(2024) 01 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 88325 Of 2019

M/S. Hapag Lloyd Global Services Pvt. Ltd — APPELLANT

Vs

Commissioner Of Service Tax, Thane — RESPONDENT

Date of Decision : 10-01-2024

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 5, 14

Citation : (2024) 01 CESTAT CK 0020

Hon'ble Judges : Dr. Suvendu Kumar Pati, Member (J)

Bench : Single Bench

Advocate : Ranjeet Mahtani, Ajay Kumar Srivastava

Final Decision : Allowed

Judgement

Dr. Suvendu Kumar Pati, Member (J)

1. Rejection of partial refund claim, primarily on the ground of no direct nexus between input and output service, by the Refund Sanctioning Authority that got approval of the Commissioner (Appeals), GST & Central Excise, Division-VI, Thane in his Order-in-Appeal referred above, is assailed in this appeal by the Assesse Appellant.

2. Facts of a case, in a nutshell, is that accumulated credit accrued against export of service between the period June 2017 and March 2017 was sought for refund by the Appellant under Provision of Rule 5 of the CENVAT Credit Rules, 2004. Out of the total refund sought for an amount of Rs.22,68,346/-, Refund Sanctioning Authority held refund to the tune of Rs.15,89,209/- as admissible and refund for the rest of amount i.e. Rs.6,79,137/- as inadmissible on the ground that there is no nexus between inputs received and export made. Against the said order to the extent of inadmissibility, Appellant approached the Commissioner (Appeals) through appeal procedure that yielded insignificant result in the sense that he allowed additional credits of only Rs.308/- against Banking and Financial service received as admissible and conformed the rest of

the inadmissible credits on the same ground of no nexus. Appellant is before this Tribunal challenging legality of the rejection of credit to the extent of Rs.6,78,829/-. The said item wise inadmissible credits are covered under the heading Banking support services, CA/Legal Consultants/ Management consultant-Professional services, Renting of immoveable property services, Telecommunication services, Passenger air travel services/ Travel agent services/ Accommodation services (hotel charges), Management maintenance repair services, Courier services, Banking and other financial services, Business auxiliary services, Works contract services (RCM).

3. During course of hearing of the appeal Learned Counsel for the Appellant Shri Ranjeet Mahtani, submitted that the issue is no more res integra as in the Appellant's own case for the period from April 2016 to December 2016 and April 2017 to June 2017, this Tribunal vide its order dated 20.01.2013 has already allowed credits on those items referred above which are held to be inadmissible in the Order-in-Original and Order-in-Appeal and the primary ground on which appeal was allowed that unless recovery proceeding under Rule 14 of the CENVAT Credit Rules, 2004 was initiated refund under Rule 5 cannot be rejected. He further pointed out that in the instant case proceeding under Rule 14 of the CENVAT Credit Rules, 2004 was also initiated for the period from 2015 to 2017 covering the present disputed period and this Tribunal vide its order dated 16.08.2022 quashed the said proceeding by rejecting order of conformation passed by the Commissioner (Appeals). He has also drawn our attention to the Provisions contained in Circular No. 120/1/2010S.T. dated 19.01.2010 to support his stand and to conclude his argument with a prayer to set aside the rejection order passed by Commissioner (Appeals).

4. In response to such submissions, Learned Authorised Representative, Shri Ajay Kumar Srivastava, AR argues in favour of the reasoning and rationality on the order and seeks no indulgence of the Tribunal.

5. Gone through the appeal paper book including written note of argument alongwith relied upon case laws cited by the parties. In the Appellant's own case for the prior and subsequent period, all these disputed credit were held to be admissible by this Tribunal. On the ground on which it was held to be admissible remained unshakeable as in the parallel proceeding initiated under Rule 14 of the CENVAT Credit Rules, 2004, the said demand that was conformed up to the Commissioner (Appeals)'s level was set aside by this Tribunal and the same do cover the present disputed period. Therefore, in furtherance to the Judicial precedent set by this Tribunal and in order to ensure consistency and predictability to the order passed by it, the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner (Appeals) in order-in-Appeal No. PVNS/124/Appeals Thane/TH/2019-20 dated 26.08.2019 to the extent of rejection of CENVAT Credit to the Appellant is hereby set aside.

Appellant is entitled to get a refund of Rs.6,78,829/- with applicable interest as per provision of law and the Respondent-Department is directed to pay the same within 3 months of receipt of this order.

