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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F. No. 195/229/WZ/17-RA/917 Date of issue: 09.02.2023

ORDER NO. 54 /2023-CX(WZ)/ASRA/MUMBAI DATED 08.2.2023 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.

Applicants	:	M/s. Eaton Industries Private Limited
Respondents	:	Commissioner of Central GST, Pune-I
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-001-APP-499-16-17 dated 16.03.2017 passed by the Commissioner (Appeals-I), Central Tax, Pune.

ORDER

This Revision Application has been filed by M/s. Eaton Industries Private Limited situated at 145, Off Mumbai-Pune Road, Pimpri, Masulkar Colony Road, Pune – 411 018 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-001-APP-499-16-17 dated 16.03.2017 passed by the Commissioner (Appeals-I), Central Tax, Pune.

2. Brief facts of the case are that the Applicant is engaged in rendering of taxable services under the categories of 'Consulting Engineer's service' and 'Management, maintenance or repair service'. They had filed a rebate claim totally amounting to Rs.18,35,977/- for export of services under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.6.2012 during the period Jul to Sep'14. The Rebate sanctioning authority, vide Order-in-Original No. PI/R-IV/STD/255/Reb./2015-16 dated 09.09.2015 rejected part of the rebate claim amounting to Rs.8,70,273/- on the following grounds:

a) The declaration as required under Notification No.39/2012-ST dated 20.06.2012 had not been filed in respect of certain input services.
b) Some services were not qualified as input services under Rule 2(l) of the Cenvat Credit Rules, 2004.

Aggrieved, the Applicant filed an appeal which was rejected by the appellate authority vide the impugned Order-in-Appeal.

3. Hence, the Applicant has filed the impugned Revision Application mainly on the following grounds:

a) Without understanding the nature of the business of the Applicants and without correctly understanding the nexus of the input service received by them to the output services rendered by them, the Ld. Commissioner (Appeals) has simply rejected the refund claim filed by the Applicants. Thus, the Ld. Commissioner (Appeals) has given such a finding only on the basis of assumptions and presumptions.

b) The Ld. Commissioner (Appeals) has solely denied the rebate in respect of input services for mere technical and procedural reasons for e.g. non-declaration of some of the services in the Pre-Export Declaration filed by the Applicants. The Ld. Commissioner (Appeals) has failed to consider the fact that there was substantial compliance on part of the Applicants as in Pre-Export Declaration, after specific twelve services, Sr. No. 13 included as 'Other Services'. The Applicants had clearly disclosed to department that the Applicants intended to use some services other than specifically mentioned in the declaration and while filing the rebate claim had enclosed invoices in respect of those services.

c) Even in respect of the balance amount of refund claim rejected, nowhere has the Ld. Commissioner (Appeals) given any reason on how it has reached the conclusion that the said services are not directly related to the output services provided by the Applicants.

d) The Ld. Commissioner (Appeals) has failed to give any findings on the following submissions made before him:

- The Applicants have declared remaining service as 'other services' in the Pre-Export Declaration. Hence, eligible for rebate under Notification 39/2012-ST dated 20.12.2012.
- Cenvat credit claimed by the Applicants is based on G.A.R.-7 Challans and not on the basis of disputed invoices.
- Services have been received and service charges have also been made by the Applicants only.
- When the core fact of export is not disputed and use of input services for authorized operations, the valuable right to claim refund cannot be denied due to technical or procedural breach.

e) The Applicant relied on following case laws

- Cyril Lasardo (Dead) v/s Juliana Maria Lasarado 2004 (7) SCC 431
- State of West Bengal v. Atul Krishna Shaw reported at 1991 Supp (1) SCC 414
- Assistant Additional Commissioner, Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6 (SC)

f) an amount of Rs. 3,68,556/- is disallowed on the ground that following services are not included in pre-export declaration filed by Applicants:

- Maintenance and Repair Services
- Event Management Service
- Erection and Commissioning Service
- Business Auxiliary Service
- Information Technology Service
- Interior Decorator Service
- Pest Control Service
- Commercial coaching and Training Service

g) In this regards it is submitted that only on a single ground, services had been disallowed by Ld. Commissioner (Appeals). As such from the details of the Order-in-Appeals, the Ld. Commissioner (Appeals) had accepted that Services are used for Export of Services as said allegation or ground is not taken. In the event Applicants submits that these services are included by them in the head of "Other Services" in the declaration.

