

GIB/KA/GENERAL MOTORS/01.04.2021/OTHERS-20

Others Category : REFUND OF UNUTILIZED CENVAT CREDIT

State : Karnataka

Order No.: GIB/KA/GENERAL MOTORS/01.04.2021/OTHERS-20

Name of Entry :

GENERAL MOTORS TECHNICAL CENTRE INDIA PVT. LTD.

Date : 01-04-2021

Breif Issue :

FACTS AND ISSUE OF THE CASE:

The appellant General Motors Technical Centre India Pvt. is registered with the Service Tax Department and is engaged in providing Consulting Engineer Services to their clients/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. Appellant filed a refund claim for Rs. 4,26,79,323/- (Rupees Four Crore Twenty Six Lakhs Seventy Nine Thousand Three Hundred and Twenty Three only) on 20/09/2016 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 relating to the period October 2015 to December 2015 as per the provisions of Notification No. 27/2012-CE (NT) dated 18/06/2012 read with Rule 5 of Cenvat Credit Rules, 2004.

After following the due process, the original adjudicating authority vide Order-in-Original dated 21/06/2018 granted refund of Rs. 4,15,49,358/- (Rupees Four Crore Fifteen Lakhs Forty Nine Thousand Three Hundred and Fifty Eight only) and rejected the balance claim amounting to Rs. 11,29,965/- (Rupees Eleven Lakhs Twenty Nine Thousand Nine Hundred and Sixty Five only) considering it to be ineligible cenvat credit on certain services. Aggrieved by the said order, appellant filed appeal before the Commissioner who upheld the order of the original authority except allowing cenvat credit of Rs. 34,250/- (Rupees Thirty Four Thousand Two Hundred and Fifty only) availed in respect of Technical Consultancy Services and for the remaining amount of Rs. 10,95,715/- (Rupees Ten Lakhs Ninety Five Thousand Seven Hundred and Fifteen only), the refund claim was rejected mainly on the ground of lack of nexus and for certain services copy of invoice is not produced.

Decision of Advance Ruling Authority :

DECISION:

The learned Commissioner has rejected the refund only on the ground of lack of nexus between the input services and the output services which is exported. The learned Commissioner has also observed that with regard to certain services the appellant has not filed the invoices which is not a correct finding because the appellants have filed the invoices and the same has been examined by the original authority and the appellant has also filed the invoices before this Tribunal also and all these services on which the refund has been rejected have been consistently held to be input services.

Further, it has been consistently held by the Tribunal in various decisions wherein the Tribunal has taken a view that after the amendment of Rule 5 of Cenvat Credit Rules, 2004, there is no need for one to one correlation between the input services and the output services and moreover the Board Circular dated 16/03/2012 also clarified 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 have to be viewed with the objective of allowing the refund.

The Department has not questioned the service tax paid on input services at the time when the cenvat credit was taken and at the time of claiming refund also. Further in view of the clarification given by the Tax Research Unit of CBEC vide their letter dated 16/03/2012, the amended Rule 5 of Cenvat Credit Rules does not require correlation between the output service exported and the input service used in such output services exported. Further, as far as Rent-a-Cab service is concerned which the Department has disputed on the ground of exclusion, in the present case 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. The decisions relied upon by the Department in this regard are distinguishable and 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'.

After all discussion, the appellant is entitled to refund of cenvat credit of Rs. 10,95,715/- (Rupees Ten Lakhs Ninety Five Thousand Seven Hundred and Fifteen only). The appeal is accordingly disposed of.