CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70014 of 2021

(Arising out of Order-In-Appeal No.NOI-EXCUS-001-APP-004-20-21 dated 06/05/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Steria India Ltd., **.....Appellant**
(Seaview Special Economic Zone
Building No. 4, Plot No.20 & 21,
Sector-135, Noida-201301)

VERSUS

Commissioner, Central Goods & Service Tax, Noida

....Respondent

(Division-1, E-23(B), Sector-8, Noida)

WITH

1. **Service Tax Appeal No.70015 of 2021 (M/s Steria India Ltd.);**

   (Arising out of Order-In-Appeal No.NOI-EXCUS-00-APP-003-20-21 dated 06/05/2020 passed by Commissioner (Appeals), Central Goods & Services Tax, Noida)

2. **Service Tax Appeal No.70016 of 2021 (M/s Steria India Ltd.);**

   (Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1645-19-20 dated 17.03.2020 passed by Commissioner (Appeals), Central Goods & Services Tax, Noida)

3. **Service Tax Appeal No.70017 of 2021 (M/s Steria India Ltd.);**

   (Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1646-19-20 dated 18.03.2020 passed by Commissioner (Appeals), Central Goods & Services Tax, Noida)

4. **Service Tax Appeal No.70018 of 2021 (M/s Steria India Ltd.);**

   (Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1647-19-20 dated 18.03.2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

APPEARANCE:

Shri Vishal Kumar, Advocate for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70390-70394/2024

DATE OF HEARING : 27.05.2024
DATE OF DECISION : 27.05.2024

SANJIV SRIVASTAVA:

These appeals are directed against the Order-In-Appeal number indicated in the table below passed by Commissioner (Appeals) Central Goods & Services Tax, Noida.

Sr. No	Appeal No.	OIA No. & date	OIO No. & date	Amount of refund rejected (Rs.)	Period Involved
1	ST/70014/ 2021	NOI-EXCUS-001- APP-00 21 dated 06/05/2020	116/R/AC/ CGST/D-I/2018-19 dated 15.10.2018	1375807/-	10/2013 to 12/2013
2	ST/70015/ 2021	NOI-EXCUS-00-APP-003 -20-21 dated 06/05/2020	118/R/AC/ CGST/D-I/2018-19 dated 15.10.2018	678360/-	04/2014 to 06/2014
3.	ST/70016/ 2021	NOI-EXCUS-001-APP-1645-19-20 dated 17.03.2020	74/R/AC/ CGST/D-I 19 dated 23.08.201	210884/-	10/2012 to 12/2012
4.	ST/70017/ 2021	NOI-EXCUS-001-APP-1646-19-20 dated 18.03.2020	63/R/AC/CGST/ D-I/2018-19 dated 09.08.2018	943100/-	01/2012 to 03/2012
5.	ST/70018/ 2021	NOI-EXCUS-001-APP-1647-19-20 dated 18.03.2020	87/R/AC/CGST/ D-I/2018-19 dated 12.09.2018	630542/-	01/2014 to 03/2014

1.2 By the impugned order Commissioner (Appeals) have rejected/partially allowed the appeals filed by the appellant, against the partial rejection of refund claims filed by the appellant under the Rule 5 of CENVAT Credit Rules, 2004.

1.3 As the issues are identical in nature I am taking up the issue for consideration first and in light of the decisions the appeals will be decided subsequently.

2.1 Appellant is an STPI unit having centralized service tax registration for providing the services classifiable under the category of Information Technology Software Services, Business Auxiliary Service and Management Consultancy Services etc. They were availing the benefit of CENVAT Credit in terms of CENVAT Credit Rules.

2.2 They filed refund claims claiming refund of accumulated CENVAT Credit during the quarter as provided by Rule 5 of CENVAT Credit Rules.

2.3 These refund claims were partly allowed and partly rejected as per the order in originals referred in table in para 1 above.

2.4 These orders were challenged by the appellant before the Commissioner (Appeals) who vide his Order-In-Appeal have disposed of the appeals filed by appellant modifying the refund orders.

2.5 Aggrieved by the impugned orders appellant have filed these appeals.

3.1 I Have heard Shri Vishal Kumar, learned Advocate appearing on behalf of the appellant and Shri A.K. Choudhary, learned Departmental Representative appearing on behalf of the Revenue.

3.2 Arguing in favor of the appellant learned counsel has placed reliance on following judgments:-

- Registration with the department is not a prerequisite for claiming credit of service tax.
- Appellants are having centralized registration at Noida in respect of their STPI unit located at Chennai & Pune
- They are filing their returns under the centralized registration at Noida and have also filed the refund claims in respect of the services received at Chennai and Pune also in Noida Jurisdiction as the concerned jurisdiction for them is only Noida.
- Cenvat credit has been claimed by the appellant on the basis of invoices which are in accordance with Rule 9 of CENVAT Credit Rules, 2004 read with Rule 4A of CENVAT Credit Rules, 1994. As per Circular No.**120/01/2010-ST** it has been clarified that in

case of incomplete invoice Revenue officers should take a liberal view and not deny the benefit of refund claim for this reason.

➢ Cenvat credit has been correctly availed by them with respect to the tax payable under reverse charge mechanism, i.e. after making the payment of service tax. The same is as per the proviso to Rule 4 (7) and hence there is no contravention of any legal provisions.

