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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F. NO. 195/97-104/SZ/2018-RA /5256 Date of Issue: ~~.08.2021~~ 17.09.2021

ORDER NO. 294-301/2021-CX (SZ) /ASRA/Mumbai DATED 31.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Net Avenue Technologies Private Limited.
No.36, Knowledge Towers,
Little Mount, Chennai – 600 015.

Respondent : Commissioner of CGST, Chennai South Commissionerate.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 165 to 172/2018(CTA-II) dated 16.03.2018 passed by the Commissioner (Appeals-II), GST & Central Excise, Chennai.

ORDER

These revision applications are filed by M/s Net Avenue Technologies Private Limited, No.36, Knowledge Towers, Little Mount, Chennai – 600 015 (hereinafter referred to as "the applicant") against the Orders-in-Appeal No. 165 to 172/2018(CTA-II) dated 16.03.2018 passed by the Commissioner (Appeals-II), GST & Central Excise, Chennai.

2. Brief facts of the case are that the applicant, a merchant exporter of ready Made Garments, are availing credit on various services associated with their export activity. The applicant had filed eight (8) rebate claims under Notification No. 41/2012-ST dated 29.06.2012 in respect of the Service Tax paid on Input Services like Clearing & Forwarding services, Courier Agency Service etc. which were used in the export of services. The applicant, while filing the refund claims, declared that they had not availed Cenvat Credit on input services (specified services). However, on perusal of their ST3 returns for the relevant period, the rebate sanctioning authority found that the applicant had availed Cenvat Credit on the input services including Cenvat Credit on specified services. The adjudicating authority rejected all the eight rebate claims vide Order in Original No. 156-163/2017(R) dated 06.12.2017. The adjudicating authority while rejecting the impugned rebate claims observed that :-

a) The applicant had availed Cenvat Credit on specified services in violation of Notification No. 41/2012-ST dated 29.06.2012.
b) The applicant had not reversed the Cenvat Credit availed by them during the period October-2016 to March -2017 as claimed by them as they had only mis-declared material particulars to avail the benefit under Notification No. 41/2012-ST dated 29.06.2012.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals-II), GST & Central Excise, Chennai. The Appellate Authority vide Order in Appeal No. 165 to 172/2018(CTA-II) dated 16.03.2018 rejected the appeals and upheld the Orders in Original on following grounds :-

a) When it is a conditional notification, prescribing certain conditions for availing the benefit of the notification, they are mandatory and should be complied with, when they avail such notification and only on fulfilment of the conditions, they get qualified for availing the benefit of the notification.

b) If the availment of credit is not prevented, it will result in double benefit to the applicant which is not the intention of the Government.

c) When there is no provision in the said notification for availment of credit when refund is claimed and when the notification specifically prohibits taking of credits in those cases where refund has been claimed, there is no merit in the applicant's contentions that they reversed such credits.

d) Originally the applicant had availed the credit in violation of the conditions stipulated in the notification, and shown the credit taken in the ST3 returns and after the irregularity was pointed out, they filed the revised return wherein the opening balance, credit taken, reversals and the closing balance were shown as zero, thereby misdeclaring the material particulars.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

4.1 The reversal of Cenvat credit without utilization causes absence of such credit ab initio. The applicant had relied upon various case laws in support of their argument. Few of the case laws relied upon are as under:-

a) JCT Ltd. Vs. CCE, Jallander [2015(318) ELT 275(Tr. Del.)]
b) B. Gjrijapathi Reddy & Co. Vs. CCE, Guntur [2016(344) ELT 923 (T. Hyd.)]
c) CCE, Mumba-I Vs. Bombay Dyeing & Mfg. co. Ltd [2007(215) ELT 3 (SC)]
d) CCE & ST, LTU, Bangalore Vs. Bill Forge Pvt. Ltd., [2012(279) ELT 209 (Kar.)]
e) TNT (India) Pvt. Ltd. Vs. CCE & ST, Bangalore-III [2016(42) STR 285 (Tr. Bang.)]
f) J.K. Tyre & Industries Ltd. Vs. ACCE, Mysore [2016 (34) ELT 193 (Tr. LB)]

4.2 Entire Cenvat Credit duly reversed by them in the revised return for the period October 2016 to March 2017. While the original return for the period October 2016 to March 2017 indicated Cenvat Credit balance of service tax (Rs.1,86,11,697/-), education cess (Rs. 82,700/-) and Secondary Education Cess (Rs. 41,289/-), all these figures of Cenvat Credit have been made 'nil' in the revised return filed for the said period. Effectively they had reversed the entire Cenvat Credit.

4.3 Having made the entire Cenvat Credit balance nil, they had not availed any Cenvat Credit during the period April-June 2017.

4.4 Impugned OIO and OIA reads erroneous figure of rebate claims i.e. they had filed a rebate claim for Rs. 27,13,767/-, the impugned OIO wrongly read the figure as Rs. 20,33,842/-

5. Since, the applicant had requested for early personal hearing vide heir email dated 12.04.2021, a Personal hearing in the matter was granted on 16.07.2021, 23.07.2021. Shri Prasanna Krishnan, Consultant appeared online on 23.07.2021 and reiterated his earlier submissions. He submitted that in spite of reversal of credit by them their claims have been rejected. He requested to allow the rebate.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. The Government finds that the dispute in the instant revision application relates to the denial of rebate claims for non fulfilment of the condition prescribed under the Notification No. 41/2012-ST dated 29th June, 2012. It is noted that in order to enable the applicant to claim the rebate benefit under Notification No. 41/2012-ST dated 29.06.2012 in respect of the Service Tax paid on Input Services, they should have refrained themselves from taking the Cenvat Credit on specified services which are associated with their export activity, in respect of which the rebate is sought to be claimed

under the said notification. The rejection by the original authority was on the basis of the Para 1(d) of the Notification No. 41/2012 ST dated 29.06.2012 which reads as follows :

"(d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;"

8. The Government finds that the Notification No. 41/2012-S.T. dated 29.06.2012 has been issued in terms of Section 93A of the Finance Act, 1994. The notification provides for grant of rebate by way of refund of the service tax paid on the specified services used for export of goods subject to fulfilment of conditions stipulated thereunder. The applicant had taken / availed Cenvat credit on the input services including Cenvat Credit on specified services during the relevant period. There is no doubt that the appellant falls within the gamut of the notification whose stated purpose is to grant refund of service tax on specified services used for export subject to condition that no Cenvat credit of service tax paid on the specified services used for export of goods is taken by them.

8.1 The Government observes that the Notification No. 41/2012-ST dated 29.06.2012, under which the applicant had filed rebate claims, is a conditional notification and to avail the benefit under said notification the prescribed condition refrains the applicant from taking Cenvat Credit on specified services. In the instant case, the Government finds that the impugned refund claims were filed for the period from May 2015 to December 2016 and the applicant had availed Cenvat Credit on specified input service during relevant period. The department sought clarification from the applicant vide its letter dated 27.09.2017 and the applicant vide letter dated 13.10.2017 submitted that they had reversed the Cenvat Credit. It is further noticed that the applicant on 29.06.2017 filed a revised ST-3 return for the period October-2016 to March 2017 indicating 'nil' entries in respect of all the columns of 'details of Credit'.

8.2 The core issue in the instant revision applications is as to whether in the circumstances of the case, the applicant would be eligible for benefit under Notification No. 41/2012-ST dated 29.06.2012. There is no dispute that the

benefit of the said notification is subject to the condition that no duty credit is taken. The applicant during relevant period had taken Cenvat credit in respect of specified inputs services. However, the applicant has submitted that this credit had not been utilised and had been reversed as soon as this irregularity was pointed out by the Department. This is corroborated with the fact that the applicant had shown balances in ST-3 returns as 'nil'. The Government observes that the applicant have effectively reversed the entire cenvat credit by making the entire Cenvat balance 'nil' in the ST-3 returns for the period Octoeber-2016 to March 2017. It is also observed that they have refrained themselves from availing Cenvat Credit on specified services from April 2017 onwards. Thus the error of taking credit has been corrected and set right. The aforesaid views find sustenance in number of High Courts and Supreme Court judgments.

8.3 The Hon'ble Karnataka High Court in the case Commissioner of CEX & ST, LTU, Bangalore Vs. Bill Forge Pvt. Ltd reported in 2012(179) ELT 109(Kar.) has held that –

> *"**20.** From the aforesaid discussion what emerges is that the credit of excise duty in the register maintained for the said purpose is only a book entry. It might be utilised later for payment of excise duty on the excisable product. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. It matures when the excisable product is received from the factory and the stage for payment of excise duty is reached. Actually, the credit is taken, at the time of the removal of the excisable product. It is in the nature of a set off or an adjustment. The assessee uses the credit to make payment of excise duty on excisable product. Instead of paying excise duty, the cenvat credit is utilized, thereby it is adjusted or set off against the duty payable and a debit entry is made in the register. Therefore, this is a procedure whereby the manufacturers can utilise the credit to make payment of duty to discharge his liability. Before utilization of such credit, the entry has been reversed, it amounts to not taking credit. Reversal of cenvat credit amounts to non-taking of credit on the inputs."*

9. In view of the above, Government holds that ends of justice will be met if the impugned Orders in Appeal are set aside and the case remanded back to the original adjudicating authority for the purpose of verification of the claims with directions that he shall reconsider the claim for rebate on the basis of the documents submitted by the applicant after satisfying itself that

the applicant had not utilized the Cenvat credit availed on specified input services and has carried out the reversal of the same.

10. In view of above circumstances, Government sets aside the impugned Orders-in-Appeal No. 165 to 172/2018(CTA-II) dated 16.03.2018 passed by the Commissioner (Appeals-II), GST & Central Excise, Chennai and remands the case to the original adjudicating authority as ordered supra.

11. The revision applications are disposed of on above terms.

31/08/21

(SHRAWAN KUMAR)
Principal Commissioner &Ex-Officio
Additional Secretary to Government of India

ORDER No. 294-301 /2021-CX (SZ) /ASRA/Mumbai DATED 31.08.2021

To,
M/s Net Avenue Technologies Private Limited.
No.36, Knowledge Towers,
Little Mount, Chennai – 600 015.

Copy to:

1. The Commissioner of CGST, South Commissionerate, Chennai, 5th floor, 692, M.H.U. Complex, Anna Salai, Chennai – 600 035.
2. The Commissioner of GST & CX, (Appeals-II), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.