h) Applicants place reliance on decision of Hon'ble Tribunal in the case of Convergys India Services Pvt. Limited Vs. CCE [2012 (25) STR 2511, CST, Ahmedabad v. S. Mohanlal Services reported in 2010 (18) S.T.R. 173 (Tri.-Ahmd.), Commissioner v. Convergys India Pvt. Ltd. — 2010 (20) S.T.R. 166 (P & H, Wipro Limited Vs. Government of India [2013-TIOL-119-HC-SEL-ST], Shell India Marketing Pvt. Limited vs CCE. [2012 (10) TMI 34 (HC)]

i) Applicants have filed the declaration of the services under residual category of the 'Other Service' and not specifically provided, which is procedural lapse on the Applicants site, but there is no iota of doubt that the said services are an eligible input services which were used for provision of output export service on which the rebate is eligible, therefore the same should be allowed in favor of the Applicants.

j) However, the Ld. Commissioner (Appeals) in para 6.3 and 6.4 of the impugned order have rejected the said claim of the Applicants on the following grounds:

- Under Notification 39/2012, it is essential to determine the description, value and amount of service tax payable on the input services;
- Only direct input services actually required for provision of output services exported are covered under the purview of said notification;
- The said requirement to declare the description, value and amount of service tax payable on the input services cannot be dismissed as procedural lapse but a substantive requirement which is mandatory.

k) Firstly, the Applicants submits that as already submitted it is not the case that Applicants have not at all declared the said services as required under the said Notification. The Applicants have duly declared the said services under the residuary category of 'other services' and have evidently fulfilled all the conditions mentioned in the said notification. Hence, the said finding of the Ld. Commissioner (Appeals) is not sustainable in law.

l) Secondly, the Applicants further submit that the Commissioner (Appeals) have erroneously held that only direct input services actually required for provision of output services are covered under the purview of said notification. The same was not an issue to be determined by the Ld. Commissioner (Appeals) as there was no such allegation raised by the department in the OIO. Further, the Ld. Commissioner (Appeals) has not even examined the nexus between input services and the exported output services before coming to such conclusion. Any ways, the Applicants humbly submit that the term 'all input services' used in the said notification signify that the intention of the legislature is to cover all kind of input services used either directly or indirectly in providing services exported in terms of Rule 6A of the Service Tax Rules, 1994 shall be granted rebate under the said notification.

m) Lastly, the Applicants further submits that the finding of the Ld. Commissioner (Appeals) that the said requirement to declare the

description, value and amount of service tax payable on the input services cannot be treated as a procedural lapse but a substantive requirement which is mandatory is not in conformity with the mandate of the said notification. The requirements to claim benefits under the said notification can be classified into two parts:

- First part i.e. para 2 of the said Notification that provides for conditions and limitations to claim benefits under the said notification. This part is the substantive requirement for claiming benefits under the said notification.
- Second part i.e. para 3 of the said Notification that provides for procedure to be followed once the conditions and limitation under para 2 has been satisfied. The Notification has clearly specified these requirements as 'Procedure'.

n) In this regards the Applicants submits that the procedural irregularities are remediable in nature. Therefore, the substantive benefit of refund cannot be denied for such reasons such a procedural lapse. The Hon'ble Supreme Court in the case of Tullow India Operations Limited 2005 (189) ELT 401 (SC) has held that eligibility clause in relation to an exemption notification must be given strict meaning. However, once the condition in eligibility clause is satisfied, the exemption clause therein may be construed liberally.

o) The following decisions also support the submission that a mere procedural lapse cannot take away a substantive benefit:

- Kamakhya Steel Ltd. vs. CCE 2000 (121) ELT 247 (Tri-Mumbai)
- Archana syntex Ltd. vs. CCE, 2005 (191) E.L.T. 545 (Tri. -Mumbai)
- Aadithya Chemicals vs. CCE, Ge-tnai, 2005 (191) E.L.T. 530 (Tri. Chennai)
- CCE, Vapi vs M/s Unimark Remedies Ltd 2009-TIOL-357

p) Since, in the present case there is no doubt with regards to the fact that the Applicants have duly satisfied the conditions and limitation mentioned in para 2 of the said notification, the Applicants cannot be denied benefits of the said notification for mere procedural lapse in the light of the case laws submitted above.