3.3 Learned Departmental Representative reiterates the findings recorded in the impugned order.

4.1 I have considered the impugned orders along with the submissions made in appeals and during the course of arguments.

4.2 In the impugned orders the common issues involved are summarized as follows:-

➢ Incorrect address mentioned in invoices;
➢ Invoice were in name of unregistered premises;
➢ Invoices pertain to service which do not have any nexus with the output service rendered by the Appellant namely:-
  ○ Works contract service;
  ○ Management, maintenance or repair services
  ○ Telecommunications services
  ○ Hospitality services
  ○ Manpower recruitment services
  ○ Membership fees
➢ Credit of service tax paid under reverse charge in July, 2014 cannot be claimed during Apr-June, 2014 quarter. Hence, refund of Rs. 6,03,561/- (out of total refund of Rs. 6,78,360/-) has been denied;

4.3 On the issues of denial of credit for the reason that invoices do not contain proper details such as address etc. it is relevant to note that Board has vide Circular No.120/01/2010-ST dated 19.01.2010 as referred as follows:-

"3.4 <u>Incomplete invoices [para 2(e) above]</u>:

In case of incomplete invoices, the department should take a liberal view in view of various judicial pronouncements by Courts. It had earlier been prescribed in circular No.106/09/2008-ST dated 11.12.2008 *that the invoices/challans/bills should be complete in all respect. This circular was issued with reference to notification No.41/2007 dated 06.10.2007 as specific services eligible for refund under the notification has been specified. Thus, a stricter requirement exists under the said notification for ascertaining the actual service which has been used in the export of goods. In the case of refund under Rule 5, (i) so far as the nature of the service which has been received by the exporter can be ascertained; (ii) tax paid therein is clearly mentioned; and (iii) other details as required under rule 4(a) are mentioned, the refund should be allowed if the input service has a nexus with the service/goods exported as discussed earlier. In any case, the suggested Chartered Accountant's certificate should clearly bring out the nature of the service and this will assist the officer in taking a decision".*

4.4 The clarification issued by the Board is very categorical and clear and that refund claims could not have been denied or modified for the reasons that certain details are missing in the invoice. The only requirement this is to be fulfilled is that the service against which the appellant is claiming the input credit and subsequently refund under Rule 5 have been used for providing output services. Once that requirement is satisfied I do not find any reason as to why the CENVAT Credit on this account could have been denied.

4.5 Further undisputedly appellant is having STPI located at NOIDA, Pune and Chennai and is having Centralized Registration for all the premises at NOIDA. From the Form ST-2 issued to the appellant it is evident that appellant is having Centralized Registration for more than one premises, having details as follows:

"Address of Business premises:

Steria (India) Ltd, Seawood Special Economic Zone

Building No 4 Plot No 20 & 21, Sector 135 Noida, Gautam Budha Nagar.

Address of the premises from where taxable services are provided:

1. G-2 Sipcote, IT Park, Siruseri, Eqattur Village, Kanchipuram, Kelambakkam, Chennai.

2. A-28 to A-32 Talawade Software Technology Park, MIDC, Talawade, Rupee Nagar, Pune, Maharashtra.

3. Unit-1, Ground 1st, 6th 7th and 8th Floor Building No 4, Seaview Special Economic Zone, Plot No 20 & 21 Sector 135 Noida, Gautam Budha Nagar.

4. Unit-2, Ground 2nd & 3rd Floor Building No 4, Seaview Special Economic Zone, Plot No 20 & 21 Sector 135 Noida, Gautam Budha Nagar.

Address of the premises of office paying service tax under centralized billing or centralized accounting under sub-rule (2) and (3A) of rule 4 of Service Tax Rules 1994.

Steria (India) Ltd, Seawood Special Economic Zone

Building No 4 Plot No 20 & 21, Sector 135 Noida, Gautam Budha Nagar."

Since appellant have centralized registration at NOIDA, the input credit in respect of the services received at Pune and Chennai gets reflected in the common cenvat credit account maintained at NOIDA and in the ST-3 return filed in NOIDA. By taking the credit against the invoices addressed to their premises at Pune and Chennai appellant have not contravened any provision of the Cenvat Credit Rules, 2004 for which the said credit could have been denied.

4.6 The next ground on which the refund claim has been denied/modified is that invoices have been issued in unregistered premises. This issue has also been settled by the Tribunal in various decisions referred to by the counsel for the appellant namely as under :-

- Ribbit Studios [(2023) 6 Centax 182 (Tri.-Bom)]
- ABM Knowledge Ltd. [2019 (27) G.S.T.L. 694 (Tri. - Mumbai)]
- Raaj Khosla & Co. Pvt. Ltd. [2008 (12) S.T.R. 627 (Tri. - Del.)]
- Curadev Pharma (P) Ltd. [2017 (7) G.S.T.L. 269 (All.)]
- Well Known Polyesters Ltd. [2011 (267) E.E.T. 221 (Tri. - Ahmd.)]

In view of the above decisions as above refunds could not have been modified/denied.

4.7 Cenvat Credit has been sought to be denied on various services by the impugned order holding the services to be ineligible as input services in terms of Rule 2 (l) of the CENVAT Credit Rules, 2004. However, except in respect of appeal No 70016/2021, impugned order does not specify the services in respect of which the credit is sought to be denied. Even in the said impugned order credit has been allowed in respect of all the services except for management, maintenance repair services and hospitality services.

4.8 The next issue that needs to be considered is with regards to establishment of nexus between the input services and output services. It is a settled law that no nexus was required to be established after the amendment made in Rule 5 of CENVAT Credit Rules, 2004 in the year 2011. Only what was required while examining the refund claim under Rule 5 was that credit has been taken during the quarter for which the refund claim is prescribed. This view has been taken by the Tribunal in various decisions. Two such decision are reproduced below;

Cross Tab Marketing Services Pvt. Ltd. [2021 (55) G.S.T.L. 29 (Tri. - Mumbai)].

