entry along with copy of the invoice before the adjudicating officer. Further the Adjudicating Authority is directed to grant the balance refund, within a period of 60 days from receipt of this order along with interest, as per rules.

7. The appeal is allowed and the order passed by Commissioner (Appeal) No. PVNS/60-61/Appeals Thane/ME/2018-19/3521 dated 7-5-2018 is hereby set aside.

Dictated and order pronounced in the court

MR. ANIL CHOUDHARY,
MEMBER (JUDICIAL)

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