CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 87174 of 2019

(Arising out of Order-in-Appeal No. PVNS/49/Appeals-II/MC/2019 dated 22.03.2019 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai

M/s. Sequoia Capital India Advisors Pvt. Ltd. .....Appellant
Nicholas Piramal Towers, 902,
Peninsula Corporate Park,
Lower Park, Mumbai

VERSUS

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

APPEARANCE:

Shri R. Kumaravel, CMA for the appellant
Shri Sunil Kumar Katiyar, AC(AR) for the respondent

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

FINAL ORDER No: A/86138 / 2022

DATE OF HEARING : 24.11.2022
DATE OF DECISION : 01.12.2022

Per: AJAY SHARMA

Appellant herein has filed the instant appeal challenging the Order-in-Appeal dated 11.3.2019 passed by the Commissioner (Appeals)-II, Central Tax, CGST Mumbai by which the learned Commissioner partly allowed the Appeal filed by the

appellant by partially modifying the order passed by the Adjudicating Authority and upholding the rejecting of refund amount of Rs.22,88,870/-.

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. Whether the authorities below have rightly rejected the refund claims in respect of the services exported out of India on the ground of being 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 March, 2017. The appellants herein are provider of Financial Investment Advisory Service to its overseas clients. Admittedly, the entire output services of the appellants were provided to their overseas clients and no part of the output services were provided to any client in India. Two refund claims were filed by the appellants for the period October, 2016 to December, 2016 and January, 2017 to March, 2017 respectively totalling Rs.2,10,44,635/-. The Adjudicating Authority vide Order-in-Original dated 17.4.2018 rejected the refund claim to the tune of Rs.36,86,969/- some on the ground that the premises are not registered and some rejection was on the ground that the appellants has failed to establish any *nexus* of the input services in issue with the export of service. On Appeal filed by the appellant, the learned

Commissioner vide impugned order dated 11.3.2019 further allowed the refund to the tune of Rs. 13,98,099/- *(which was rejected by the adjudicating authority on the ground that 'premises not registered'*) but upheld the rejection on Rs.22,88,870/- on the ground of *'no nexus'* with the output service.

4. Learned Chartered Accountant appearing for the Appellant submitted that the services for which the refund has been rejected by the appellate authority are car parking services, coffee machine, travelling expenses, event management service, gardening, hotel accommodation and the refund of the amount of Rs.11,650/- was rejected on the ground of *no invoice present*. He also raised a very relevant preliminary submission that Rule 14 of Cenvat Credit Rules, 2004 has not been followed while rejecting the refund claim and therefore the authorities below have erred in rejecting the refund claim. In order to buttress the argument, learned Chartered Account relied upon the decisions of this Tribunal in the matters of (i) *BNP Paribas India Solution Pvt. Ltd. vs. Commr. CGST, Mumbai East; 2022 (58) G.S.T.L. 539 (Tri.- Mumbai)*, *(ii) Order No. A/85955-85963/2022 dated 17.10.2022, PMI Organisation Centre Pvt. Ltd. vs. Commr. CGST & CT and (iii) Order dated 18.12.2019 in Appeal Nos. ST/1834 & 1833/2011; Orange Business Services India Solutions Pvt. Ltd. vs. Commr. S.T., Delhi-III*. While relying upon the decision of this Tribunal in the matter of *Accelya Kale Solutions Ltd. vs. Commr. CGST, Thane; 2018-TIOL-2451-CESTAT-Mum,* learned

Chartered Accountant submits that since the claim pertains to the period post-2012, refund ought to have been allowed by the concerned authorities on the basis of formula prescribed under Rule 5 ibid without insisting on any nexus. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

5. I have heard learned Chartered Accountant for the appellant and learned Authorised Representative for the revenue and perused the case records. In the matter of *BNP Paribas India Solution Pvt. Ltd. (supra)* 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 complied with, 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:

"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."

6. It is settled legal position that in absence of any notice for recovery as provided by Rule 14 ibid the refund claimed by the assessee under Rule 5 cannot be denied. Now I will take the merits of the matter and it has already been held by this Tribunal in the matter of *Accelya Kale Solutions Ltd.(supra)* that

in such cases the *nexus* between the input service used in export of service should not be insisted upon. The relevant paragraphs of the aforesaid decision are reproduced hereunder:-

> "6. The fact is not under dispute that the appellant provides the entire output services to its overseas clients and none of the output services were provided to the clients within the country. Thus, it cannot be said that the input services, on which refund benefit has been sought, were not utilized for providing the exported output service. While presenting the Union Budget for the year 2012, the Finance Minister in the floor of Parliament had clarified the legislative intent in granting refund of service tax and for that purpose, had conveyed that voluminous documentation cannot be insisted upon for verification by the Department. The relevant paragraph in the Budget speech is extracted herein below:-
>
> > "173. While the problems faced by exporters of goods with respect to taxes on input services was addressed earlier this year, disbursement of taxes that go into the export of services has been an irritant for long. I now announce a new scheme that will simplify refunds without resorting to voluminous documentation or verification. As an added incentive, such refunds will also be admissible for taxes on taxable services that have been exempted."
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> 7. Further, I also find that the amended provisions of Rule 5 of the rules have also been clarified by the Tax Research Unit of Department of Revenue vide Circular dated 16.3.2012. It has been stated therein that the nexus between the input service used in export of service should not be insisted upon and the benefit of

refund should be granted on the basis of ratio of export turnover to total turnover demonstrated by the assessee. The relevant paragraph in the Circular dated 16.3.2012 of TRU is extracted herein below:-

> "**F. Cenvat Credit Rules, 2004:**
>
> **F.1 Simplified scheme for refunds:**
>
> 1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 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."

8. Since the department has not specifically objected to the fact of computation of export turnover to the total turnover by the appellant and denied the refund benefit solely on the ground that there is no nexus between the input service and the output service exported by the appellant, I am of the view that as per the statutory mandates read with clarification furnished by TRU, rejection of refund benefit by the authorities below cannot be sustained for judicial scrutiny.

9. In view of above, I do not find any merits in the impugned orders, so far as denial of refund benefit to the appellant in respect of the input services used for export of the output service. Therefore, after setting aside the same, I allow the appeals in favour of the appellant."

7. In view the discussions made in the preceding paragraphs I am of the considered view that the authorities below have erred in rejecting the refund claim of the appellant. Accordingly the impugned order is set aside and the appeal filed by the

appellant is allowed with consequential relief, if any in accordance with law.

(Pronounced in open Court on 01.12.2022)

(Ajay Sharma)
Member (Judicial)

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