"4.4 From the plain reading of the said rule it is evident that the amended Rule 5, does not require establishment of any nexus between the input services and the exported 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, of the Net Cenvat credit taken during that period. Undisputedly in the refund proceedings under Rule 5 of Cenvat Credit Rules, 2004 as amended any such attempt whereby credit availed during the period under consideration is sought to be denied or varied, is not permissible. If the quantum of the Cenvat credit is sought to be varied, by holding that certain services do not qualify as input services then the same could have been done by invoking the provisions of Rule 14 of the Cenvat Credit Rules, 2004. In my view the Commissioner (Appeals)/Adjudicating Authority has misdirected himself by undertaking such exercise while adjudging the refund claim filed in terms of Rule 5. In the case of Accelya Kale Solutions Ltd. v. Commissioner of Central Goods and Services Tax and Central Excise, Mumbai [2018-TIOL-2452-CESTAT-MUM = 2019 (369) E.L.T. 803 (Tri. - Mumbai]. Tribunal observed, as under :-

"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

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." "

4.5 Similar view has been expressed by the Tribunal in case of TPG Capital India Pvt. Ltd. [Final Order No. A/86651-86655/2019, dated 20-9-2019]. Tribunal has observed therein stating as follows :

"4. However, it is seen that no objection was raised by the revenue at the time of availing of credit. Rule 5 allows refund of accumulated credit and at the time of grant of refund, the Revenue is not permitted to examine the availability of the CENVAT credit. Such an exercise was required to be adopted by the Revenue at the time of availment of credit, by way of initiation of separate proceedings. Having not done that, it is not permissible to raise the objection at the time of grant of refund in terms of the said rule. The reliance by the Learned Advocate to the Circular No. 120/01/2010-S.T., dated 19-1-2010 clarifying the issue that by observing that there cannot be different yardstick for establishing nexus for taking of credit and for refund of credit, is appropriate. Otherwise also, we find the issue stands decided by the many decisions of the Tribunal. One such reference can be made to the Tribunal decision in the case of Barclay Global Service Centre Pvt. Ltd. & Ors. v. Commissioner of Central Excise & Service Tax, Noida [2019-TIOL-1714-CESTAT-ALL]. It stands held in the said decision that as no

objection was raised by the Revenue at the time of availing the credit, such objection cannot be raised at the time of deciding the refund claim in terms of provision of Rule 5."

4.6 In view of the discussions as above I am not in position to sustain the impugned order to the extent indicated. Since the Commissioner (Appeals) has by the impugned order held the refund to be admissible, to the extent of Cenvat credit held admissible by him subject to verification of the documents by the original authority I modify his order to this extent i.e. that entire credit as claimed by the appellant for determining the refund amount is held admissible if not held admissible in proper proceedings initiated under Rule 14 of the Cenvat Credit Rules, 2004."

B. Microsoft Global Services Center (I) Pvt. Ltd. [2021 (44) G.S.T.L. 264 (Tri. - Hyd.)]

"8. *Rule 3(1) ibid is the enabling provision, which entitles a manufacturer or provider of output service for availment of Cenvat credit of various duties and service tax paid on the inputs/input services. The manner of utilisation of such credit is contained in sub-rule (4) of Rule 3 ibid. In the event, where the Cenvat credit has been wrongly taken or utilised, Rule 14 ibid mandates for recovery of such irregularly availed credit from the service provider, in the manner prescribed under Section 73 of the Finance Act, 1994. The basic requirement for effecting recovery of the Cenvat credit under the said statutory provision is for initiation of show cause proceedings within the stipulated timeframe and thereafter, for adjudication of the dispute arising therefrom. In the present case, it is an undisputed fact on record that the department had not proceeded against the appellant for effecting recovery of the allegedly availed irregular Cenvat credit, by taking recourse to Rule 14 ibid read with Section 73 ibid. On the other hand, the department had raised the issue of non-establishment of nexus between the input services and exported output service for the first time, while adjudicating the subject refund claims filed under Rule 5 ibid by the appellant.*

8.1 *A service provider is permitted under the Cenvat statute to take credit on the input or input service used in output service, which is exported by it. The credit so taken by such type of service provider is allowed for utilisation for payment of service tax on the output service. However, for any reason, where such credit adjustment is not possible, a service provider is allowed for refund of such credit amount, subject to fulfilment of the conditions and limitations, as may be specified by the Central Government by way of issuance of notification. Such refund provisions are governed under Rule 5 ibid. In this case, the Central Government has issued the Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006, providing the procedure for grant of refund of input or input service used in providing output service, which has been exported without payment of service tax. The condition No. 5 in the said notification has provided that "the refund of unutilised input service credit will be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates". The said notification has also prescribed the formula, which has to be followed by the service provider for claiming refund of input tax credit. The notification dated 14-3-2006 (supra) was amended vide Notification No. 7/2010-C.E. (N.T.), dated 27-2-2010, by substituting the words 'used in' as 'used for' in clause (b) and the words 'used in' was substituted with the words as 'used in or in relation to' in the Form 'A' appended thereto. The effect of amendment of the earlier notification dated 14-3-2006 was that the input or input service may not be used directly in providing the exported output service and even indirect use also would suffice for the purpose of refund benefit. Further, the Finance Act, 2010 has amended the provisions of Rule 5 ibid with retrospective effect to read the words 'in or in relation to', in place of the words 'used in'. As a result of the changes made in the Service Tax statute in the Union Budget, 2012, the Tax Research Unit of Department of Revenue in the Ministry of Finance has issued the letter dated 16-3-2012, clarifying that establishment of nexus or correlation between exports and input services used in such exports may not be insisted upon and the refund claim be decided on the ratio of the export turnover to total turnover. The relevant paragraph in the letter dated 16-3-2012 (supra) is extracted herein below :*

"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".

