

(2021) 07 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40599 Of 2017

M/s.Origin Learning Solutions Pvt. Ltd.

APPELLANT

Vs

Commissioner Of Service Tax

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 5

Citation : (2021) 07 CESTAT CK 0035

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : G. Natarajan, L. Nandakumar

Final Decision : Allowed

Judgement

1. Brief facts are that the appellants are engaged in providing Information Technology Services and are also exporting these services. They availed credit on the service tax paid by them and applied for refund under Rule 5 of Cenvat Credit Rules, 2004 as amended till date. The refund claim was for the period July, 2013 to September, 2013. The original authority sanctioned the refund claim. Against this, appeal was filed by the department contending that the appellants are not eligible for refund. The Commissioner (Appeals) vide order impugned herein allowed the appeal of the department holding that the refund sanction is erroneous that appellant is not eligible for refund to the tune of Rs.16,93,074/-. Hence this appeal.

2. On behalf of the appellants, the learned counsel Shri G. Natarajan appeared and argued the matter. He submitted that the refund claim is filed for the period July, 2013 to September, 2013 for the refund of credit availed on the service tax paid on input services. They had discharged service tax on input services under reverse charge mechanism and had availed the credit. Though, the availment of credit was properly accounted, they omitted to mention the same in their ST-3 returns. The department is of the view that since the said credit has not been shown in the ST-3 returns, the appellants are not eligible for refund of the same.

The learned counsel argued that department does not have a case that the appellants are not eligible for such credit. The credit is being denied merely for the reason that the same was not reflected in the ST-3 returns. An undertaking vide letter, dated 28.08.2015 was furnished by the appellants to the department that they would not be claiming the said credit in refund for the subsequent period. In spite of this, department has denied the credit without any legal or factual basis. He prayed that the appeal may be allowed.

3. The learned Authorised Representative Shri L. Nandakumar supported the findings in the impugned order. He stressed the fact that the appellants had not reflected the credit taken in the books to the tune of Rs.16,93,074/- in their ST-3 returns. Only if the credit availed by them is mentioned in the ST-3 returns, the department would not be able to verify the same. Therefore, the refund has been rightly rejected.

4. Heard both sides.

5. It is not in dispute that the appellants are eligible for credit to the tune of Rs.16,93,074/- on the service tax paid by them under reverse charge mechanism on input services availed by them. The only reason for denying the credit is that they have not reflected such availment of credit in ST-3 returns for July, 2013 to September, 2013. The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per Rule 5 of Cenvat Credit Rules, 2004. The appellants have properly accounted in their books of account. Not mentioning the credit availed in ST-3 returns is only a procedural lapse, which can be condoned.

6. From the above discussions, I hold that the appellants are eligible for refund as claimed by them. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)