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घ Appeal / Order Number / Order-In-Appeal No.:

BHV-EXCUS-000-APP-122-2018-19

Date of Order:	12.06.2018	Date of issue:	13.06.2018

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग [illegible]

ङ Name & Address of the Appellants & Respondent

M/s Stresse Consultancy LLP, 7, Surabhi Bungalows, Hill Drive, Takhteshwar, Bhavnagar - 364002

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:: ઉદ્ભવ ની સંક્ષિપ્ત હકીકત ::

M/s. Sunstone Contractors LLP, 7 South Bungalows, Nr. Drive, Tadkeshwar, Bhavnagar - 364002 (hereinafter referred to as "appellant") has preferred appeal against Order in Original No. 5/01/2017 dated 30.01.2017 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2 The brief facts of the case are that appellant filed refund claim of Rs. 1,37,326/- for the period from April, 2016 to June, 2016 in terms of Rule 5 of Cenvat Credit Rules, 2004 (hereinafter referred to as the "CCR, 2004") for refund of unutilized cenvat credit earned on input services received for providing output services viz. information technology software consultancy exported out of India. Query letter No. V/18-52/ST/DIV/16-17/Ref dated 17.02.2017 was issued to the appellant and the appellant vide letter dated 01.03.2017 replied the queries along with supporting documents. The lower adjudicating authority vide impugned order rejected refund claim on the following grounds:

(i) refund claim not filed in prescribed format i.e. Form – A as per Para 2(a) of Notification No. 27/2012-CE(NT) dated 18.06.2012;

(ii) the appellant had not submitted documentary evidences to prove that they had reversed or debited cenvat credit taken as per Rule 3(1) of the Notification No. 27/2012-CE (N.T.) dated 18.06.2012;

(iii) as per Para 2(d) of the Notification No. 27/2012-CE(NT) dated 18.06.2012, B10 is not submitted;

(iv) as per Para 3(c) of the Notification No. 27/2012-CE(NT) dated 18.06.2012, a certificate in prescribed Annexure A-1 not submitted;

(v) the appellant submitted one calculation sheet with refund claim showing domestic clearance of Rs. 1,27,218/- and another calculation sheet submitted with defence rejoinder showing domestic clearance as nil;

(vi) thus, the appellant not submitted proper documents as required under Notification No. 27/2012-CE(NT), dated 18.06.2012 and correctness of the refund claim cannot be verified due to contradictory documents;

(vii) the appellant did not submit any document to prove inapplicability of unjust enrichment.

3. The aggrieved appellant has filed appeal, *inter-alia*, on the grounds that the impugned order has been passed without informing them that the documents produced before the lower adjudicating authority were not sufficient;

that the appellant was not aware that the Bank Realisation Certificate and the Inward Remittance Certificate were different; that the lower adjudicating authority did not inform that the refund claim was not in accordance with Notification No. 27/2012-CE(NT) dated 18.06.2012 read with Rule 5 of the CCR, 2006 and was not mentioned in Query Memo 645 issued on 17.02.2017. It is submitted that it is duty of the officer to inform the appellant which type of documents required for refund claim.

3.1 The appellant Vide letter dated 09.05.2018 has, *inter-alia*, submitted additional submissions as under, *inter-alia*, with relevant documents:

(i) The appellant was engaged in business of rendering professional services in the field of Information Technology – Software Consultancy and related services to their overseas customers during the material period in terms of Rule 6A of the Service Tax Rules, 1994 and no domestic services were provided by them;

(ii) The appellant provided services valued at Rs. 19,39,35,/- to overseas customers i.e. covered under export of service and got realisations in foreign currency as per BRCs, during the relevant period and hence, the same was not liable to service tax;

(iii) the appellant paid service tax on input services used for providing output services which are not liable to service tax due to export and hence are eligible for refund of service tax paid on input services which remained unutilised, under Rule 5 of the CCR, 2001 read with Not.No. 27/2012-CE(NT) dated 18.06.2012;

(iv) after switching over to GST, though they have not reversed the cenvat credit of the eligible refund in ST-3 returns filed and the balance lying in the ST-3 returns has not been carried forward and claimed in the GST returns;

(v) the appellant undertakes that they forgo the right of cenvat credit related to export of service for which refund claim is filed and also undertake not to claim the same in future either as set off or otherwise in the GST returns;

(vi) the said cenvat credit is now as receivable in books of account on 17.01.2017 while lodging the refund claim.

3.2 The appellant vide letter dated 15.05.2018 has, *inter-alia*, further submitted that the Commissioner (Appeals), Ealkot/Additional Director General (DGTS), AZL, Ahmedabad has allowed their appeal which is on similar grounds and set aside OIO No. 91/2016 dated 10.10.2016 under which the lower adjudicating authority rejected their own refund claim of Rs. 2,46,915/- for the

period from July, 2013 to September, 2013 (3rd Quarter).

4. Personal hearing in the matter was attended to by Shri Joyesh Mehta, CA who reiterated the grounds of Appeal and contentions raised in their Written submission dated 09.05.2013; also submitted written PH submission and stated that their appeal for other period has been allowed by the Commissioner (Appeals, Rajkot)vide OIA(TFS). All relevant on the same line this appeal may also be allowed as they have exported services.