8.2 *On a conjoint reading of the statutory provisions and the notifications issued by the Central Government from time to time, it transpires that input services may not necessarily be used directly in provision of the output service and use of such services 'in or in relation to' also meet the requirement of Rule 5 ibid for the purpose of refund benefit. While interpreting the expression 'in relation to' used in the statute, the Hon'ble Supreme Court in the case of Doypack Systems Pvt. Ltd. v. Union of India [1988 (36) E.L.T. 201 (S.C.)] has held that the said phrase is equivalent to or synonymous with 'pertaining to' and 'concerned with' and therefore, the said phrase has a very broad connotation and cannot be given a narrow meaning. In view of the settled position of law, there is no requirement of establishing one to one correlation between the input services and the output service. Based on adoption of prescribed formula, the refund application alone should be processed and settled by the department and the aspect of direct nexus or correlation between the input service and output service should not be looked into for such purpose. Therefore, we do not find any merits in the impugned orders, insofar as the refund benefit was denied to the appellant on the ground of non-establishment of direct nexus between the input services and the output service exported by it.*

9. *On careful examination of various notifications (supra) issued by the Central Government, it reveals that based on the prescribed formula, the refund application has to be filled by the appellant and to be processed by the jurisdictional service tax authorities for sanction of refund of unutilised Cenvat credit, owing to the reason of exportation of output service. No other mode or method has been prescribed in the statute for consideration of the refund benefit. In the case in hand (Appeal No. ST/22056/2014), the Learned Commissioner (Appeals) has* *recorded the submissions of the appellant that the adjudicating authority has not applied the formula correctly for determination of eligible refund amount. However, without consideration of such submissions of the appellant, he has held that the original authority had taken into consideration the admissible credit, which appears justifiable. Since, the specific issue regarding adoption of the formula prescribed under Rule 5 ibid has not been discussed by the authorities below, we are of the considered view that the matter should be remanded to the original authority for a fresh finding on the issue, whether the requirement of the said rule has actually been complied with by the appellant."*

In view of the above decisions I do not find any merits in the rejection of /modification on refund claims on this account.

4.9 Having recorded my findings on the issues involved I take up individual appeal for consideration.

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4.10 As per para 5.1 of the impugned order following issues have been flagged for consideration:

- Cenvat Credit is sought to be denied on following input services alleging that they do not qualify as input services in terms of Rule 2 (l) and Rule 9 of CENVAT credit Rules;
  - Courier Service Rs 10475
  - Advertising Services Rs 30400
  - Rent a Cab Rs 691 Withdrawn
  - Works Contract Rs 2169
  - Hospitality Rs 14137 Withdrawn Rs 6791
  - Management Maintenance Repair Rs 144620

4.11 By the impugned order CENVAT credit has been held admissible in respect of courier service, advertising service, Landscaping service , work contract services and has been denied on the Hospitality services and Management maintenance and Repair services.

4.12 So the issue that remains for consideration in this appeal is only in respect of Hospitality Services and Management maintenance and

Repair Services. Also in respect of Hospitality Services appellant has withdrawn the claim to the extent of Rs 6791/- and hence the issue for consideration is in respect of the remaining amount. In case of Heubach Colour Pvt. Ltd. [2013 (32) S.T.R. 225 (Tri. - Ahmd.)] Ahmedabad Bench has observed as follows:

"4. *In this case Service Tax proposal is for denial of Service Tax credit on food and hospitality services rendered by hotel. It was submitted before the lower authorities that The Service Tax was paid for a buyers' delegation and conference. Further the learned counsel also submitted that the credit of Service Tax has been taken when food and hospitality services were received for providing lunch/dinner etc. to the customers. The credit has been denied on the ground that Service Tax has been charged on the buffet dinner, mineral water also and such Service Tax credit cannot be allowed in Cenvat Credit Rules, 2004. Learned Commissioner (Appeals) has not said anything other than this. In the case of Ultratech Cement Ltd. reported in 2010 (260) E.L.T. 369 (Bom.) Hon'ble High Court of Bombay allowed the credit of Service Tax in respect of outdoor catering service and took the view that outdoor caterer service has a nexus or integral connection with the manufacture of final product. The view taken is that for benefit of cenvat credit in respect of input services, such services should be relatable to the manufacturing activity. It cannot be said that providing lunch/dinner to customers is not part of the business promotion and is not part of sale of manufactured goods. Without promoting the sale of the product, the manufacture also cannot take place. Therefore the activity can be definitely said to be relatable to the manufacture of the goods. Under these circumstances on merits I find that the appellant is eligible for the benefit of Cenvat credit. Accordingly, the appeal is allowed with consequential relief to the appellant."*

In view of the above decision I do not find any reason for denial of the credit in respect of these services.