q) Eaton Technologies Private Limited who is having their office and unit in SEZ had provided following services to the Applicants - Technical and Information Technology Support, Enabling Services, Accounting and Financial Support, Facility and Maintenance Support, Management Support Services.

r) The claim for the said provider is dis-allowed for a reason that the provider is in SEZ and unit is not as per A-2. Applicants wish to submit that as per Finance Act, 1994 and provisions made there under, SEZ units in India providing any taxable service to any person in Domestic Tariff Area, is liable to pay service tax.

s) Applicants further wish to submit that, the impugned order had not objected the service as an input service, thus Input service without an iota of doubt is eligible as input service, which is used for provision of Export of Service, therefore rebate claim should be sanctioned in favor of the Applicants. The rebate claim has been rejected only on the objection that the "Service provided is SEZ Unit not as per A-2" and that too is not factual as the provider had issued invoice in accordance with Rule 4A of the Act. In the event, they should be allowed refund.

t) In case of Applicants, as they are not SEZ unit and service received to them by unit in SEZ, same is chargeable to Service Tax and the service is used in relation to Export of Services the refund would be allowable. The Ld. Deputy Commissioner erred in not considering the said fact and rejected the claim on the ground which even Applicants had not understood.

u) However, the Ld. Commissioner (Appeals) has failed to give any findings on the submissions made in this regard and have thus passed a non-speaking order. Hence, the impugned order is liable to be set aside on this count alone.

v) When the fact that services are exported, is not in dispute on the service tax paid on the input services used for providing output services, the Applicants have acquired a right to obtain the rebate. The Applicants seek to place reliance on the following decisions which

hold that the refund cannot be denied once the core fact of export is not in dispute.

- Universal Enterprises vs. GOI.1991 (55) ELT 137 (GOI)
- Poulose Mathew vs. CCE 1989 (43) ELT 424 (Tri.) affirmed by SC 2000 (120) ELT A64 (SC)
- Madras Process Printers2006 (204) ELT 632 (GOI)
- Barot Exports 2006 (203) ELT 321 (GOI)

w) The Applicants submit that both the Department as well as the Ld. Commissioner (Appeals) have ignored this common-sense approach and have taken a very hyper technical view of the matter. In the present case it is not in dispute that the services are provided in relation to services which are exported by the Applicant. Therefore, the Applicant submit that the impugned order is liable to be set aside.

x) Without prejudice to the aforesaid submissions, where it is clear that the receipt of input services and output services exported is carried out by the same entity viz. the Applicants, the rebate cannot be denied merely because of procedural defects. The Applicants have received input services which are used in or in relation to exporting of the output services. The said services are "input services" as defined under Rule 2(l) of the Cenvat Credit Rules, 2004. The said service providers have raised invoices on the Applicants in terms of Rule 4A of the Service Tax Rules, 1994. The Applicants have paid service charges along with service tax thereon to the said service providers. The said service providers have paid service tax to the credit of the central government. These facts are not in dispute. Once this is the admitted factual position, assuming there are procedural irregularities, the same would be remediable in nature. Therefore, the substantive benefit of rebate cannot be denied for such reasons. The following decisions also support the submission that a mere procedural lapse cannot take away a substantive benefit:

- CCE vs. DNH Spinners [2009(244) ELT 65 (Tri- Ahm)]
- Modern Petrofils vs. CCE Vadodara [(2010 (20) STR 627 (Tri.Ahm)]
- Deloitte Haskins & sells vs. CCE 2015 (38) S.T.R. 1220 (Tri. Mumbai)
- Moser Baer India Ltd. v CCE, Noida 2014 (36) S.T.R. 815 (Tri. Del.)

