CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85265 OF 2019

[Arising out of Order-in-Appeal No: IM/CGST A-I/MUM/275/18-19 dated 17th August 2018 passed by the Commissioner of Central tax (Appeals-I), Mumbai.]

Rolex Watch Company Private Ltd
NM Wadia Building, 1st Floor, 123 MG Road
Mumbai 400023 … ***Appellant***

versus

Commissioner of CGST & Service Tax
13th Floor, Air India Building, Nariman Point
Mumbai - 400021 ***…Respondent***

APPEARANCE:

Shri Sushant Murthy, Advocate for the appellant

Shri S K Hatangadi, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85152 /2022

DATE OF HEARING: 22/02/2022
DATE OF DECISION: 22/02/2022

In this appeal of M/s Rolex Watch Company Private Ltd against order-in-appeal no. IM/CGST A-I/MUM/275/18-19 dated 17th August 2018 of Commissioner of Central Tax (Appeals-I), Mumbai

which upheld the decision of the original authority, two aspects of the order – with one telescoping into other – are to be considered: the exclusion of some of the activities from the ambit of service tax and the ineligibility of a portion of CENVAT credit taken by them for monetization. The dispute has its genesis in the refund of accumulated CENVAT credit of ` 13,36,901/-, attributed to 'input services' deployed for rendering of 'service' to M/s Rolex SA, Geneva in the six quarters spanning from July 2012 to December 2013, sought by appellant under rule 5 of CENVAT Credit Rules, 2004 in accordance with the procedure stipulated in notification no. 27/2012-CE(NT) dated 18th June 2012. Even while rejecting the claim as inadmissible in the circumstance of the purported transaction of M/s Rolex Watch Company Private Ltd with M/s Rolex SA being nothing more than internal transfer of funds, it was held by the lower authorities that, even if these were 'exports' within the meaning of rule 6A of Service Tax Rules, 1994, the entitlement would have to be restricted to `10,77,183/- owing to documentary deficiencies. Consequently, the dispute may be compartmentalised as: eligibility for coverage under rule 5 of CENVAT Credit Rules, 2004 and appropriateness of disallowing of credit beyond `10,77,183/- for refund.

2. Learned Counsel for appellant was at pains to discredit the observation in the impugned order that they had been derelict in furnishing relevant information that may have forestalled the

truncating of eligible credit; relying upon the correspondence with the service tax authorities, he pointed out to the prompt response of theirs to the piece-meal exercise undertaken in processing their claims.

3. According to Learned Counsel, the irrationality of the finding that the impugned activity did not qualify as 'exports' was evident from the absence of any proceedings for recovery of tax on 'service' rendered domestically which is implicit in such determination of 'non-export' on the part of the assessee. For this, he places reliance on the decision of the Tribunal in *JFE Steel India Pvt Ltd v. Commissioner of CGST, Gurugram [2021 (44) GSTL 292 (Tri.-Chan.)]*, with particular reference to

> *'8. We find that for the same set of service provided earlier to the disputed period and subsequently also, the Department allowed cash refund of accumulated Cenvat credit considering the appellant as not an 'intermediary', hence denying the cash refund of the accumulated Cenvat credit for the intervening period, in our opinion, is bad in law. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per rule.*
>
> *xxxxx*
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> *10. The present issue is in respect of the refund claims filed in terms of Rule 6 of the Cenvat Credit Rules, 2004 as amended from time to time. The said rule provides for the refund of accumulated credit in the Cenvat account in respect of goods and services exported under bond or undertaking.*

This rule is very specific and lays down how to determine the quantum of admissible refund from the accumulated credit. It is not a proceeding for the denial of credit available in the Cenvat account of the claimant. Thus even if the refund is denied then also the amount continues to be in the Cenvat account of the claimant.

11. If the case of Revenue is that the activities undertaken by the appellants in present case is not amounting to Export of Service then the proceedings need to be initiated against the appellant for demanding the service tax in respect of the taxable services provided by the appellant. In the present case no such proceedings demanding the Service Tax on these taxable services provided by the appellant have been initiated in terms of Section 73 of the Finance Act, 1994. By not initiating any such proceedings Revenue itself has allowed these taxable services provided as Export of Services. Having done so they cannot in a proceeding under Rule 5 for refund of accumulated credit take the contrary stand and deny refund treating the services provided not to be export of services.'

Though Learned Authorized Representative did attempt to salvage the situation by pointing out that the lower authorities, by reference to the financial records, had also established that the impugned contract was little else than an agreement for 'inter-office' reimbursement of expenses incurred at the local end and not 'consideration' for 'service' to warrant recovery of tax under Finance Act, 1994, a separate finding by the lower authorities of the impugned activity being covered by 'intermediary services' in Place of Provision of Services Rules, 2012, by which, contrary to the default benchmark of 'location of

recipient', it is the 'location of provider' that determines 'taxable territory', is at odds with the conclusion of no 'service' having been provided or received. The test of 'service' is not financial flows – or 'consideration' – which is bereft of any standing except in the context of the entirety of section 65B(44) of Finance Act, 1994. There has been no foray in that direction by the lower authorities and, without determination of exclusion from 'service' in the manner intended therein, the proposition of absence of 'service' to alienate financial flows from 'consideration' is not tenable.

