(2024) 02 CESTAT CK 0020

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 78380 Of 2018

M/S. TCG Software Services Private Limited APPELLANT

Vs

Commissioner Of Service Tax RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Citation : (2024) 02 CESTAT CK 0020

Hon'ble Judges : K. Anpazhakan, Member (Technical)

Bench : Single Bench

Advocate : Tarun Chatterjee, S. Mukhopadhyay

Final Decision : Allowed

Judgement

K. Anpazhakan, Member (T)

1. The present appeal has been filed by the appellant against the impugned Order-in-Appeal No. 378/S.Tax-I/KOL/2018 dated 23.05.2018.

2. The facts of the case are that the appellant has filed a refund claim pertaining to unutilized CENVAT Credit of input services which were used in the export of output services. The appellant had claimed refund of an amount of Rs.4,77,377/-. The adjudicating authority sanctioned the refund claim to the extent of Rs.4,74,203/- only vide Order-in-Original No. 16/REFUND/ST/D-II/KOL/2014-15 dated 08.04.2014.

3. The Department filed an appeal against the said order of the adjudicating authority sanctioning the refund claim on the ground that as per paragraph 2(h) of Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012, the amount of refund claimed under Rule

5 of the CENVAT Credit Rules, 2004 shall be debited by the claimant from their CENVAT Credit account at the time of making the claim, but the appellant has not produced any evidence regarding the debit of the said amount from their CENVAT Credit account. The ld. Commissioner (Appeals) allowed the appeal filed

by the Department and rejected the refund claim sanctioned by the adjudicating authority.

4. Aggrieved against the rejection of their refund claim, the appellant filed this appeal.

5. I observe that the appellant has filed the present refund claim as per Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012 read with Rule 5 of the CENVAT Credit Rules, 2004 and the Export of Service Rules, 2005. As per condition 2(h) of Notification No. 27/2012, the appellant has to debit the amount of refund claimed from their CENVAT Credit account at the time of making the claim. In this case, the appellant has submitted their CENVAT Credit account evidencing debit of an amount of Rs.4,77,377/- from their CENVAT Credit account on 10.02.2014. However, in the impugned order, the ld. Commissioner (Appeals) made the observation that the appellant has debited the amount of refund claimed from their CENVAT Credit account only on 11.04.2014.

5.1 I find that there is no evidence available on the record to substantiate the above claim mentioned by the ld. Commissioner (Appeals) in the impugned order. On a perusal of the documents submitted by the appellant, I find that the debit has been made by the appellant in their CENVAT Credit account on 10.02.2014 and the refund application was filed on 28.02.2014. Accordingly, I find that the appellant has fulfilled the condition stipulated in the Notification No. 27/2012-C.E.(N.T.) dated 18.06.2012. Thus, the appellant is eligible for refund of CENVAT Credit on input services utilized in the provision of output services, as provided under Notification No. 27/2012. I hold that the impugned order rejecting the refund claim filed by the appellant is not sustainable.

6. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.