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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 87845 of 2019

(Arising out of Order-in-Appeal No. PVNS/Appeals-II/181 to 182/MC/2019 dated 27.06.2019 passed by the Commissioner (Appeals)-II, CGST & Central Excise, Mumbai)

M/s. KKR India Advisors Pvt. Ltd. **.....Appellant**
2nd Floor, Piramal Tower,
Peninsula Corporate Park,
Lower Parel, Mumbai

VERSUS

The Commissioner of CGST & Central Excise, Mumbai Central **.....Respondent**
4th Floor, CEx Bldg.,
Churchgate, Mumbai

With

Service Tax Appeal No. 88160 of 2019

(Arising out of Order-in-Appeal No. PVNS/Appeals-II/181 to 182/MC/2019 dated 27.06.2019 passed by the Commissioner (Appeals)-II, CGST & Central Excise, Mumbai)

M/s. KKR India Advisors Pvt. Ltd. **.....Appellant**
2nd Floor, Piramal Tower,
Peninsula Corporate Park,
Lower Parel, Mumbai

VERSUS

The Commissioner of CGST & Central Excise, Mumbai Central **.....Respondent**
4th Floor, CEx Bldg.,
Churchgate, Mumbai

APPEARANCE:

Shri Tirumalai Sampath, Advocate for the appellant
Shri Vinod Kumar, AC (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86106-86107/2022

DATE OF HEARING : 14.11.2022
DATE OF DECISION : 25.11.2022

Per: AJAY SHARMA

These appeals have been filed by the appellant assailing the order dated 27.6.2019 passed by the Commissioner (Appeals)-II, CGST & Central Excise, Mumbai by which the Commissioner (Appeal) partly modified the orders passed by the Adjudicating Authority.

2. The issue involved herein is about denial of refund of accumulated/unutilized Cenvat Credit of Service tax under Rule 5 of Cenvat Credit Rules, 2004 r/w Notification No.27/2012 -CE (NT) dated 18.6.2012. It is to be decided whether the authorities below have rightly rejected the refund claims in respect of Business Travel Service, Membership of club or Association, Event Management Service and Business Support Services as ineligible *input services* in terms of Rule 2(l) of Cenvat Credit Rules, 2004 being no nexus with the *output services*?

3. The period in dispute is October, 2016 to June, 2017 and the refund claim in dispute is Rs.21,18,014/-. The appellants herein were providing taxable output services viz. banking and other financial services and availing Cenvat Credit of the Service Tax paid

on various input services used by them in providing the said output services. The appellants filed two refund claims before the concerned authorities under Rule 5 of Cenvat Credit Rule, 2004 r/w notification No.27/2012-CE (NT) dated 18.6.2012 in respect of the accumulated Cenvat Credit on the grounds that the output services provided during the periods in dispute viz. 1.10.2016 to 31.3.2017 & 1.4.2017 to 30.6.2017 respectively had been exported and they were not in a position to utilize the Cenvat credit availed on the said input services. The Adjudicating Authority vide separate Orders-in-Original dated 15.2.2018 and 10.5.2018 respectively rejected the refund claims on Business Auxiliary Service, Business Travel Services, General Insurance Services, Event Management Service, Business Support Service and Membership of clubs and association. On Appeals filed by the Appellant before the 1st Appellate Authority, the learned Commissioner (Appeals) vide common impugned order dated 25.6.2019 partly modified the Adjudicating Orders and confirmed the rejection of refund claims on *Business Travel Service, Membership of club or Association, Event Management Service and Business Support Services*.

4. Learned counsel for the appellant submits that the refund has been rejected without issuing any show cause notice to the appellants. He further submits that after the amendment in Rule 5 ibid on 1.4.2012 there is no requirement of establishing *nexus* between input and output services for claiming refund. According to learned counsel Business travel service consisting of expenses of air travel and travel agent’s service, have been availed as the

appellant's employee have to travel to various locations in India and abroad for the growth of its organization, therefore as the expenses for travel or Business Travel Service are for facilitating the objectives and growth of the company the same has nexus with the output service. According to him the mails, to show that the travelling are for business purpose only, were also placed on record before the lower appellate authority by the appellant. So far as Club Membership and Event services are concerned, learned counsel submits that such membership is necessary for conducting Events, business meetings with foreign delegates, business forums, seminars, conference etc. for understanding the current trend of the Industry which has a direct nexus with the output service. It has further been submitted that these service are not used for the personal use of the employees. So far as *Business Support Service* is concerned learned counsel submitted that these were also utilized for smooth running of the business and that the business support service provided by KKR Capital Markets India Pvt. Ltd. in this regard are consumed for the output services provided by them and in support of his submission learned counsel relied upon the decision of this Tribunal in the matter of *Bain Capital Advisors (India) Pvt. Ltd. vs. Commr, GST & CE, Mumbai South; Final order No. A/85996-85998/2022, dated 21.20.2022*. Per contra learned Authorised Representative appearing for Revenue supported the findings recorded in the impugned order. He submits that the appellants failed to produce any tangible documentary evidence in support of their submissions that the services had nexus with the

output service and therefore the authorities below have rightly rejected refund claim.