4.13 In respect of the Management maintenance and Repair Services, I find that credit has been held admissible in case of Castrol India Limited [2013 (291) E.L.T. 469 (Tri. - Ahmd.)] observing as follows:

***"9.** In the light of the decision of the Hon'ble High Court of Bombay in Ultratech Cement Limited and in the light of following decisions; Metro Shoes Pvt. Limited - 2008 (10) S.T.R. 382 (Tri.), Cadila Healthcare Limited v. CCE - 2010 (17) S.T.R. 134 (Tri.), Semco Electrical Pvt. Limited. v. CCE - 2010 (18) S.T.R. 177 (Tri.), CCE v. Mundra Port & Special Economic Zone Limited - 2011 (21) S.T.R. 361 (Guj.), Ambalal Sarabhai - TA No. 433 of 2010 (Guj. HC), Rajratan Global Wires Limited. v. CCE - 2011 (21) S.T.R. 383 (Tri.), CCE, Guntur v. Hindustan Coca-cola Beverages Pvt. Limited - 2010 (18) S.T.R. 500 (Tri.-Bang.), the credit of service tax paid on Advertising Agency Services, Business Auxiliary Services, Business Support Services (in the case of this assessee, it is Advertising Agency Service), Management and Consultancy Services, Online Information and data base Access Service, Port service, Maintenance and Repair Service, Consulting Engineer's service, Security Agency Service and Storage and Warehousing credit is admissible."*

In view of the above I do not find any merits in impugned order denying the credit in respect of these services.

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4.14 As per para 5.1 of the impugned order following issues have been flagged for consideration:

- ➢ *The appellant has availed input credit on some services which are not used for authorized operation and some of the services not covered under input service definition under Rule 2 (l) of CCR, 2004.*
- ➢ *Either the invoices are not addressed to the appellant or the address is not provided on the invoice*
- ➢ *Though some services are fit for taking credit but invoice is not proper i.e, either the address is not provided or addressed at Pune*.

4.15 On the issue with regards to the deficiency in the invoice and the invoices being addressed to Pune, I do not find any merits in view of the observations made in para 4.3 to 4.5 above. Further in respect of services held to be ineligible as per Rule 2 (l) of CENVAT Credit Services , I find most of the services mentioned are the services which are subject matter of Appeal No 70016/2021 and credit has been held admissible. Only services which are not covered by the said appeal are Membership Fee and Manpower Recruitment and Supply Agency Services. However I find that in case of XILINX India Tech. Services Pvt. Ltd [2016 (44) S.T.R. 635 (Tri. - Hyd.)] Hyderabad Bench has considered all the services which are in dispute in these set of appeals and have held as follows:

"4. *In this regard, it is found as follows :-*

i. ***Air Travel Agent's Services :***

While conceding that this service is an eligible input service for exporting the taxable output service, the lower authority has disallowed refund of the credit thereof on the grounds that the appellant could not submit any material evidence that the services are utilized for official purpose.

The appellants have adverted that they do not provide facilities of Air Travel to their employees for personal tour and that the said services are strictly availed only with reference to official tours. The appellant has also enclosed sample input invoices along with contemporary copies of internal approval for availing such services to demonstrate that the said services were availed only for business purpose.

In the circumstances, I hold that the denial of the refund is not justifiable.

ii. ***Banking and Other Financial Services***

Refund of credit on these services has been disallowed by lower authority on the ground that no connectivity has been established to conclude that the said services are used in relation to export.

The appellant has adverted that these services were received by them to provide the employees the foreign currency on overseas tours to meet clients and hence, directly connected with the rendering export of output service. The appellant has also submitted copies of sample input service invoices along with contemporary copies of internal approval for availing such services to demonstrate that the said services were availed only for business purpose.

In the circumstances, I hold that the denial of the refund is therefore not justifiable.

iii. ***Chartered Accountant's Services***

The refund of the credit on these services has been disallowed by lower authority on the grounds that no connectivity has been established to conclude that the said services are used in relation to export.

The appellant has adverted that these services were received by them in connection with their audit and issue of certificate by practicing Chartered Accountant and that these services will fall under the ambit of activities like accounting and audit which form part of the inclusive portion of the definition of 'input service' at Rules 2(l) of the Cenvat Credit Rules, 2004.

I find merit in the submissions of the appellant and in consequence, I hold that the denial of the refund for this input service is not justifiable.

iv. ***Commercial Training or Coaching Services***

I find that the lower authority while conceding that the appellant is eligible for claiming refund on this service, has however disallowed an amount of Rs. 11,192/- with regard to training on communication skill and conference.

The appellant has adverted that the input service in this case pertains to participation fees paid for attending business conference/seminar and business communication training services and that input services like coaching and training exhibition are part of input service.

In the circumstances, I hold that the denial of the refund for this input service is therefore not justifiable.

v. ***Courier Services***

The refund of the credit on this input service has been disallowed by the lower authority on the ground that absence of any evidence of its usage for business purpose.

The appellant has adverted that the courier services are required for sending documents to their customers/vendors which is an integral part of their business. They have further adverted that they do not provide courier service to their employees and that same are exclusively used by them to send business documents only.

In this age of tight schedules, it cannot be said that courier services are not required by trade and industry for quick relay of documents etc. I, therefore, find and hold that this would also therefore has to be necessarily considered as an input service used in providing the output service. In the circumstances, I hold that the denial of the refund for this input service is not justifiable.

vi. ***Custom House Agent's Services***

The lower authorities have disallowed refund of the credit on this service on the ground that there is lack of clarity as to the purpose for which these charges are paid and in which manner these services are related to output service exported.

The appellant has adverted that the services provided by Custom House Agents are availed by the appellant in connection with import of IT equipment from outside India.

