One-to-one correlation between output service and input service not required for for claiming refund

The Hon'ble CESTAT, Bangalore in ***General Motors Technical Centre India Pvt. Ltd. v. Commissioner of Central Tax [Service Tax Appeal No. 20400 of 2020, dated April 1, 2021]*** set aside the order passed by the Commissioner (Appeals) rejecting the refund claim of unutilized CENVAT credit of the assessee**.** Held that, there is no need to establish one-to-one correlation between output service exported and input service used in such services.

Facts:

General Motors Technical Centre India Pvt. Ltd **("the Appellant")** is engaged in providing Consulting Engineer Services to their customers located outside India and are availing the facility of CENVAT credit of service tax paid on input services which are required for providing the resultant output service as per the provision of CENVAT Credit Rules, 2004 **("the CCR")**

The Appellant filed a refund claim for INR 4,26,79,323/- for refund of unutilized CENVAT credit in respect of service tax paid on various input services said to have been used for providing output services exported outside India, during the period October 2015 to December 2015.

After following the due process, the Adjudicating Authority (**"A.A."**) vide Order-in-Original dated June 21, 2018 **("OIO")** granted refund of INR 4,15,49,358/- and rejected the balance claim amounting to INR 11,29,965/- considering it to be ineligible CENVAT credit on certain services. Aggrieved by the OIO, the Appellant filed an appeal before the Commissioner (Appeals) (**"the Respondent"**) wherein, the Respondent vide order dated August 28, 2020 (**"the Impugned Order"**) upheld the OIO, except allowing CENVAT credit of INR 34,250/- availed in respect of Technical Consultancy Services and rejected the remaining amount of the refund claim amounting to INR 10, 95,715/-, on the ground of lack of nexus and for certain services copy of invoice is not produced.

Being aggrieved by the Impugned Order this appeal has been filed.

Issue:

Whether the Respondent was correct in rejecting the refund claim of the Appellant on the ground of lack of nexus between output services exported and input service used in such services?

Held:

The Hon'ble CESTAT, Bangalore in ***Service Tax Appeal No. 20400 of 2020 dated April 1, 2021,*** held as under:

- Noted that, the Respondent has rejected the refund only on the ground of lack of nexus between the input services and the output services which is exported and the Appellant had filed the invoices and the same has been examined by the A.A. and has also filed the invoices before the Tribunal.

- Observed that, all the services on which the refund has been rejected have been consistently held to be input services in various decisions relied upon by the Appellant and it has been consistently held by the Tribunal in various decisions with a view that after the amendment of Rule 5 of CCR, there is no need for one to one correlation between the input services and the output services.

- Stated that, no correlation is required because the intention of the Government is to allow refund to the exporters and the Circular/clarification issued on this subject has to be viewed with the objective of allowing the refund.

- Further noted that, the Respondent has not questioned the service tax paid on input services at the time when the CENVAT credit was taken and it has been earlier held that the Respondent is not permitted to question the same at the time of claiming refund.

- Opined that, the Appellant has availed the services of Rent-a-cab for the purpose of bringing and dropping the employees and this service has been used for providing the output service and the invoices have been produced by the Appellant.

- Held that, rent-a-cab service in the present case has been used for providing the output service and hence gets covered under the main clause of the definition of "input service". Therefore, the Appellant is entitled to refund of CENVAT credit of INR 10, 95,715/-.

Relevant provisions:

Rule 5 of CCR:

"Refund of CENVAT credit

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

…….

…….

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Explanation 1.- For the purposes of this rule,-

> *(1) "export service" means a service which is provided as per 3[rule 6A of the Service Tax Rules 1994], whether the payment is received or not;*
>
> *(1A) "export goods" means any goods which are to be taken out of India to a place outside India*
>
> *(2) "relevant period" means the period for which the claim is filed.*

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined."

Course Details: Certificate of Participation will be Provided, Free GST Updates on E-mail, WhatsApp, Telegram for 1 Year, Background Material and PPT will be Provided on the downloadable basis, Total 21 Recorded Sessions (60 Hours), will be available for 120 hours or 60 Days whichever expires earlier.

For Registration:- https://cutt.ly/hxjl5Cu

Recorded: GST Course on Exports, Deemed Exports, SEZ, Imports, Merchandise Exports, Inverted Duty Structure (including Refunds)

Course Details: 6 Online Recorded Sessions of 2.30Hrs each with Background Material (BGM)

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