5. I have heard learned Counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the synopsis & case laws placed on record by the learned counsel. The first objection raised by the learned counsel is non-issuance of show cause notice for rejecting the refund. There is no doubt that Rule 5 ibid provides for refund of accumulated Cenvat credit subject to compliance of the procedure/ guideline laid down in the notifications issued thereunder. The refund of Cenvat credit on the services in issue was mainly denied to the Appellant on the ground of 'no nexus' between the input services and the export services. But the question herein is whether the department can deny refund of Cenvat credit under Rule 5 ibid alleging that there was no nexus between the output and input services. It is settled legal position that denial of Cenvat credit can be done only by issuing notice under Rule 14 ibid and the department cannot reject refund of Cenvat credit solely under Rule 5. It is well settled principle that availment of Cenvat credit, its utilization and refund are different aspects dealt with under CCR, 2004. Rule 5 provides for any refund of Cenvat credit and the said Rule nowhere provides for determination about the correctness of availment of Cenvat credit. Its only Rule 14 ibid which provides for recovery of irregularly availed Cenvat credit. Admittedly since the availment of credit has not been questioned by the department herein by issuing show cause notice in terms of Rule 14 ibid, the refund

benefit cannot be denied on the ground of non-establishment of nexus between input and the output services.

6. In the matter of *BNP Paribas India Solution Pvt. Ltd. vs. Commr. CGST, Mumbai East; 2022 (58) G.S.T.L. 539 (Tri.-Mumbai)*this Tribunal while allowing the appeal of the assessee therein allowed the refund claim u/s. 5 ibid by holding that since the provisions of Rule 14 ibid have not been invoked, the refund of Cenvat credit as claimed by the Appellant under Rule 5 *ibid* cannot be denied. The relevant paragraphs of the said order are reproduced hereunder:-

> *"5. I have heard Learned Counsel for the Appellant and Learned Authorised Representative for the Revenue and perused the case records including the written submission and the case laws filed by the respective sides. There is no doubt that Rule 5 ibid provides for refund of accumulated Cenvat credit subject to compliance of the procedure/guideline laid down under the notifications issued thereunder. The refund of Cenvat credit on the services in issue was mainly denied to the Appellant on the ground of 'no nexus' between the input services and the export services. The issue which falls for consideration in these Appeals is whether the department can deny refund of Cenvat credit under Rule 5 ibid alleging that there was no nexus between the output and input services. It is well settled legal position that denial of Cenvat credit can be done only by issuing notice under Rule 14 ibid. Having allowed the Cenvat credit or by not denying the same, the department cannot reject refund of Cenvat credit under Rule 5. It is well settled principle that availment of Cenvat credit, its utilisation and refund are different aspects dealt*

with under CCR, 2004. Rule 5 provides for any refund of Cenvat credit and nowhere in this Rule there is a provision to determine the correctness about the availment of Cenvat credit. Its only Rule 14 ibid which provides for recovery of irregularly availed Cenvat credit. I find force in the submission of Learned Counsel that since availment of credit has not been questioned by the department in terms of Rule 14 ibid, the refund benefit cannot be denied on the ground of non-establishment of nexus between input and the output services. This Tribunal in Appellant's own case on an identical issue, for the period April, 2012 to March, 2013 and April, 2016 to September, 2016 in the matter of M/s. BNP Paribas India Solutions Pvt. Ltd. v. Commissioner of CGST, Mumbai East reported in 2020 (2) TMI 224-CESTAT Mumbai, set aside the denial of refund by the department to the Appellant on the ground of non-establishment of nexus between the input and output services, after discussing Rule 5 ibid in detail. The relevant extract of the said order is as under :

"xxxx xxxx xxxx

6. Rule 5 of the Cenvat Credit Rules was substituted by Notification No. 18/2012-C.E. (N.T.), dated 17-3-2012 (w.e.f. 1-4-2012). Under the said substituted rule, it has been provided that the manufacturer or the service provider has to claim the refund as per the formula prescribed therein. Considering such amendment of Rule 5, the Tax Research Unit of Department of Revenue *vide* circular dated 16-3-2012 has clarified that the new scheme under Rule 5 does not require the kind of correlation that is needed at present between exports and input services used in such exports. Since the amended rule w.e.f. 1-4-2012 does not provide for establishment of nexus between the input and the output services and the benefit of refund is to be extended only on compliance of the formula prescribed therein, I am of the view that denial of refund

benefit on the ground of non-establishment of nexus cannot be sustained, I find that this Tribunal in the case of *Maersk Global Services Centres (I) Pvt. Ltd.* (supra) has extended the refund benefit on the ground that establishment of nexus between the input and the output services cannot be insisted upon. The relevant paragraphs in the said decision is extracted hereinbelow:

> "7. In this case, the department has not disputed the fact regarding export of output service by the appellant. The dispute raised in the present case were in context with non-establishment of nexus between the input and output services, service description provided in the invoices were not confirming to the input service definition provided under Rule 2(l) ibid and the invoices were not submitted by the appellant, establishing the fact that the refund benefit should be granted to it. So far as establishing the nexus between input and the output service is concerned, I find that this Tribunal in the case of *Accelya Kale Solutions Ltd.* (supra) by relying upon the letter dated 16-3-2012 of TRU has held that under Rule 5 ibid, refund of input service credit is permissible on compliance of the formula prescribed therein and not otherwise. The relevant paragraphs in the said order are extracted hereinbelow:
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> > "3. Rule 5 of Cenvat Credit Rules, 2004, was substituted *vide* Notification No. 18/2012-C.E. (N.T.), dated 17-3-2012, with effect from Appeal Nos. ST/88190, 88215, 88216 & 88217/2018, 1-4-2012. The said substituted rule has prescribed the formula for claiming refund of service tax by the service provider. Under such amended rule in vogue, there is no requirement of satisfying the nexus between the input services and the output service provided by the service provider. Consequent upon substitution of the said Rule in the Union Budget-2012, the Tax Research Unit (TRU) of CBEC *vide* letter dated 16-3-2012 has clarified as under :-

"F.1 Simplified scheme for refunds :

1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of Cenvat Credit Rules, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.

2. xx xx xx

4. On perusal of the statutory provisions read with the clarifications furnished by the TRU, it transpires that under the substituted Rule 5 of the rules, there is no requirement of showing the nexus between the input service and the output service provided by the assessee. Since the refund under the said amended rule is governed on the basis of receipt of export turnover to the total turnover, establishing the nexus between the input and output service cannot be insisted upon for consideration of the refund application."

8. In view of above, the impugned order, insofar as it has denied the refund benefit on the ground of non-establishment of nexus between the input and output services, is set aside and the appeal is allowed in favour of the appellant."

There is no dispute that the aforesaid decision of this Tribunal in appellants' own case covered both pre-and post-amendment period and also the services which are in issue herein. So far as the decision in the matter of *Maersk Global* (supra) is concerned, I am afraid that the Learned Authorised Representative is not correct in his submission that the said decision pertains to pre-amendment period. Similarly, while interpreting Rule 5 this Tribunal in the matter of *M/s. Cross Tab Marketing Service Pvt. Ltd.* v. *C.C. GST, Mumbai East*; reported in 2021-VIL-466-CESTAT-MUM-ST = 2021 (55) G.S.T.L. 29 (Tri. - Mumbai) *vide* order dated 17-9-2021 held that the amended Rule 5 *ibid* does not require establishment of any nexus between input and export services. The rule only provides that the admissible refund will be proportional to the ratio of export turnover of goods and services to the total turnover, during the period under consideration and the net Cenvat credit taken during

that period. Indisputably, in the refund proceedings under Rule 5 *ibid* as amended, any such attempt to deny or to vary the credit availed during the period under consideration is not permissible. If the quantum of the Cenvat credit is to be varied or to be denied on the ground that certain services do not qualify as input services or on the ground of 'no nexus', then the same could have been done only by taking recourse to Rule 14 ibid.

6. In view of the discussions made hereinabove in the preceding paragraphs, in my opinion since the provisions of Rule 14 ibid have not been invoked, the refund of Cenvat credit as claimed by the Appellant under Rule 5 ibid cannot be denied to them and the same is admissible. Therefore, the Appeals filed by the Appellant are allowed with consequential relief, if any."

7. In Appellant's own case this Tribunal in the matters of *KKR India Advisors Pvt. Ltd. vs. CGST Mumbai Central vide Final Order No. A/861146-86148/2018 dated 24.4.2018* and in the matter of *KKR India Advisors Pvt. Ltd. vs. CGST Mumbai Central vide Final Order No. A/86618/2019 dated 16.9.2019* has held travel agent service and club membership/ association service as eligible *input service* and eligible for refund under Rule 5 ibid. I don't understand what is meant by '*tangible evidence',* the term that has been used by the learned Commissioner in the impugned order. Although, as submitted by learned counsel, the mails and sample copy of invoices were produced by them before the learned commissioner in support of their submissions but simply the claim has been rejected by merely recording that no *'tangible evidence'* has been produced. In my view the aforesaid mails and invoices, which have

been produced here also, are sufficient to establish the *nexus*. Law does not require one to one correlation unless the availment of Cenvat credit itself is questioned and this view has already been taken by this Tribunal in the matter of *Blackstone Advisors India Pvt. Ltd. vs. Commr. GST & CE, Mumbai South vide Final Order No. A/85995/2022 dated 21.10.2022.*

8. I am, therefore, of the firm view that the appellants are entitle for the refund as claimed by them and the authority below is not justified in rejecting the same. Accordingly, the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 25.11.2022)

(Ajay Sharma)
Member (Judicial)

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