IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos.40814 & 40815 of 2018

(Arising out of Order-in-Appeal No.56 & 57/2018 (CTA-I) dated 2.2.2018 passed by the Commissioner of GST and Central Excise (Appeals), Chennai)

M/s. Dhyan Networks and Technologies Pvt. Ltd. **Appellant**
455, 6th Floor, Anna Salai
Teynampet, Chennai – 600 018.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam
Chennai – 600 034.

APPEARANCE:

Shri T.R. Ramesh, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **40280-40281 / 2022**

Date of Hearing : 20.07.2022
Date of Decision: 21.07.2022

The issue involved in both these appeals being similar, were heard together and are disposed by this common order.

2. The appellant had filed refund claim under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) for refund of the unutilized CENVAT credit. The refund claims were rejected by the original authority and was upheld by the Commissioner (Appeals). Hence these appeals.

3. The learned counsel Shri T.R. Ramesh appeared and argued for the appellant. He submitted that in Appeal No.

ST/40814/2018, the refund claim is filed for the quarter April 2016 to June 2016 and in Appeal No. ST/40815/2018, the refund claim is filed for the period July 2016 to September 2016. In the first appeal, the refund has been rejected for the reason of wrong interpretation of clause 2(g) of Notification No. 27/2012-CE (NT). The appellant has to debit the amount which is claimed as refund before filing the refund claim as required under clause 2(h) of the said Notification. After debiting the amount, which is claimed as refund, the balance in CENVAT credit was 'nil'. The refund has been rejected stating that clause 2(g) has not been fulfilled which says that the amount of refund claim shall not be more than the amount lying in balance at the time of filing refund claim. He submitted that both these clauses 2(g) as well as 2(h) of the Notification has to be read together. When the amount is required to be debited while filing the refund claim, the amount so debited has to be reckoned for computation of the balance in CENVAT credit amount. He submitted that this issue is no longer res integra and is covered by the decision of the Tribunal in the case of Scribetech India Healthcare Pvt. Ltd. Vs. Commissioner of Central Tax reported in 2020 (43) GSTL 245 (Tri. Bang.).

4. Apart from this issue, the other reason of rejecting the refund claim is that the credit availed on maintenance of cafeteria is not eligible as the invoice is issued to unregistered premises. This issue is covered by the decision in the case of ABM Knowledge Ltd. Vs. Commissioner reported in 2019 (27) GSTL

694 (Tri. Mum.) wherein it has been held that there is no provision in CENVAT Credit Rules, 2004 which prescribes that registration of premises is a condition precedent for claiming CENVAT credit. The invoice raised in regard to rent paid for the month of July 2016 has been rejected stating that the invoice is paid in the month of June 2016. The learned counsel submitted that the rent is paid in advance and therefore the reason of rejection is absolutely baseless.

5. It is submitted by the learned counsel that the issue for rejecting the refund claim in the second appeal ST/40815/2018 is with regard to the mis-interpretation of clause (g) and clause (h) as stated above.

6. The learned AR Shri Arul C. Durairaj supported the findings in the impugned order.

7. Heard both sides.

8. The first issue is with regard to non-fulfillment of the conditions as required under clause 2(g) and clause 2(h) of the said Notification. The said clauses are reproduced as under:-

> "2(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.
>
> 2(h) the amount that is claimed as refund under Rule 5 of the said rules shall be debited by the claimant from his Cenvat credit account at the time of making the claim."

9. As per clause 2(h)of the Notification, the assessee is required to debit the amount that is claimed as refund. The said issue as to whether refund claim can be rejected on the ground

that the balance of credit at the end of the quarter is 'nil' was discussed by the Tribunal in the case of Scribetech India Healthcare Pvt. Ltd. (supra). It was observed as under:-

> "6.1 After considering the submissions of both the parties and perusal of the material on record, I proceed to examine whether the rejection of refund claims is legally sustainable or not. Here it is pertinent to take note of the relevant provisions of the Notification No. 27/2012 for alleged violation of which the refund claims have been rejected.
>
> 2(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.
>
> 2(h) the amount that is claimed as refund under Rule 5 of the said rules shall be debited by the claimant from his Cenvat credit account at the time of making the claim.
>
> 6.2 Further I find that there is no dispute with regard to the export of service and the receipt of foreign exchange. The only ground on which the refund has been rejected is that the closing balance of Cenvat credit at the end of the quarter as per ST-3 return was 'nil' which was less than the refund amount for respective quarter. I have examined the ST-3 returns as well as the Cenvat credit account furnished by the appellant and as per the Cenvat credit amount and has also shown 'nil' in ST-3 returns filed with the Department. Further I find that the objection of the Department that the appellant has not debited the Cenvat credit account before filing the refund claim is not factually correct, in fact the appellants have debited the Cenvat credit account before filing the refund claim and the same is clearly shown in the ST-3 returns also. Further I find that the respondent while rejecting the refund claims has not properly appreciated the condition/limitation envisaged in paragraphs 2(g) and 2(h) in Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012. The said paragraph only provides that the amount of refund claim shall not be more than the amount lies in the Cenvat credit account at the end of the quarter for which the claim is filed or at the time of filing of refund claim, whichever is less. This condition has been interpreted out of context by the respondent in the impugned order and the respondent has erred in not appreciating the facts as also the condition envisaged in Notification No. 27/2012. The decisions relied upon by the Revenue are not applicable in the facts and circumstances of the case because in those cases, clearly it was held that the assessee did not debit the Cenvat credit account before filing the refund claim which is a mandatory condition as per the notification. In view of my discussion above, I set aside the impugned order by allowing the appeals of the appellant."

Following the said decision, I am of the view that rejection of refund claim on this ground is not justified and requires to be set aside.

10. The other ground for rejection of refund is that the invoice with regard to maintenance of cafeteria has been issued on unregistered premises. As argued by the learned counsel for the appellant, the said issue is no longer res integra. In the case of ABM Knowledge Ltd. (supra), the Tribunal has held that there is no requirement in CENVAT Credit Rules, 2004 that the premises should be registered for availing the credit.

11. The invoice issued with regard to rent paid for office has been rejected stating that the rent for the month of July 2016 has been paid in June 2016. When the rent has been paid in advance, the invoices will be issued in advance. This cannot be a reason for rejecting the credit.

12. The issue in Appeal No. ST/40815/2018 is with regard to non-compliance of clause 2(g) of the Notification. The said issue has been already held in favour of the appellant as discussed above.

13. For the reasons stated above, I am of the view that the rejection of refund is not justified. The impugned orders are set aside. The appeals are allowed with consequential relief, if any.

(Pronounced in open court on 21.07.2022)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex