

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86378 of 2020

(Arising out of Order-in-Appeal No. SM/211/Appeals-II/ME/2020 dated 03.09.2020 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai)

M/s BNP Paribas India Solutions Pvt. Ltd. **Appellant**
Infinity Building No. 4, Unit No. 601, 6th Floor,
Off Film City Road, Malad West, Mumbai-400097.
Versus

**Commissioner of GST & Central Excise-
Mumbai East** **Respondent**
9th Floor, Lotus Infocentre, Near Parel Station,
Parel East, Mumbai - 400012.

Appearance:

Shri Prasad Paranjape, Advocate for the Appellant

Shri Vinod Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85534/2023

Date of Hearing: 10.04.2023

Date of Decision: 10.04.2023

Per: Anil G. Shakkarwar

Brief facts of the case are that the appellant are the exporter of service in the nature of Information Technology Software Service. For the quarter from April 2017 to June 2017 appellant had accumulated CENVAT Credit of around Rs. 12 crores. The appellant filed claim for refund of the same under the provisions of Notification No. 27/2017-CE (NT) dated 18.06.2012. On 02.05.2019 the appellant were issued with a deficiency memo and subsequently Order-in-Original was passed. Some amount of

refund was allowed and some amount of refund was rejected. Against the amount of refund rejected, appellant preferred appeal before learned Commissioner (Appeals). He has allowed some part, remanded some part and rejected refund of Rs. 25,81,828/-. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned Counsel for the appellant. The appellant has submitted that the rejected amount was related to Service Tax paid on cleaning activities, convention center, event management and renting of immovable property including car parking. He has submitted that the appellant were not issued with any show cause notice invoking Rule 14 of CENVAT Credit Rules, 2004 proposing denial of availment of the said credit and therefore, rejection of the refund was not in accordance with law. He has also submitted that time and again this Tribunal has held that so long as CENVAT Credit remain on the books of accounts, the same when gets accumulated due to export, refund of the same cannot be rejected.

3. Learned AR has submitted that defect memo was issued to the appellant and appellant were also heard before passing the order.

4. I have carefully gone through the records of the case and submissions made. I have perused the deficiency memo dated 02.05.2019. The deficiency memo has not invoked any provisions of CENVAT Credit Rules much less said Rule 14. Therefore, the said deficiency memo cannot be called a show cause notice. I have, therefore, come to the conclusion that the refund of Rs. 25,81,828/- was denied to the appellant without issue of any show

cause notice. Such an order is not sustainable in law. I, therefore, set aside that part of the impugned order through which refund of accumulated CENVAT Credit of Rs. 25,81,828/- was rejected. I, therefore, direct Revenue to refund accumulated CENVAT Credit of Rs. 25,81,828/- to the appellant.

4. In above terms, the appeal is allowed.

(Order dictated and pronounced in open court)

(Anil G. Shakkwar)
Member (Technical)

Sinha