

Service Tax: Registration, Taxability, not required for taking refund of input service credit on export of service

The appellants are engaged in business of IT enabled service viz. Customer Contact Centers services, Transaction Processing Services and merit classification as 'Business Auxiliary Service'. All the services provided by the appellant are to the consumer who is located outside India and consideration is received in foreign exchange.

The appellant had filed various refund claims of unutilized Cenvat Credit under Rule 5 of CCR, 2004 for the export affected during the period from October, 2005 to March, 2006, from April 2006 to September, 2006 and from October, 2006 to March 2007 respectively. The adjudicating authority sanctioned a part of the refund claim.

In appeal against the rejected portion, the Commissioner (A) allowed a part of the claim and rejected the rest.

The rejection was on the following grounds:

- (a) Cenvat Credit availed prior to application of service tax registration i.e. 25/8/2008 is not admissible for refund.
- (b) Cenvat Credit on input services used in provision of exempted call centre service i.e. prior to 1 st March 2006 is not admissible for refund.
- (c) Refund claim greater than the amount of service tax on the invoices is not refundable.
- (d) Cenvat credit ineligible on bank statement under the category of banking and other financial services.
- (e) Cenvat Credit on the following services is inadmissible as they have no nexus with output service. [(i) Event Management Services, (ii) Mandap Keepers Services, (iii) Management Consultant Services, (iv) Club and Association Services, (v) Convention Services, (vi) Cable Services, (vii) Facilities and Management Services, (viii) Real Estate Agent Services, (ix) Dry Cleaning Services, (x) Business Auxiliary Services, (xi) Manpower Recruitment Services, (xii) Management or Repair Services.]

Aggrieved, the appellant is before the CESTAT.

They made the following submissions –

- (a) Rejection on ground that Cenvat Credit is not admissible prior to taking registration - the Karnataka High Court in the case of mPortal India wireless Solutions Pvt. Ltd. vs. CST Bangalore 2011-TIOL-928-HC-KAR-ST has held that registration with the department is not pre-requisite for availing the Cenvat Credit.
- (b) Prior to 1/3/2006 Call centre Services were exempted - this is a case of refund of accumulated Cenvat credit and not in respect of service tax on output services therefore even though the output service was exempted, refund could not have been denied as the accumulation of Cenvat credit in respect of input services which were used in the output service is not under dispute. Case laws cited - Dell International Services India P. Ltd. 2009-TIOL-1957-CESTAT-BANG, Zenta Pvt Ltd. 2012-TIOL-624-CESTAT-MUM, Repro India Ltd. 2007-TIOL-795-HC-MUM-CX.
- (c) Refund claim of Rs.3581/- which is greater than the amount of service tax on the invoices – appellant concedes Revenue stand.

- (d) Bank statement is not proper document for availing credit - there is relaxation provided under proviso to sub rule (1) of Rule (4A) of STR according to which any document by whatever name called where not serially numbered and whether or not containing the address of the person receiving taxable service but containing other information in such documents as required under this sub-rule shall be sufficient document to be treated as service tax paying documents for CENVAT entitlement.
- (e) Various services [(i) to (xii)] claimed as Input service – all the services are essential for providing call centre services, hence credit correctly availed.

The AR reiterated the findings of the impugned order.

The Bench observed seriatim –

- (a) There is no provision in law that Cenvat credit can be allowed only after registration of the unit, cenvat credit is allowed in respect duty suffered on input/input services and the said payment is nothing to do with the registration of the recipient of the services, therefore, registration cannot be made criteria to reject the refund claim. This view has been re-enforced by this Tribunal in the following cases - M Portal India wireless Solutions Pvt Ltd 2011-TIOL-928-HC-KAR-ST, J.P. Morgan Services India Pvt Ltd. 2015-TIOL-226-CESTAT-MUM, Beico Industries Pvt Ltd 2014-TIOL-2817-CESTAT-AHM.
- (b) It is Government Policy across the board that in case of export neither input tax/duty nor output tax/duty should be exported therefore either duty/tax should not be charged at both the stage or if at all due to practical working if duty/tax is charged, it has to be refunded to the exporter. In the present case export is not under dispute and service tax suffered on the input services is also not under dispute. Therefore, even though output service is exempted the duty suffered on the input services has to be refunded to the exporter. [Dell International Services India P. Ltd. 2009-TIOL-1957-CESTAT-BANG, Zenta Pvt Ltd. 2012-TIOL-624-CESTAT-MUM]
- (c) As appellant is not claiming refund of Rs.3581/-, rejection of same upheld.
- (d) In view of the special relaxation provided in the proviso to Rule 4A (1) of Service Tax Rules, 1994, any documents of the bank is sufficient for taking Cenvat credit. The bank statement is rather a document which shows all the debit and credit transaction in the account of the appellant therefore the refund claim is admissible in respect of Cenvat credit availed on the strength of bank statement.
- (e) Other Services – Firstly, the appellant is engaged in export of 100% services and no part of the services is provided in India with this reason alone all the services which have been received and used by the appellant are deemed to have been used for providing output services which have been exported. Since there is no provision for domestic services, the ratio of services that how much related to export and how much related to domestic does not arise. Moreover, all these services as per its use explained in the appeal memo, all the services are essential for providing the call centre services. In the appellant's own case the sanctioning authority has sanctioned the refund claim under the same set of facts.
- (e-1) As regard dry cleaning services, appellant has not pressed for refund, accordingly the rejection of refund amounting to Rs. 2930/- in respect of dry cleaning services is maintained.

Appeals were partly allowed.