Findings:

5. I have carefully gone through the facts of the case, impugned order, appeal filed by the appellant and written as well as oral submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority rejecting refund claim filed by the appellant under provisions of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012 CE (NT) dated 18.06.2012 and Section 11B of the Central Excise Act, 1944 is correct or not.

6. I find that the facts of export of services are not in dispute and it is also undisputed fact that the appellant had refund claim under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012 for unutilized cenvat credit / service tax paid on input services which were used for output service viz. Information Technology – Software Consultancy, which was exported out of India.

7. The lower adjudicating authority in the impugned order rejected the refund claim on the grounds that the appellant did not submit proper documents as required under Notification No. 27/2012-CE(NT) dated 18.06.2012 like (i) refund claim not filed in prescribed format i.e. Form – A; (ii) documentary evidence showing reversal of cenvat credit not produced; (iii) Bank Realisation Certificates not submitted; (iv) Certificate in Annexure-M duly signed by auditor (Statutory or any other) certifying the correctness of refund claim and (v) document to prove inapplicability of unjust enrichment. However, the appellant in their appeal submitted copy of refund claim in prescribed format i.e. Form – A showing period of refund claim, export turnover, total cenvat credit taken on input services, total of exported service and other services, bank details. The appellant also submitted Certificate dated 15.05.2013 issued by M/s. Rakesh B Shah & Co. – Chartered Accountants certifying that the value of the export turnover of services

and total turnover of services mentioned by the appellant in Form A-1 of refund claim is correct and is in accordance with the provisions of Rule 5 of the Cenvat Credit Rules, 2004. The appellant also submitted the following documents for F.Y. 2016-17: (i) Invoice/Remittance Transaction Advices along with related invoices; (ii) Statement of Assets & Liabilities; (iii) Statement of Income & Expenditure; (iv) Tax Audit Report; (v) Digital Signature Tax Return Acknowledgement along with Computation of Taxable Income; (vi) Income Ledger; (vii) Cenvat Credit of Service Tax Ledger for 2016-17 & 2017-18; (viii) ST-3 Returns; (ix) GST Registration Certificate; and (x) Income Ledger; ST-3 Return; Invoices; GST Registration Certificate of input service provider to support their contention. The appellant vide submission dated 03.05.2018 submitted that they exclusively exported services and no service was provided to domestic customers during April, 2016 to June, 2016. In view of this, I find that the compliance submitted by the appellant in relation to the queries raised by the lower adjudicating authority for procedural aspects of the refund claim is satisfactory. The said Remittance Transaction Advices proved that the appellant had exported the output services.

7.1 The lower adjudicating authority rejected refund claim on the grounds that the appellant did not submit undertaking regarding non utilization of cenvat credit in the last half-yearly ST-3 return and documents to prove that they have reversed/debited cenvat credit taken; that ST-3 returns submitted by the appellant show that they has taken cenvat credit on input services during the relevant period but ST-3 returns prove that the appellant has not reversed the cenvat credit during the relevant period but they did not carry forward the cenvat credit balance in the month of July, 2017. Thus, it is proved that the appellant had taken cenvat credit on the input services but not utilized the same during the relevant period and to regain the said balance of cenvat credit as on 01.07.2017 i.e. the date when GST law has been implemented.

8. I find that the object of the Notification made to be read in conjunction with the object of Notification No. 27/2012-CE(NT) dated 18.06.2012 is to refund service tax, if the services have been exported as Government does not want to export taxes. The purpose of the Government to allow refund of cenvat credit of service tax paid on input services used in output services exported is to get rid of the burden of tax to promote exports. I have perused the Order of the Government of India's order in the case of Vadilal Process Printers reported in 2006 (204) E.L.T. 632 (G.O.I.), holding that the rebate/drawback and other such export promotion

schemes of Government, are incorrect/wrong and irrational. Instead, mandate to promote export, i.e. to earn foreign exchange for the country and if export of service is not in doubt, a liberal interpretation is to be accorded in case of technical lapses. By applying the ratio of the above decisions to the facts of the present case and considering the fact that the services were exported, I am of the view that denial of refund of cenvat credit of service tax paid on the input's services on the admittedly exported service, is not in consonance with the extant scheme.

8. In view of above, I set aside the impugned order and allow the appeal filed by the appellant for grant of refund in cash, allowed as per Section 5A of CEA, 1944.

९.१ अपीलकर्ता द्वारा दर्ज की गई उपरोक्त अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeal filed by the appellant is disposed off as above.

(कुमार संतोष)
आयुक्त (अपील)

By Regd. Post AD

To,

M/s. Shalaka Consultancy LLP, A-Sukh Bungalow, Hill Drive, Tachkeshwar, Bhavnagar - 364002	मे. शलाका कंसल्टंसी एलएलपी, ए सुखी बंगलोज,हिल ड्राइव, तांडेश्वर, भावनगर 364002

Copy for information and necessary action to:

1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
2) The Commissioner, CGST & Central Excise Commissionerate, Bhavnagar.
3) The Assistant Commissioner, CGST & Central Excise Division, Bhavnagar.
4) Guard File.