4. Learned Counsel contends that the very same activity was, for the period prior to 1st July 2012, accepted as covered within the scope of Export of Services Rules, 2005 for eligibility under rule 5 of CENVAT Credit Rules, 2004 and it would appear that it was the rescinding of the said Rules upon commencement of Place of Provision of Service Rules, 2012 and the classification of 'intermediaries' therein, with deemed 'domestication' of the service, which prompted the change of tack. This, he pointed out, was inconsistent with the scheme as the intent of 'export' remained unaltered and, more so, owing to 'intermediaries' requiring two other entities to consummate the transaction which the proceedings thus far were woefully oblivious of.

5. According to Learned Counsel, conformity with the several

characteristics of ‘export’ in rule 6A of Service Tax Rules, 2004, other than determination of ‘service’ having been rendered in the ‘taxable territory’ within the meaning of Place of Provision of Services Rules, 2012, has not been disputed by the lower authorities. Decrying the contrived fitment within ‘intermediary service’ merely for denial of refund claim, Learned Counsel submits that the contract adverted to by the lower authorities obliges the appellant to undertake marketing and promotion of ‘watches’ for which M/s Rolex SA Geneva are renowned with no role in the actual trade transaction between the producer and consumer that is facilitated exclusively by authorized dealers in India and that, even by stretching the connect, the later incorporation of ‘supply of goods’ in the scope of ‘intermediary service’ in 2014 precluded such fastening appellation on their transaction during the period of dispute.

6. Learned Authorized Representative contended that the appeal merits dismissal in view of the clear findings of the lower authorities that the activity is nothing but ‘intermediary service’ which determines ‘taxable territory’ as the place at which appellant was located.

7. On perusal of the contract, it is seen that there are two obligations that devolve on the appellant, *viz*, promotion and marketing of Rolex watches in India and undertaking repairs/replacement during the warranty period for which neither the

customer nor the overseas entity are charged. That the ‘consideration’ in the contract, having nought to do with actual turnover in India or the nature and extent of repairs, is for the contracted activity is plausible; in any case, the manner of computation does not, of itself, deprive the obligated financial flow from acceptability as ‘consideration’ for service.

8. It would appear that, for any ‘post-warranty’ repair/ replacement, which dealers are unable to handle, the undertaking of such work by the appellant entitles them to bill the customer which is ‘taxable service’ rendered in ‘taxable territory’ and not in dispute here. The appellant does render service in ‘taxable territory’ and that due tax is discharged on such transactions is common ground.

9. The appellant claims that the ‘consideration’ pursuant to contractual obligation with M/s Rolex SA for rendering services outside the ‘taxable territory’ should be relieved of the tax component in accordance with rule 5 of CENVAT Credit Rules, 2004. It is ironical that a tax administration, otherwise keen to perceive ‘service’ in any contractual obligation involving financial flows, contends ‘no service, no consideration’ in the present dispute to deflect eligibility for refund; a clear instance of, and because it is a revenue administration that does not bind itself to consistent approach, ‘running with the hounds and hunting with hares’ that does not appeal

either logically or legally. The lower authorities have not identified the terminal entities that the appellant is purportedly 'intermediary' for, the manner in which the 'intermediary' service is recompensed in the channelizing of 'consideration' from the customer to the supplier or the origin of the supply of service in the course of which the 'intermediary' facilitation by the appellant occurs. The adjunct proposition of 'no service' to obfuscate this lacuna brings the contradiction to the fore – the determination of 'intermediary' is founded upon the obligations in a contract which should not only have been redundant but also not acknowledgeable as contract if the proposition that the compensation terms therein, not being 'consideration' in the absence of 'service', are an internal arrangement for reimbursement of expenses is also accepted. Logic and legality are obviously invisible in the conclusions of the lower authorities.

10. The nature of the service is irrelevant for the purpose of rule 5. All that is required is compliance with the conditions laid down therein which, *inter alia,* include undertaking of exports as specified in rule 6A of Service Tax Rules. As pointed out by Learned Counsel, all the conditions therein had been complied with; any counters thereto in the impugned order are, for the reasons *supra*, without authority of law. Therefore, the denial of the refund is not within the authority of law. The appellant, as provider of 'service' outside the 'taxable territory' is entitled to be relieved of the tax burden in the value of

'service' so exported.

11. However, there is only passing mention of the entitlement in the event of eligibility; all that can be deduced is that the original authority does not controvert eligibility of ` 10,77,183/-. The claim is for a higher amount and the conformity of the remaining portion of the claim to the formulation in rule 5 of CENVAT Credit Rules, 2004 needs the attention of the competent authority.

12. Appeal is, accordingly, allowed to the extent of ` 10,77,183/- and by remanding the matter to the original authority for considering the submissions of the appellant for the remaining portion of the claim as directed above.

(Operative Part of the Order pronounced in the open court on 22nd February 2022)

(C J MATHEW)
Member (Technical)

**/as*