(2021) 01 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 76673 Of 2018

M/s Semtech Advanced Systems India Pvt. Ltd. @Hash Commr. of Central Excise And Service Tax, Bhubaneswar

Date of Decision : 05-01-2021

Acts Referred:

Citation : (2021) 01 CESTAT CK 0006

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Advocate : N.K.Kothari, Joideep Chakraborty

Final Decision : Allowed

Judgement

1. The instant appeal has been preferred by the assessee against denial of refund of service tax availed as Cenvat Credit for the Quarter ended

March 2015 by both the authorities below.

2. Briefly stated, the facts of the case are that the appellant is a registered STPI unit and is also registered with jurisdictional service tax authorities.

They are primarily engaged in providing services which constitute export of service on which no output service tax is payable which fact is not in

dispute. For providing the said services, they have availed various input services on which Cenvat Credit has been availed. Since no output tax is

payable, the credit availed by them remained unutilised for which they claimed refund under Notification no. 27/2012 for Quarter ended March 2015.

Show Cause Notice dated 14.01.2016 (SCN) was issued wherein certain discrepancies were pointed out. However, no reply to said SCN was filed by

the assessee. Consequently, the Ld. Asst. Commissioner passed an ex-parte order dated 17.03.2016 rejecting the refund claim filed by the appellant

assessee. In appeal before the Ld. Commissioner (Appeals), Bhubaneswar, the original order rejecting the refund claim has been upheld vide Order-

in-Appeal dated 20.02.2018 against which the assessee is in appeal before the Tribunal.

3. Shri N. K. Kothari, Ld. Chartered Accountant (CA) appeared for the appellant and Sri Joideep Chakraborty, Ld. Authorised Representative

appeared for the Revenue.

4. The Ld. C.A. for the appellant submitted that refund has been wrongly rejected without giving opportunity of being heard and in violation of

principles of natural justice. He submitted that on merits, the appellant is clearly eligible for refund for the following reasons:

(i) Credit should not be denied merely because the service provider / vendor charged service tax on the amount of air-conditioning charges and

maintenance charges under the head Renting of Immovable Property services. When services is clearly eligible for credit, refund should not be denied

for reasons of classification adopted by the service provider.

(ii) Service Registration has been duly mentioned on the invoices reissued by the vendors. He also submitted copy of such invoices and registration

certificates of the vendors.

(iii) In respect of dispute raised in the SCN with regard to the address / place from where the service was provided by the vendor, he submitted

supporting from the said vendors together with registration certificate copies.

(iv) He also submitted that refund should not be denied for procedural reasons when the service tax payment and receipt of service is not in dispute.

He also submitted CA certificate in support of said contentions.

(v) With regard to the claim of refund on the basis of input service invoice already considered in the previous refund period (quarter ended December

2014), he submitted that the subject refund has been filed on the basis of payments received during quarter ending March 2015 and that payment for

input service pertained to both the said period but, however, refund has been correctly claimed as per the prescribed formula.

(vi) He also claimed interest for the delay caused in refund process.

5. The Ld.Departmental Representative disputed the refund and submitted that the appellant did not submit reply to the SCN. He also submitted that

these documents are being submitted for the first time before this forum which should not be given any credence. He accordingly submitted that the appeal be rejected.

6. Heard both sides through video conferencing and perused the appeal records.

7. I find that the refund has been denied for non-submission of requisitioned documents which the appellant submitted before the Ld. Commissioner (Appeals) which has not been considered in the impugned order. With regard to the dispute raised by the original authority for denial of refund on ground of classification, I do not agree with the reasons assigned by the said authorities inasmuch as when the repair and maintenance service per se is not excluded for the purpose of availing credit, refund should not be denied on the ground that the service provider should not have classified the same under the category of Renting of Immovable Property services. Further, while denying refund, the lower authorities have not stated the reasons as to why such credit is not available. In any case, it is a settled position that the entitlement of credit should not be denied when the assessee is pursuing refund of credit claimed in returns. In the instant case, there is no dispute that service tax of which refund has been claimed, has not been deposited with the Revenue. Since the appellant has submitted necessary confirmations from the service provider duly supported with CA certificate, it would be unjust to deny the refund.

8. Since the case pertains to grant of refund and that the original order has been passed ex-parte, I consider it fit and proper to remand the matter to the original authority, who would provide reasonable opportunity to the appellant to submit the desired documents and decide the claim in line with the above observation. Since the claim pertains to March 2015, it is directed that the matter be decided expeditiously not later than 3 months of receipt of this order. The appellant is also advised not to seek unnecessary adjournments for expeditious disposal of the matter.

9. Appeal is thus allowed by way of remand in the manner stated above.

(Pronounced in the open court on 05.01.2021)