I find merit in the aforesaid submission of the appellant, especially when it has not been disputed by the Revenue that these services have been used for enabling customs clearances of employees and/or their personal goods in activities relating to business purpose. In the circumstances, I hold that the denial of the refund for this input service is not justifiable.

vii. ***Information Technology Software Services.***

The lower authority while conceding that the assessee is eligible for refund of the credit on this service, has however disallowed an amount of Rs. 4,635/- without assigning any reason thereof.

The appellant has adverted that the impugned credit amount has been incurred by them on the invoices raised by M/s. TenXLabs Technologies Pvt. Ltd. towards 'hosting charges' availed by them to access web based *application and that the same are directly related to the export of their output service.*

I find merit in the above submissions of the appellant and I hold that the denial of the refund for this input service is not justifiable.

viii. ***Management, Maintenance and Repair Services***

The lower authority has disallowed refund pertaining to premises related to maintenance, Xerox machine maintenance, Fire alarm maintenance etc. on the ground that same do not impact the quality of the output service.

The appellant has adverted that these services are consumed essentially in relation to day-to-day function of the office including security, cleaning and housekeeping services and an indispensable services being directly connected to office premises. They have relied upon the ratio of Tribunal's order in the case of CCE v. CE Gloves India Ltd. [2013-TIOL-1975-CESTAT-BANG.].

In the circumstances, I find merit in the above submission and I hold that the denial of the refund for this input service is not justifiable.

ix. ***Management or Business Consultant's Services***

The lower authority while conceding that these services are covered under the definition of input service has however disallowed an amount of Rs. 2,00,295/- in respect of invoices on the ground that the related invoices were towards fees for statutory compliance and towards pay roll processing.

The appellant has adverted that these services were used in connection with the accounting, payroll, tax and regulatory services rendered by the management consultants and other professions.

I find merits in the submission of the appellant. These services are very much required to enhance efficiency and productivity of the organization and to ensure compliance with tax and regulatory requirements. I, therefore, hold that the denial of the refund for this input service is not justifiable.

x. ***Manpower Recruitment or Supply Agency's Services***

The lower authority while conceding the eligibility of this input service both for taking credit and refund thereof, has however disallowed an amount of Rs. 2,47,860/- ; no reasons have been adduced for the denial.

The appellant has adverted that the impugned services are received in connection with the supply of qualified IT professional by other IT companies on fees basis to enable the appellant export the software development services.

I find that inter alia, recruitment is in the list of services included in the inclusive portion of the definition of input service referred supra.

I, therefore, hold that the denial of the refund for this input service is not justifiable.

xi. ***Renting of Immovable Property Services***

The lower authority, while inter alia holding that the appellants are rightly eligible for claiming refund of the service tax paid on renting of immovable property, has however disallowed an amount of Rs. 1,19,160/- pertaining to rent of fitouts and has also held that input services should have been used for providing the output services and input services though used by the service provider would render themselves ineligible if their consumption is not in relation to or not having nexus with the output service. On appeal, the appellate authority has inter alia upheld that part of the order of the lower authority disallowing the refund of Cenvat credit in respect of input services pertaining to rent of fitouts, holding that the same does not form part of immovable property service.

Before this Tribunal, the appellant has contended that the fitouts rent are towards the basic furniture and fixtures provided by the premises owner along with the premises as part of the renting services; that this is an essential service without which the appellant cannot export services; that any view that no furniture and fixtures are required for rendering the output services is devoid of merit.

In the instant case, I find that the appellants were a provider of output service under the category of Information Technology from their premises at Madhapur, Hyderabad. It is not disputed that the said output service was provided by the appellant from their said premises which had been leased out by them from M/s. Cyberpearl Information Technology Park Private Ltd., the lessor and the provider of both the services renting of immovable property service as well as the renting out of fitouts (interiors and improvements) as per the list of furniture and fittings attached in the Second Schedule to the Deed of Lease. There can be no dispute that the aforesaid fitouts are used by the Information Technology and Software Service providers such as this appellant for housing their employees and equipment, without which they cannot provide the export service - they set out to do.

It is also noted that in this case, the service pertaining to renting of fitouts will have to be necessarily considered as a "naturally bundled services" with the service of renting of immovable property, for the purposes of Section 66F of the Finance Act, 1994.

In view of the above, I am of the considered opinion that the service of renting of fitouts availed by the appellant passes the test of an 'input service' for providing an output service as envisaged in Rule 2(l) of the Cenvat Credit Rules, 2004, as amended w.e.f. 1-4-2011.

xii. ***Internet/Telecommunication Services***

The lower authority has disallowed part of the refund claim in respect of this service on the ground that the invoice copy submitted by the appellant did not reflect whether of the calls of business purpose.

The appellant has adverted that these are the internet, tele-conference facilities, telephone connections and mobile phone facilities are required in order to export the software services electronically, communicate with the customers and the vendors and hence are essential for the functioning/business of the company that is rendering of the output services. These are essential lifelines for the efficient working of any organization and are very much used for providing output service.

