CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service tax Appeal No. 89767 of 2018

(Arising out of Order-in-Appeal No. NA/GST/A-III/MUM/108/2018-19 dated 28.08.2018 passed by the Commissioner of GST & CENTRAL EXCISE (Appeals-III), Mumbai)

M/s. Morgan Stanley Advantage Services Pvt. Ltd. **.....Appellant**
Athena Bldg. no.5,
Sector 39, Mindspace,
Gurgaon West, Mumbai

VERSUS

Commissioner of GST, Mumbai west **.....Respondent**
Mahavir Jain Vidyalaya,
Juhu Lane, Andheri (W)
Mumbai

APPEARANCE:

Shri Prasad Paranjape, Advocate with Shri Mohit Rawal, Advocate for the appellant
Shri Dharmendra Singh, SUpdt. (AR) for the respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86701 / 2019

DATE OF HEARING : 24.09.2019
DATE OF DECISION : 24.09.2019

After hearing both sides, I find the lower authorities, by their impugned order, have rejected the refund claim of accumulated credit, filed by appellant in terms of the provisions of Rule 5 of CENVAT Credit Rules, 2004 on the ground that input services have no nexus with the appellant's output activity and that such credit was not available to the appellant.

2. Without going into the details of nexus of each and every service of the appellant, I find that no objection was raised by the Revenue at the time of availment of credit. Such credit was availed by the appellant and reflected in the CENVAT credit account by showing such availment in their return. Revenue has accepted the said accumulation of the CENVAT credit inasmuch as the same could not have been utilised by the appellant for their export activities. The provisions of Rule 5 simpliciter provide for the refund of the unutilised CENVAT credit. There is no jurisdiction vested with the authorities to examine the correctness of the availment of the credit. Such exercise was required to be done by the Revenue by challenging the availment of credit by way of initiation of separate proceedings. This having not done by the Revenue, the denial of the accumulated credit in terms of Rule 5 cannot be upheld.

3. The above view point is also supported by the Tribunal in *Barclay Global Service Centre Pvt. Ltd.& Ors. V. Commissioner of Central Excise & Service tax, Noida [2019-TIOL-1714-CESTAT-*

ALL]. As such on this ground, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

//SR