y) Without prejudice, the rebate of Rs. 18,460/- claimed by the Applicants is based on the G.A.R.-7 challans and not on the said

invoices. The Service is provided by Eaton Industries PTE Limited, Singapore. The provider had provided service from non-taxable Territory and for Applicants, the service is falling under Import of Service and credit is availed by Applicants on copy of GAR 7. The Applicants relies upon the decision of the Hon'ble Tribunal CCE vs. Ambika Overseas (2012) 278 ELT 524 (CESTAT SMB) wherein it was held that in case of Rule 9(1)(e) of the CCR, 2004 the service recipient will pay the service tax by way of G.A.R.-7 challans, such challan is eligible for availing Cenvat credit. Further, reliance is also placed upon: Gabriel India Ltd. v. CCF 1993 (67) ELT 131 (CEGAT), Sona Wires Pvt. Ltd. v. CCE (2012) 35 STT 114, Krebs Biochemicals v. CC 2001 (138) ELT 353 (CEGAT), Avanti Kopp Electricals v. CCE 2006 (193) ELT 581 (CESTAT).

z) Rebate is admissible even if the invoices do not clearly show service tax registration number of the service receiver. [amount Rs. 12,978/-] The Eaton Power Quality Private Limited and provided Renting of Immovable Property Service to Applicants. The claim is dis-allowed only on single ground that the said service provider had not incorporated his Service Tax Registration No. on invoice. It is submitted that the invoice carry the Registration No. and STC Code also. Since copy of Registration Certificate is enclosed, considering the said, claim would be allowed. It is also a well settled legal position that refund should not be rejected on technical and procedural issues.

aa)It is alleged that Canteen Service [Amount Rs. 92,907/-], Garden Maintenance Service [Amount Rs. 21,012/-], Renting of Immovable Property service [Amount Rs. 18,715/-], Cleaning Service [Amount Rs. 909/-] have no direct nexus with output services exported by the Applicants, therefore, the rebate pertaining to these input services is not admissible. The Applicants wish to submit, in detail, specific submissions on each of the aforesaid services.

bb) Eaton Fluid Power Limited and V. D Shetty had provided Catering Service to Applicants. The Service is in relation to providing Export of Service as it is one of the essential service while of output service.

Canteen services are the essential part business of the Applicants being the output service provider for ensuring availability of staff to carry on business of the Applicants. Thus, Canteen service being art Input Service used in relation to provision of export of service, refund on the same would be allowed. Reliance may be placed on the following judicial pronouncement wherein it had been help that Canteen service is an Input service and credit / refund of the same is allowed. [Post amendment made from 01-04-2011]

- Mukand Limited vs. CCE, 2015-TIOL-1693-CESTAT-MUM
- M M Forge Limited and other vs. CCE, 2015-TIOL-1693-HC-MAD-CX
- Gateway Terminals India [Pvt] Limited Vs, CCE, 2015-TIOL-1471CESTAT-MUM
- Resil Chemicals Pvt. Limited vs. CCE, 2015 (1) TMI 948

In view of the foregoing paras, Applicants wish to submit that the service is used by employees who had engaged in export of services as such same is clearly related to and used by them for export of services. Considering the settled legal position the refund on input services used for export of services should be allowed to them. Applicants further wish to submit that the rebate of service tax paid on canteen service were allowed till Oct to Dec-2013 and there is no changes in the legal provision in this regards since then. The earlier OIO have not been challenged by the department and hence attend finality thus the contrary stand taken in the present OIO is not tenable.

cc) The Services provided by Eaton Fluid Power Limited are mainly Business Support Services and they had provided common facilities such as water, electricity, maintenance, security, telephone etc. It can be seen from the invoices attached to paper book, out of total value of services, only Rs.23,000/- from the gross amount of Rs.1,70,000/- are related to garden maintenance rest are related to common facilities provided. As such these services are clearly related to providing export of services as are having direct nexus with export of services. In view of the above, Applicants wish to submit that the credit on Garden Maintenance even post 01-04-2011 is allowed.

Considering the legal and factual position, refund on Business Support Services provided by EFPL, for providing common facilities and garden maintenance should have been allowed. Ld. Commissioner (Appeals) erred in not considering the said legal and factual position. Applicants further wish to submit that the rebate of service tax paid on garden maintenance service were allowed till Jul to Sep- 2013 and there is no changes in the legal provision in this regards since then. The earlier OIO have not been challenged by the department and hence attend finality thus the contrary stand taken in the present OIO is not tenable.

dd) The Eaton Fluid Power Limited [EFPL] had premises in Pimpri. EFPL had provided place to Applicants from where Services are provided by Applicants. All the Employees of Applicants are working in the said premises. The EFPL is charging Applicants for various common facilities provided by them to Applicants. The Services are clearly related to Export of Services as same related to immovable property on which Applicants are registered and having ST 2 and are also exporting services from the said premises. The Service had nexus with export of services and refund should have been allowed on it. Applicants further wish to submit that the rebate of service tax paid on renting of immovable property were allowed till Oct to Dec 2013 and there are no changes in the legal provision in this regard since the earlier OIO have not been challenged by the department and hence attend finality thus the contrary stand taken in the present OIO is not tenable.

ee) Service provided by Maxclean Services. Applicants are engaged in Software Exports and the exports are made basically using computer and computer peripherals and main frame. It needs dust free, hygienic and insert free atmosphere, It is also important that the computers and main frame is maintained in controlled temperature. The service provided by Maxclean is for maintaining area as required and it is essential to keep area dust and inserts free. The Service is clearly and directly relates to export of services. In view of the above,

the Applicants wish to submit that Cenvat Credit / Refund is allowed for housing keeping and cleaning services having nexus with manufacture or providing Output Service. The Service of housing keeping and cleaning were used in provision of export of service and thus refund should have been allowed on it. Applicants further wish to submit that the rebate of service tax paid on cleaning charges were allowed till Oct to Dec 2013 and there is no changes in the legal provision in this regards since then. The earlier OIO have not been challenged by the department and hence attend finality thus the contrary stand taken in the present OIO is not tenable.

ff) The applicants humbly submit that even if it is presumed that the Applicants are not eligible to claim rebate under the said notification, the Applicants are eligible to claim refund under Rule 5 of the Cenvat Credit Rules, 2004. Rule 5 of the Cenvat Credit Rules, 2004 states that where any input service is used in providing output service which is exported, the Cenvat credit respect of the input service so used shall be allowed to be utilized by the provider of output service towards payment of, service tax on output service and where for any reason such adjustment is not possible, the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by Notification. In the present case, there is no doubt with regards to the fact that the services received by the Applicants are utilized for providing output services which is exported. Hence, the Applicants are eligible for claiming benefit under the Rule 5 of the CCR, the same has also been acknowledged by the Ld. Commissioner (Appeals) in para 6.2 read with para 6.3 of the impugned order. It is evident from mere reading of the two paras wherein the Ld. Commissioner (Appeals) has went on stretch to state that the mere qualification of the said input services received by the Applicants as input services in the context of Rule 5 of the CCR, 2004 will not suffice to be eligible for rebate under the Notification 39/2012. Further, in this regard, reliance is placed on decision of Hon'ble High

Court of Karnataka in the case of Shell India Marketing Pvt. Limited Vs CCE. [2012 (10) TMI 34 (HC)] wherein It was held that these provisions are in the nature of incentives given to the exporters to encourage them from getting the precious foreign exchange to the Country and also to see that the price which they keep in the international market is competitive. If these benefits to which they are legally entitled to and is conferred on them by the policies of the Government as well as the statutory provisions is not settled expeditiously, the very object of granting these benefits would be defeated.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal.

4. Personal hearing in the case was fixed for 19.12.2022. Shri Narendra Vaidya, Manager (Taxation) attended the hearing and he submitted that in all these Claims, part of the amount was rejected by the original authority on the ground that declaration not being accurate and services like canteen service not being input service. He reiterated their earlier submissions. He requested to allow their RA.

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

6. Government observes that the main issues involved in the instant Revision Application are whether a rebate claim can be rejected – (a) for lapses in following the laid down procedure under Notification No. 39/2012-S.T. dated 20.06.2012 and (b) due to ineligibility of certain input services as per Rule 2(l) of Cenvat Credit Rules, 2004?

7.1 Government observes that the concerned Rule 6A(2) of the Service Tax Rules,1994 reads as under:

6A. Export of services -

(2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

7.2 Government observes that the Notification No. 39/2012-ST dated 20.06.2012, has been issued under Rule 6 of the Service Tax Rules,1994, and it stipulates following conditions, limitations and procedure:

2. Conditions and limitations:

(a) *that the service has been exported in terms of rule 6A of the said rules;*

(b) *that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;*

(c) *that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service; Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.*

(d) *the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;*

(e) *no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and*

(f) *that in case,-*

(i) *the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or*

(ii) *the service, rebate for which has been claimed, has not been exported; or*

(iii) *CENVAT credit has been availed on inputs and input services on which rebate has been claimed,*

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

3. ***Procedure.***

3.1 Filing of Declaration. *- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central*

Excise, as the case may be, specifying the service intended to be exported with,-

(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;

(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.

***3.2 Verification of declaration**.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.*

8.1 Government observes that the impugned Order-in-Original does not mention about violation of any of the stipulated conditions or limitations. Further as per procedures laid down at para 3.1 of said Notification No.39/2012-ST dated 20.06.2012, the applicant had to file a declaration prior to date of export specifying the inputs /input services to be used in the service intended to be exported with jurisdictional authorities. As per para 3.2 of said Notification, the jurisdictional authority had to conduct verification of the said pre-export declaration and satisfy regarding no likelihood of evasion of duty/service tax and thereafter accept the same. Government observes that as per impugned Order-in-Original the pre-export declaration was filed on 04.07.2014 for the period Jul-Sep'14, which has been accepted by the Competent authority.

8.2 Government observes that during the impugned period viz. Jul-Sep'14, the applicant had not taken any Cenvat credit on input services on which rebate had been claimed. Government observes that in consonance with Notification No.39/2012-ST dated 20.06.2012, any objection regarding eligibility of input services should have been raised at the time of verification of pre-export declaration. As no Cenvat credit has been availed by the

applicant, to apply provisions of Cenvat Credit Rules,2004 at the time of sanctioning rebate would be inappropriate.

8.3 At the same time as the definition of 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004 (CCR,2004), clearly excludes certain services, rebate of service tax paid on such services would be inadmissible. In the instant case, on this ground rebate of 'Canteen service' has been rightly rejected, as 'Outdoor Catering Service' is primarily used for consumption by employees and is hence covered under exclusion clause (C) of Rule 2(l)(ii) of CCR,2004. The case laws quoted by the applicant are not applicable in the instant case as in those cases maintaining canteen within factory premises for workers was a statutory requirement under the Factories Act, 1948/ Dock workers (safely, health & welfare) Regulation, 1990.

8.4 As regards, contention of the Applicant that alternatively they are eligible to claim refund under Rule 5 of the CCR, 2004, Government observes that the said Rule allows refund of Cenvat Credit, however as already discussed at para 8.3, as the impugned services, were ineligible as per definition of 'input service' under Rule 2(l) of CCR,2004, no Cenvat credit of tax involved could have been taken. Hence, question of refund does not arise.

9.1 As regards procedural lapse of not mentioning some of the input services in the pre-export declaration filed as per para 3.1 of said Notification (supra), Government observes that the respondent had contended that the services were mentioned under the head "other services" in the pre-export declaration. Government also observes that the lower authorities have not raised any doubts as regards to use of these input services by the Applicant in providing the services exported.

9.2 Further, Government observes that in numerous court cases it has been held that "substantial benefit cannot be denied because of procedural lapses" including the ones relied upon by the respondent viz. Convergys India Services Pvt. Ltd., Wipro Limited, Jocund India Ltd. etc. The bottom

line is that whereas stipulated 'Conditions/limitations' are to be mandatorily complied to avail the benefit of a Notification, the laid down procedure is to facilitate in availing the benefit of the Notification and thus any lapse in following it is condonable, subject to satisfaction of competent authority.

10. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. PUN-EXCUS-001-APP-499-16-17 dated 16.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune except as regards the ineligible services under Rule 2(l) of CCR,2004, viz. Canteen service involving rebate amount of Rs.92,907/-, and allows the Revision Application filed by the applicant to that extent.

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

ORDER No. 54/2023-CX(WZ)/ASRA/Mumbai dated 08.2.2023

To,
M/s. Eaton Industries Pvt. Ltd.,
145, Off Mumbai-Pune Road,
Pimpri, Masulkar Colony Road,
Pune – 411 018.

Copy to:

1. Commissioner of Central GST & Customs,
   Pune-I Commissionerate,
   GST Bhavan, ICE House,
   41/A, Sassoon Road, Pune – 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.