I find merit in the above submissions of the appellant. In the circumstances, I hold that the denial of refund of credit on this service is not justifiable.

xiii. ***Sponsorship Services***

These services are basically for the purpose of enhancement of visibility of the organization and are advertisement services provided by them. This would therefore, very much in the nature of advertisement or sales promotion, which finds place in the inclusive portion of the definition of input service. I, therefore, hold that the appellants are eligible for the refund of credit on this service.

xiv. ***Club or Association Services***

I find that services such as this provided by a club are excluded from the ambit of input service by virtue of Rule 2(l)(C) of the Cenvat Credit Rules, 2004. However in this instance, it has been clarified by the appellant that these services are with reference to the membership fees paid to the Indian Semiconductor Association which represent the interest and concern of appellant and are not availed for personal use or consumption of the employee. This being the case, I hold that this input service is used for the furtherance of the output service provided by the appellant.

xv. ***Legal Consultancy Services***

Like Chartered Accountant services, these are also essential services which are required by service providers or manufacturers for conducting their business and hence have a direct nexus. In any case, the said service finds place in the inclusive portion of the definition of input service.

3. *In view of the above, I am of the opinion that the disputed input services as aforesaid, disallowed by the lower authorities, will merit consideration as input services for the purposes of Rule 2(l) of the Cenvat Credit Rules, 2004, as amended w.e.f. 1-4-2011 and that these services have clear nexus with the output service provided by the appellant and are very much used by them to provide the output service.*

Therefore, the appeal filed by the appellant is allowed with consequential reliefs, as per law."

4.16 Thus in view of the above I do not find any justification for denial of CENVAT credit or the refund claim in respect of these input services.

Service Tax Appeal No.70015 of 2020

4.17 As per para 5.1 of the impugned order following issues have been flagged for consideration:

- ➢ Inadmissible credit availed by the appellant on the invoices not issued at registered address as per ST-2 and pertains to ineligible services i.e Works contract services, Hotel Services having no nexus with export of services
- ➢ Credit taken by the appellant on the abscess of challan issued under RCM after the period for which the refund claim was filed.

4.18 In respect of the first issue the matter has been elaborately discussed in appeal No 70016 & 70014 of 2021 in preceding paragraphs and I have concluded that the credit/ refund is admissible in respect of these services.

4.19 Refund has been denied/modified on the ground that credit of service tax paid under reverse charge in July 2014 cannot be claimed during April-June, 2014 quarter. The view taken in the impugned order cannot be sustained in view of the decision of Mumbai Bench in case of WNS Global Services Pvt. Ltd [2023 (73) G.S.T.L. 77 (Tri. - Mumbai)] holding as follows:

"6. *….. ….. On Service Tax paid under Reverse Charge Mechanism on the very next month of the quarter in which service was taken, we find force in the submission of Learned Counsel that the decision of Tribunal reported in 2016-TIOL-3217-CESTAT MUMBAI, orders passed in the case of Gujarat Pipavave Port Ltd. in Appeal No. ST/135-136/2007 [2009 (14) S.T.R. 53 (Tri. - Ahmd.)] and India Cement Ltd. reported in 2018 (5) TMI 603 could have been taken into consideration by the Commissioner (Appeals) in deciding the issue."*

4.20 In the case of Virtusa India Pvt. Ltd [2017 (3) G.S.T.L. 359 (Tri. - Hyd.)] Hyderabad Bench has observed as follows:

"9. *The second ground raised by the ld. AR is that the appellant is not eligible to take credit of the service tax which was paid belatedly under reverse charge mechanism, for two reasons: Firstly, that such service tax does not relate to the quarter for which the refund claim is filed. This issue is clarified in Circular No. 120/01/2010-S.T., dated 19-1-2010. The Tribunal in the case of M/s. Hritik Exim v. CCE, Hyderabad-IV vide Final Order No. A/31188/2016, dated 26-10-2016 has considered the said issue and held in favour of assessee. The relevant portion of the Final Order is reproduced as under:*

"5. On behalf of the department, the Ld. AR Shri P.S. Reddy reiterated the findings in the Impugned Order. He submitted that the credit was availed on the basis of the invoices for foreign agent commission service dated 1-3-2010, 10-11-2010 and 25-3-2011. That the period of refund claim pertains to February, 2012 & March, 2012. That as the invoices are for past period, the appellant is not entitled to the refund.

6. With regard to the issue whether the appellant is eligible for refund in respect of credit availed for earlier period, the D.O.F. No. 334/1/2010-TRU, dated 26-2-2010 clarifies the same, and is reproduced as under:

Refund of accumulated CENVAT credit to exporters: Amendments in Notification No. 5/2006-C.E. (N.T.)

8.1. "It may be recalled that a number of representations were received from exporters, especially the exporters of services regarding difficulties being faced in availing the benefit of refund of accumulated credit under the scheme prescribed under Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006, issued under rule 5 of the CENVAT Credit Rules, 2004. While certain issues germinated from the wordings used in the provisions of the notification or interpretation of such provisions, other issues were more in the nature of administrative difficulties in operating the scheme. As an immediate measure, CBEC issued a clarificatory circular No. 120/01/2010-S.T., dated 19-1-2010. It was however felt that a permanent solution would require supplementing the clarification with certain amendments to the notification, part of which had to be 'retrospective' in nature. Accordingly, Notification No. 5/2006-

C.E. (N.T.) has been amended vide Notification No. 7/2010-C.E. (N.T.), dated 27-2-2010. This mainly deals with the procedure that needs to be adopted in case of the new refund claims. However, to resolve the disputes arising on account of the wordings/illustration provided in the notification, the same is being amended retrospectively (w.e.f. 14-3-2006) (Clause 73 of the Finance Bill, 2010 refers) so as to resolve the disputes in respect of pending cases as well. Therefore to visualize the entire revamped and simplified refund scheme, both the amending notification and the Finance Bill provision must be read in conjunction. A note on the issue is enclosed as Annexure C.

Refund of accumulated CENVAT credit to exporters: Amendments in Notification No. 5/2006-C.E. (N.T.)

