

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH AT CHENNAI

Appeal No.ST/40661/2015

[Arising out of Order-in-Appeal No.MAD-CEX-000-APP-183/2014 dt.23.12.2014 passed by the
Commissioner of Central Excise (Appeals-I), Madurai]

AMRL Hitech City Ltd.

Versus

Commissioner of Central Excise & ST- Tirunelveli

Appearance:

Shri P.C.Anand, Consultant For the Appellant

Shri L. Paneerselvam, AC (AR) For the Respondent

CORAM:

Hon'ble Shri R. Periasami, Technical Member

Date of hearing/decision: 17.3.2016

FINAL ORDER No.40483/2016

The appeal is filed against the impugned order dt.23.12.2014 passed by Commissioner of Central Excise (Appeals), Madurai.

2. The issue relates to partial rejection of refund claim on inputs services under Rule 5 read with Notification No.12/2013 dt. 1.7.2013. The appellant is registered as Multi Product Special Economic Zone (MPSEZ) as a developer of AMRL Hi-Tech City and the appellant claimed the refund of credit paid on various input services under Rule 5 of CCR. Appellant claimed refund of Rs.89,82,783/- towards service tax paid on various input services. While scrutinizing the refund, it was found that appellants were not eligible for refund on certain services amounting to Rs.18,13,434/- for which a show cause notice dt. 5.8.2014 was issued for denying refund claim to that extent mainly on the services viz. Company Secretary Service, Chartered Accountant Service, Security Service, Legal Consultancy services etc. The adjudicating authority in his order sanctioned the refund claim of Rs.71,69,349/- but rejected the refund of Rs.18,13,434/- on the ground that no evidence was available supporting that these services were used towards authorized operation of SEZ. On appeal, the Commissioner (Appeals) upheld the order.

3. Ld. Consultant submits that eligibility of refund under Notification No.12/2003 and under Rule 5 of CCR is not in dispute as the adjudicating authority already sanctioned the refund for majority of the input services but rejected the claim on CA service, legal services and submits that majority amount of input services relates to legal services. He also submits that in respect of legal services, security services and GTA services they have paid service tax under reverse charge mechanism. He produced copy of bills, invoices raised by various clients towards legal fees under Company Secretary Service and under GTA service. He submits that as a developer of 2520 acres, the land was to be developed as a SEZ but it went into litigation and the appellant had associated as a developer with TIDCO as joint venture and they had to pay legal fees for that litigation i.e. Appeal Suit filed before the Madurai Bench of Hon ble High Court of Madras. The legal fees were paid to various advocates, Additional Solicitor General. He submits that all these expenses incurred as a part of developing the SEZ. Therefore, they are input services for a developer.

4. On the other hand, Ld. A.R reiterated the findings of the adjudicating authority wherein the appellate authority has recorded that appellants have not produced any evidence to show that these services were used in relation to authorized operation of SEZ as a developer.

5. After hearing both sides, I find that there is no dispute on the fact that appellant being a developer is registered with Development Commissioner, MEPZ, Special Economic Zone, Chennai vide LOA No.F.2 (2)/2/2007 EP dt. 23.5.2007. On perusal of the Development Commissioner's letter dt. 13.12.2003 wherein the unit of Approval committee has approved the list of specified services for claiming the benefit under Notification 12/2013. On perusal of the list of services which contained 47 services (annexed at pages 53, 54 of the paper book) vide Sl.No.7, 11, 21, 22, 26 & 32 which relates to approval list of specified services viz. Chartered Accountant service, Company Secretary Services, GTA service, ITS service, Legal Consultancy Service and Security Agency services respectively. The committee has approved the said list of services and the appellants are eligible for claiming the benefit under Rule 5 of CCR. On perusal of the SCN and the impugned order, the only ground on which the refund has been rejected is that no evidence was submitted by the appellants in supporting that these services were used in the operation of SEZ developer. On perusal of various bills, and invoice submitted before the Bench, I find that there is Invoice dt.3.12.2013 issued by SGP & Associates-Company Secretaries towards Retainer-ship fee and another Invoice dt. 31.10.2013 issued by akasam & associates, for conducting the statutory audit of the Financial Year 2012-13. both raised on AMRL Hitech City Ltd. Similarly, GTA for transport of goods service has been paid and the appellants have used the services as a developer. Therefore, they are eligible for service tax on Chartered Accountant, Security Agency service, GTA service and Company Secretary Service and IT service.

6. As regards legal services on perusal of various bills, and invoice, I find that invoice dt. 9.11.2013 has been raised by Shri G. Mazilamani, Additional Solicitor General of India for appearing before Hon'ble Madurai Bench of Madras High Court on 13.1.2013 wherein Rs.10,00,000/- was paid. There is also Invoice raised on AMRL Hitech City Ltd. by M/s.King & Partridge No.MVN/451 dt. 08.11.2013 towards professional charges in connection with appearing before Hon'ble Madurai Bench of High Court, wherein the appellants have paid legal fees of Rs.10,05,000/-. A perusal of these invoices clearly show that fees have been paid for the appeal suit. I find from the bills, wherein it has been clearly mentioned that amount has been paid in connection with Appeal Suit (A.S.No.191 to 193/2006 and A.S. No.191 and 192/2008) which was related to Madurai Land Land Acquisition matters pending before Madurai Bench of the Hon'ble Madras High Court. As a foot note to the bill, it has to be paid on the taxable value by AMRL Hitech City Ltd to the Central govt as per Notfn No.36/2012 dt. 20.6.2012. I find from the challan dt. 29.3.2014 wherein the appellant have remitted the service tax under reverse charge under the services of legal consultancy service. From the above facts, bills and remittances of service tax clearly confirms that appellant being a developer of AMRL Hi-Tech City has to fight legal case. It is informed by the consultant that ultimately Hon'ble Madurai Bench of High Court allowed the appeal in their favour. Since the case relates to land acquisition of 2520 acres the input services in dispute were used as authorized operation of SEZ as a developer. In view of above, I hold that appellants are eligible for refund under Rule 5 of CCR read with Notfn No.12/2003 as amended on the input services i.e.

Company Secretary Service, Chartered Accountant service, Security service, Legal Consultancy service, ITS service, GTA service. Accordingly, appellants are eligible for refund of Rs.18,13,434/- subject to verification by the original authority. Appellants are directed to produce all the original invoice documents, High Court orders, if any before original authority. Appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(R. PERIASAMI)

TECHNICAL MEMBER