

CST, Bangalore  
Vs.  
Parinith Infotech Pvt.Ltd.

**Brief Facts of the Case**

- Respondent is STPI Unit having both Software Development Activity and BPO Services
- They availed credit of service tax paid on various input services
- They registered under service tax on 1<sup>st</sup> of April 2007
- Claimed refund of accumulated credit for the period from January 2006 to December 2008
- Refund sanctioning authority rejected the claim on various grounds

## Brief Facts of the case – Contd.

- Respondent preferred Appeal before Commissioner (Appeals)
- Commissioner (Appeals) allowed the appeal sanctioning refund
- Revenue is in Appeal against the said order before H'ble Tribunal

## Grounds of Appeal

- Period prior to 14.03.2006 is not covered by Any Notification
- Refund claim is barred by limitation
- The input services should be 'used in providing output service which is exported'
- The credit on some of the input services are ineligible as it does not fall under Rule 2(l)
- Refund is claimed for the credits pertaining to period before registration.
- They have not produced various documents like agreements with the customer, certificate from the customer that the services are used outside India, Transfer pricing report etc.,
- No service tax is paid by the service provider on some of the invoices based on which credit is taken.

## Rule 5 of CCR 2004

- **RULE 5. Refund of CENVAT credit.** - Where any input or **input service** is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or **used in providing output service which is exported**, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,
  - (i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or
  - (ii) service tax on output service,
- **and where for any reason such adjustment is not possible**, the manufacturer or 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 :
- **Provided** that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.
- **Provided** further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.
- **Explanation** : For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rules, 2005.

## Period prior to 14.03.2006 not covered by Notification

- Refund is claimed under Rule 5 of Cenvat Credit Rules, 2004, where as the Notification to claim refund of service tax was issued only on 14.03.2006. Therefore the refund for the period prior to 14.03.2006 is invalid without authority of law.
- Reliance is placed on the decision of Supreme Court in the case of Hindustan Zinc Ltd. Vs. CCE 2008 (11) STR 338 (Tri-LB) upheld by SC.

## Para 7 of the said decision

- 7. It is not possible to accept the contention that the manner of collection of tax can be extended to include the person liable to pay the tax. The person liable to pay the tax is an integral component of any tax - as a concept, distinct from the mechanism for its collection and recovery. Reference to Section 68 in Section 94(2)(a) simply means that the Central Government is required to make rules for collection and recovery of Service tax under Section 68, read with Section 66 which is the charging section. As seen above, Section 68(2) envisages specifying the 'services' in relation to which a person other than the service provider is to be made liable to pay Service tax; it also envisages specifying the 'person' - other than the service provider - to be made liable to pay Service tax. While the former is to be done by way of notification, the latter can be done by making rules. It is well known that where the law provides the manner for doing something, it should be done in that manner or not at all. It is relevant to mention here that while Notification No. 12/2002 was issued amending the Service Tax Rules in exercise of rule making power under Section 94 of the Act, Notification No. 36/2004 was issued in exercise of powers under Section 68(2).

## Refund is barred by limitation

- Para 6 of Notification 5/2006-CE (NT) reads as  
"6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944)."

## Refund is barred by limitation

- As Per Section 11B refund should be applied for within 1 year from the relevant date.
- The application in the instant case is made after one year. Therefore it is barred by limitation.

- (B) "relevant date" means, -
- (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
  - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or
  - (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
  - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;
- (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;
- (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;
- (e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;
- (ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;
- (eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;
- (f) in any other case, the date of payment of duty.