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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 89110 of 2018

(Arising out of Order-in-Appeal No. PVNS/126/APPEALS THANE/TH/2018-19/4065 dated 26.06.2018 passed by Commissioner of GST & Central Exsice (Appeals), Thane, Mumbai)

M/s Accelya Kale Solutions Ltd. .....**Appellant**
3rd Floor, Modi House,
Naupda, Easter Express Highway,
Thane (West)-400602

VERSUS

Commissioner of C.G.ST., Thane .....**Respondent**
Ranade Road, Navbharat Chambers,
Dadar (West),
Mumbai-400028

Appearance:

Shri S. Tirumalai, Advocate for the Appellant
Shri Dharmendra Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87484/2019

Date of Hearing: 22.11.2019
Date of Decision: 22.11.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 26.06.2018 passed by the Commissioner of GST & Central Excise (Appeals), Thane, Mumbai. Denial of refund benefit provided under Rule 5 of Cenvat credit Rules, 2004 is the subject matter of present dispute. The refund claim filed by the appellant was rejected by the original authority on the ground that there was no nexus between the disputed input services and output service exported by the appellant. On appeal, the learned Commissioner (Appeals) has allowed some of the refund claims and denied the claims in respect of some others by upholding the adjudication order of non- establishment of nexus between the input and output services.

2. The learned Advocate appearing for the appellant submits that issue arising out of the present dispute is no more *res integra* in view of the order passed by this Tribunal in the case of appellant itself, reported in 2018-TIOL-2451-CESTAT-MUM and 2018-TIOL-2452-CESTAT-MUM. Thus, he submits that since on identical set of facts the learned Commissioner (Appeals) has denied the refund benefit in the present case, the same is not proper and justified.

3. On the other hand, the learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that in respect of the issue of denial of refund benefit for the period April to June 2013 and October to September 2014 (excepting July to September 2013), the Tribunal has allowed the benefit of refund claim, holding that the formula prescribed under Rule 5 of the Cenvat Credit Rules, 2004 has to be adhered to and non-establishment of nexus between the input and the output services cannot be insisted upon for denial of the refund benefit. In the present case, the period of dispute is from July to September 2013. Since, the credit was denied exclusively on the ground of non-establishment of nexus between the input and output services and there is no specific allegation regarding non-observance of the formula prescribed under Rule 5 *ibid,* I am of the view that different interpretation cannot be placed at this juncture to decide the appeal contrary to the decision taken by the Tribunal in the appellants own case for different period (referred supra).

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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