CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 89152 of 2018

(Arising out of Order-in-Appeal No. PK/494/MC/2018 dated 31.05.2018 passed by Commissioner (Appeals-II) CGST & Central Excise, Mumbai)

Amarchand Mangaldas and Suresh A Shroff and Co. .....**Appellant**
5th Floor Peninsula Chambers
Peninsula Corporate Park,
Ganpatroa Kadam Marg,
Lower Parel (W),
Mumbai – 400 013.

VERSUS

Commissioner of CGST, Mumbai Central .....**Respondent**
4th Floor, C. Ex. Building, Churchgate,
Mumbai – 400 020.

Appearance:

Ms. Mekhla Anand & Ms. Rupa Roy, Advocate for the Appellant

Shri Dharmendra Singh Supdt., Authorized Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85647/2020

Date of Hearing: 03/01/2020
Date of Decision: 03/01/2020

Per: DR. SUVENDU KUMAR PATI

I had heard arguments from both the sides on the other day and allowed the appeal by way of remand on the grounds as stated below:

The factual backdrop of the case, as reveals from the appeal memo and written notes of submission, is that appellant had been exporting and providing "legal and consultancy services" and in the process accumulated CENVAT Credit of Rs. 40,84,827/- during the period January 2013 - June 2014 (5 Quarters). The claim was rejected by the adjudicating authority but was partially allowed by the Commissioner (Appeals) CGST & Central Excise, Mumbai to the tune of Rs.26,42,365/- and refund claim to the tune of Rs.14,42,462/- pertaining to the period April 2013 –June 2013 was rejected on the sole ground that it was prematurely filed. Aggrieved by this partial dismissal of the appeal against rejection of refund claim by the appellate authority, appellant has come to this forum for necessary relief.

2. During the course of hearing Ld. Counsel Ms. Mekhla Anand alongwith Ms. Rupa Roy for the appellant cited case law in the case of CCE, Jaipur I Vs. Samcor Glass Ltd. [reported in 2016 SCC Online CESTAT 3713], M/s. The General Manager, Telecom, BSNL Vs. CCE, Raipur [reported in 2014 SCC Online CESTAT 3528] to argue that substantial benefit cannot be denied to the appellant on the basis of mere procedural lapse . it was submitted, with reference to judicial decision in the case of Egon Zehnder Informations and Research Services Pvt. Ltd. V. CCE & ST (reported in 2015 SCC Online CESTAT 2664), that without demanding for production of documentary evidence the Ld. Commissioner (Appeals) should not have confirmed the rejection of refund claim for which the order, to the extent of such rejection, is liable to be set aside.

3. Shri Dharmendra Singh, Ld. Authorized Representative for the Revenue, in response to such submissions, argued in favour of the reasoning and rationality found in the Commissioner's order and submitted that proviso to Rule 4(7) of the Cenvat Credit Rules 2004 ,

presupposes payment of the value of input service and service tax as indicated in the Rules before making claim for refund for which he sought no interference in the order passed by Commissioner (Appeals).

4. I have perused the case records. It is found that in para-9 of his order, Ld. Commissioner (Appeals) has made the following observations:

> *"In the instant case, the appellant have availed CENVAT Credit to the extent of Rs.14,42,262/- during the quarter April to June 2013. However, payment of service tax on reverse charge basis as a service recipient was made in July 2013. There is nothing on record to indicate that the payment of the value of input service has been discharged by the appellant. The appellant at the appeal stage have also not produced any documentary evidence indicating that payment of the value of input service has been made. Since, credit has been availed before payment of service tax and also since there is nothing on record indicating payment of the value of input service by the appellant, the availment of CENVAT Credit is in contravention of the provisions of the first proviso to Rule 4(7) ibid………."*

5. This being the factual aspect and evidence on record and having regard to the fact that the Ld. Commissioner (Appeals) had also dealt with the refund claim that arose also for the subsequent period i.e. July 2013 to October 2013 in the quarter in which Service Tax was paid by the appellant, there was no impediment on his part to call for additional documents to get himself satisfied of the payment of value of such input services relating to the disputed invoices which were actually claimed by the appellant to have been discharged and accordingly, allow the claims, since Section 85(5) empowers him to exercise the same powers and follow the same procedure as available to him under Central Excise Act and Section

35A(3) of the Central Excise Act vest with him the power to make further inquiry as may be necessary before passing the order, which obviously does not restrict his power to determine the legality of the order of the adjudicating authority alone. Therefore, while holding that appellant is entitled to get the refund in the subsequent period in which payment of service tax was made as the order for refund was passed subsequent to such accumulation of CENVAT Credit, I find it a fit case which is required to be remanded back for examination of documents in support of appellant's claim. Hence the order

ORDER

> The Appeal is allowed by way of remand to the Commissioner (Appeals) to examine the invoices concerning payment of input value along with taxes and to extend the refund benefits accordingly.

The order passed by the Ld. Commissioner (Appeals) vide order No. PK/494/MC/2018 dated 31.05.2018 is accordingly modified.

(Operative portion of the order was pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sm