(3) To give legal backing to the above said circular, leading to faster and fair settlement of the refund claim, changes have been effected in Notification No. 5/2006-C.E. (N.T.). Some of the changes have been made retrospective so that the pending cases are also covered. Other changes are being brought in prospectively, and are aimed at assisting the Departmental officers in faster processing of refund claims. The retrospective amendments are contained in clause 73 of the Finance Bill, 2010 while the prospective changes are contained in Notification No. 7/2010-Central Excise (Non-Tariff), dated 27-2-2010. Both these documents may be carefully read together for appreciating the full impact of the changes. The salient features of these changes are as follows:

Retrospective changes effected from 14-3-2006 (i.e. from the date of issue of notification)

(1) The words "in relation to" have been added in main condition (a) of the Notification.

(2) The word "in" contained in main condition (b) of the said Notification has been replaced with "for".

The above two changes ensure that the provisions of the refund notification and the CENVAT Credit Rules are aligned and that refund is *granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services.*

(3) The illustration given in condition 5 of the Appendix to the Notification has been deleted. This ensures that refund of CENVAT credit which has been availed in the period prior to the quarter/period for which the refund has been claimed is also eligible for refund. The refund claims should be calculated only on the basis of the ratio of the export turnover to the total turnover of the claimant. Thus, if the CENVAT credit available to the exporter at the end of the quarter, or month, as the case may be, is Rs. 1 crore, and the ratio of export to total turnover during the quarter is 50%, then Rs. 50 lakh should be refunded to the exporter. The essence of the changes is that refund shall be available for all goods, or input services, on which CENVAT is permissible and should be processed accordingly. Further, refund of CENVAT should not be linked to CENVAT taken in a particular period only.

10. *Following the decision in the above stated Final Order in the case of Hritik Exim v. CCE, Hyderabad, as well as the above Direct Order of the TRU, clarifying Circular No. 120/01/2010-S.T. and retrospective amendments made to Notification No. 5/2006-C.E. (N.T.), I hold that the refund claim is proper.*

11. *The second objection in respect of this belatedly paid service tax is that the credit is barred under Rule 9(1)(bb) of CENVAT Credit Rules, 2004. The Commissioner (Appeals) has discussed in detail in para 7 of the impugned order that the payment of service tax has been made by the respondent under Section 73(4A). That this being the case, the respondent/assessee is not barred from taking credit in terms of Rule 9(1)(bb) for the reason that Rule 9(1)(bb) bars the availment of credit when the service tax is paid pursuant to the notice issued alleging fraud, suppression of facts and wilful misstatement. On perusing the relevant paragraphs and the discussions made by Commissioner (Appeals), I am in full agreement with the view taken by him. Section 73(4A) does not make any mention about fraud, suppression of facts or wilful misstatement. The department cannot read words into the provisions of statute."*

4.21 Thus in view of discussions as above I do not find any merits in the impugned order on either of the issues.

Service Tax Appeal No.70017 of 2020

4.22 As per para 5.1 of the impugned order following issues have been flagged for consideration:

➢ Invoices issued in the name of Sec. 1 Noida, Invoices not produced, address is incomplete, Services taken are not clear on invoices and some of the services not allowed as input service.

4.23 In view of the observations made in para 4.3 to 4.5 I do not find any merits in the findings recorded by the impugned order on this issue.

Service Tax Appeal No.70018 of 2020

4.24 As per para 5.1 of the impugned order following issues have been flagged for consideration:

➢ Input Service tax credit has been denied for the reason that the said credit was not admissible to the appellant in terms Rule 2(l) and Rule 9 of CENVAT Credit Rules, 2004

4.25 In view of the observations made in para 4.3 to 4.5 and with regards to admissibility of credit in respect of the disputed services, namely Work Contract Services, Management, Maintenance & Repair Services, Telecommunication Services, Cleaning Services, Manpower Recruitment Services, Security Services, Mandap keeper Services and Hospitality I do not find any merits in the findings recorded by the impugned order on this issue. Further I also observe that impugned order is totally non speaking in nature and does not make any analysis in respect of the services in dispute. In absence of any categorical finding recorded I am constrained to observe that in respect of the appeal No same Commissioner (Appeal) has held that Cenvat Credit is admissible in respect of most of the disputed services.

4.26 Appellant has contested the charge made in the show cause notice for demanding interest and imposition of penalty on the appellant. Though such a charge has been made in the show cause notice issued, Adjudicating Authority has not imposed penalty or demanded interest in any of these proceedings except in Service Tax Appeal No 70016 & 70017 of 2021. However as I do not find any merits in the impugned order to the in respect of the denial CENVAT credit in terms of Rule 14 of CENVAT Credit Rules, 2004 and consequent rejection of the refund claims made under Rule 5, ibid, I do not find any merits in demand for interest and penalty imposed, set aside the same.

4.27 In view of our findings recorded issue wise and on in respect of each of the appeals in paragraphs above, I do not find any merits in the impugned orders and set aside the same. The matters in respect of the refund claim are remanded back to the original authority for redetermination of amounts to be refunded to the appellant in terms of rule 5 of CENVAT Credit Rules, 2004 by holding that the disputed credit is admissible.

5.1 Appeals are allowed and the matter remanded to original authority for redetermination of amounts to be refunded to the appellant in terms of rule 5 of CENVAT Credit Rules, 2004.

5.2 As the issue is substantially old, the original authority should decide the refund claims of the appellant within 90 days of the receipt of this order.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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