CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.2279 of 2012-EX[DB]

(Arising out of Order-in-Appeal No.127-128/CE/APPL/NOIDA/2012 dated 30/04/2012 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

(Unitech Infospace Park, Building No.1 8th Floor, Plot No.2, Block B,

Sector 62, Gautam Budha Nagar Noida, U.P. 201301)

VERSUS

Commissioner of Customs, Central Excise

& Service Tax ....Respondent

(C-56/42, Sector-62, Noida)

WITH

(i)

Excise Appeal No.2280 of 2012-EX[DB]

(Arising out of Order-in-Appeal No.127-128/CE/APPL/NOIDA/2012 dated 30/04/2012 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Noida ....Respondent

(ii)

Service Tax Cross Application No.57760 of 2013

In

Service Tax Appeal No.56007 of 2013-EX[DB]

(Arising out of Order-in-Appeal No.316/ST/APPL/NOIDA/2012 dated 27/09/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Customs, Central Excise

& Service Tax, Noida .....Appellant

VERSUS

M/s Barclays Global Service Centre Pvt. Ltd. ..Respondent

(iii)

Service Tax Cross Application No.57621 of 2013

In

Service Tax Appeal No.56008 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.281/ST/APPL/NOIDA/2012 dated 29/08/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Customs, Central Excise

& Service Tax, Noida .....Appellant

VERSUS

M/s Barclays Global Service Centre Pvt. Ltd. ..Respondent

(iv)

Service Tax Cross Application No.56720 of 2013

In

Service Tax Appeal No.56009 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.280/ST/APPL/NOIDA/2012 dated 29/08/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Customs, Central Excise

& Service Tax, Noida .....Appellant

VERSUS

M/s Barclays Global Service Centre Pvt. Ltd. ..Respondent

(v)

Service Tax Appeal No.56079 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.281/ST/APPL/NOIDA/2012 dated 29/08/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Noida ....Respondent

(vi)

Service Tax Appeal No.56112 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.280/ST/APPL/NOIDA/2012 dated 29/08/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Noida ....Respondent

(vii)

Service Tax Appeal No.56113 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.320/ST/APPL/NOIDA/2012 dated 29/09/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Noida ....Respondent

(viii)

Service Tax Appeal No.56115 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.316/ST/APPL/NOIDA/2012 dated 27/09/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Barclays Global Service Centre Pvt. Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise

& Service Tax, Noida ....Respondent

(ix)

Service Tax Cross Application No.57846 of 2013

In

Service Tax Appeal No.56347 of 2013-CU[DB]

(Arising out of Order-in-Appeal No.320/ST/APPL/NOIDA/2012 dated 29/09/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Customs, Central Excise

& Service Tax, Noida .....Appellant

VERSUS

M/s Barclays Global Service Centre Pvt. Ltd. ..Respondent

APPEARANCE:

Shri Vipin Upadhyay Advocate for the Assessee
Shri Mohd. Altaf (Asstt. Commr.) Authorized Representative for the Revenue

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. - 70905-70914/2019

Date of Hearing : 24.04.2019
Date of Decision : 24.04.2019

PER: ARCHANA WADHWA

All the appeals filed by the appellant as also by the Revenue are being disposed of by a common order.

2. The appellant is 100% EOU, entitled to refund of Cenvat credit of duty availed by them on the input services, in terms of provision of Rule 5 of Cenvat Credit Rules read with Notification No.05/2006. Part of the refund stands denied to them on the

ground that input services have no nexus with their output services.

3. After hearing both the sides, we intend to dispose of all the appeals on the short issue, without going into the detailed discussion on the nexus between the input and output services. Admittedly the Cenvat credit stands availed by the appellant after following the due procedure and by reflecting the same in their Cenvat credit account. Revenue has not objected at the time of availment of said credit and has not sought to deny the credit on the ground of the input services having no nexus with output services. The question as to whether the refund of such accumulated unutilized credit can be denied, without first challenging the admissibility of said credit stands answered by various decisions of the Tribunal. One such reference can be made to Tribunal's decision in the case of Commissioner of Service Tax, Delhi vs. Convergys India Pvt. Ltd. 2009 (16) S.T.R. 198 (Tri.-Del.). Para 6.7 of the said decision read as follows:-

> *"6.7. From the above, it is clear that there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or as rebate. Without questioning the credit taken, the eligibility to rebate cannot be questioned."*

As is seen from the above, it stands concluded by the Tribunal that where credit has been permitted to take the same has to be refunded to the assessee without raising any issues to the contrary. The said decision of the Tribunal stands confirmed by the Hon'ble Punjab & Haryana High Court when the appeal filed by the Revenue was rejected reported as Commissioner of Service Tax vs. Convergys India Pvt. Ltd. 2010 (20) S.T.R. 166 (P & H).

4. Inasmuch as the Revenue has not first denied the credit availed by the appellant, the objection of the Revenue as regards nexus, adopted at the time of deciding the refund application, is unsustainable. Accordingly, on this ground itself we allow all the appeals filed by the assessee with consequential relief to them.

5. As regards the Revenue's appeals, we note that one of the units of the appellant is located at SEZ in Chennai. Revenue's objection is that the unit was not entitled to avail the refund claim in terms of Notification No.05/2006 issued under Rule 5 but the claim should have been filed under Notification No.09/2009. Inasmuch as the said Notification carries the condition of non-availment of credit, and inasmuch as the SEZ unit at Chennai had not satisfied the said condition, refund was not admissible to them.

6. Commissioner (Appeals) has accepted the assessee's stands that they have centralized registration in Noida and the entire credit is being availed at Noida as ISD. In such a scenario refund claim of SEZ located in Madras cannot be denied.

7. After hearing both the sides on the said issue, we find that the same is no more *res integra.* Tribunal in the case of Tata Consultancy Service Ltd. vs. Commissioner of Central Excise, Mumbai 2013 (29) S.T.R. 393 (Tri.-Mum.) has held that services used in relation to authorized operation in SEZ would be eligible to refund under Section 11B of the Central Excise Act, 1944 as applicable to service tax vide Section 83 of Finance Act, 1994 and it cannot be denied on the ground that they were ineligible to claim the same under Notification No.09/2009-ST. As such by following the said decision, we find no merits in the Revenue's appeal. The same are accordingly rejected.

8. In a nutshell, all appeal of the appellants are allowed and appeal of the Revenue's are rejected. Cross objection filed by the assessee also get disposed of.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks