
(2015) 03 AP CK 0097

In the Andhra Pradesh High Court

Case No : C.E.A. Nos. 2, 5, 6 and 9 of 2015

C.C., C.E. and S.T.

APPELLANT

Vs

Hyundai Motor India Engg. (P) Ltd.

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (2015) 39 STR 984

Hon'ble Judges : K.J. Sengupta, C.J;Sanjay Kumar, J

Bench : Division Bench

Judgement

K.J. Sengupta, C.J—These appeals are sought to be preferred and admitted against the judgment and order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (hereinafter referred to as "the CESTAT") which has disposed of a number of appeals, on the following suggested questions of law:

1. "Whether the CESTAT is correct in holding that the assessee was within time in claiming refund without discussing the Section 11B of the Central Excise Act, 1944 relevant for refunds under Rule 5 of CCR, 2004 read with Notification No. 5/2006-C.E. (N.T.) , dated 14-3-2006 and merely relying on the decision of Hon"ble CESTAT, Mumbai in the case of Smith v. East Elloe Rural District Council, (1956) 1 All ER 855
2. Whether the CESTAT is correct in holding that the assessee is eligible to claim refund of CENVAT credit on construction service relying on case of Smith v. East Elloe Rural District Council, (1956) 1 All ER 855
3. Whether the Tribunal is correct in remanding the matter with regard to the claim of refund of CENVAT credit on other services such as courier service, repair or maintenance services, telephone service, rent-a-cab service, management consultant service, chartered accountant service, etc., since the said services are not having nexus with their output services, i.e., Consulting Engineering Service

which was exported online?

4. Whether the assessee is correct in claiming credit before payment of Service Tax?"

We have heard the learned Counsel for the appellant and we have gone through the records relating to the judgment of the learned CESTAT. It appears that the assessee is a hundred percent export oriented unit (EOU) registered under Software Technology Parks of India (STPI) for export of computer software and Information Technology Enabled Services (ITES). Its basic area of work is providing product designs, modeling and analysis in car engineering etc. The assessee had entered into agreement with two car manufacturers in South Korea for providing design and analysis services. The assessee filed several refund claims for the period from December 2007 to August 2009 on a quarterly/monthly basis. In all there are 12 refund claims involved. All these refund claims have been rejected by all the authorities below. Therefore, the assessee became unsuccessful right from the adjudicating authority till the first appellate authority, but the assessee was successful in persuading the learned CESTAT and got the relief, naturally the judgment of the lower authority was reversed. Three points were formulated by the learned CESTAT which are as follows:

- i "Whether relevant date specified under Section 11B of Central Excise Act, 1944 is relevant for refunds under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification 5/2006-C.E. (N.T.) dated 14-03-2006?
- ii. Eligibility of services as input services for grant of refund.
- iii. Whether CENVAT credit availed on the input services before payments for the services received?"

2. It appears the learned CESTAT decided the first issue relying on the judgment of the Bombay Bench of the Tribunal in the case of C.C.E., Pune-I v. Eaton Industries P. Ltd. - 2011 (22) S.T.R. 223 (Tri.-Mumbai) to hold that the relevant date for calculating the time limit for grant of refund would be the date of receipt of consideration and not the date when the services were provided. If the date of receipt of consideration is reckoned then the claims are perfectly within time limit, and if date of rendering services is taken then obviously most of the claims would be time barred. The Tribunal has held that the relevant date would be the date of receipt of consideration and, when such decision has not been appealed against nor it has been reversed or overruled by any superior forum, the said judgment is binding. The learned CESTAT recorded no contrary decision. However, learned Counsel for the appellant - Revenue asserts before us that a contrary decision has been rendered in the year 2014 by the Bombay Bench of the Tribunal. Unfortunately that judgment referred was neither produced before the Tribunal nor before us and even case number or cause title of the same could not be informed by the learned Counsel appearing for the appellant. We, therefore, do not find any illegality or infirmity with the order of the learned CESTAT and we agree with the decision rendered by it on the issue.

3. As regards admissibility of CENVAT credit on construction service, the learned CESTAT relied on the decision in the case of *Smith v. East Elloe Rural District Council*, (1956) 1 All ER 855 wherein the definition of "input services" has been considered and admissibility of CENVAT credit in respect of various services and the rationale to take such a view has been discussed. Therefore, on the prayer of the learned Counsel for the assessee that the matter can be remanded for calculating the refund claim, following the decision of the Tribunal in the case of *Infosys Ltd.* (supra), the learned CESTAT remanded the matter to the original adjudicating authority, and it is not argued that the aforesaid decision is appealed against or reversed. In view of the aforesaid adjudication, we do not find any infirmity or illegality in the judgment of the learned Tribunal to hold otherwise, because it is a pure case of remand to consider admissibility of CENVAT credit in respect of various services. We do not find any infirmity in the order of the learned Tribunal. Hence, we dismiss the appeals. There will be no order as to costs.