CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)

Service Tax Appeal No.70393 of 2023

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-001-20-21 dated 05.05.2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Headstrong Services India Pvt. Ltd. **.....Appellant**
(D-4, Sector-59, Noida-201301)

VERSUS

Commissioner, CGST, Noida **....Respondent**

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

APPEARANCE:

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

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

FINAL ORDER NO.-70265/2025

DATE OF HEARING : 20.03.2025
DATE OF DECISION : 20.03.2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. NOI-EXCUS-001-APP.00l -20-21 dated: 05.05.2020 of the Commissioner, CGST (Appeals), Noida. By the impugned order following has been held:

> *"14. In light of the above discussions, I find no reason to intervene in the findings of the adjudicating authority. Accordingly 1 uphold the Order-in- Original No.R-55/DC/D-VI2018-19 dated 31.03.2019 and reject the appeal 325/ST/NOIDA/APPL/NOI2019-20 dated*

07/06/2019 filed by M/s Headstrong Services India Pvt. Ltd-, D-4, sector-59, Noida."

1.2 By the Order-In-Original dated 31.03.2019 following has been held:

"ORDER

I hereby reject the refund claim of Rs. 31,73,673/- (Rupees Thirty one Lakh Seventy three Thousand Six Hundred Seventy three only), as proposed in the SCN, filed by M/s. Headstrong Services India Pvt. Ltd., D-4, Sector-59, Noida. Under rule 5 of the CENVAT Credit Rules, 2004 read with Notification no. 05/2006-CE (NT) dated 14.03.2006."

2.1 Appellant is registered with the Service Tax vide Registration no. AABCT7650DST001 for providing taxable services namely Management Consultants, Renting of Immovable Property Services, manpower Recruitment Agency, Maintenance or Repair Service, Transport of Goods By Road, Information Technology Software Service and Business Auxiliary Services falling under Section 65 (105) (r), (zzzz), (k), (zzg), (zzp), (zzzze) and (zzb) of the Finance Act, 1994 as amended. They are availing facility of CENVAT in respect of input services being used in providing of output services under Cenvat Credit Rules 2004.

2.2 Appellant filed on 28.12.2012 filed a claim under Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. Notification No. 05/20006-Central Excise (N.T) dated 14.03.2006 for refund of Rs. 31,73,673/- in respect of unutilized Cenvat Credit of Service Tax involved on input services claimed to have been used for providing output services during the period Jan'12 to March'12.

2.3 During the course of scrutiny of the refund claim it was observed that

- the Appellant did not submit all copies of BRC/FIRC in support of export turnover

- the CENVAT credit taken on invoices were inadmissible as the relevant services were either used in un-registered premises or did not have any nexus with the output services or did not fall in the ambit of Rule 2(1) of CCR or on strength of invalid documents/missing invoices in contravention of Rule 9 ibid.

2.4 A show cause notice dated 07.04.2014 was issued to the Appellant asking them to show cause as to why the instant refund claim of Rs. 31,73,673/- should not be rejected under rule 5 of CENVAT Credit Rules, 2004, read with Notification No. 05/20006-C.E. (NT) dated 14.03.2006.

2.5 The show cause notice was adjudicated as per order in original referred in para 1.2 above.

2.6 Aggrieved Appellant filed the appeal before Commissioner (Appeal) which has been dismissed as per the impugned order referred in para 1 above

2.7 Aggrieved Appellant has filed this appeal.

3.1 I have heard Shri Kumar Harshvardhan, Advocate for the Appellant and Shri A K Choudhary, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:

- with respect to the finding on non-submission of FIRCs, the Appellant seeks to draw attention to para 9.2 of the OIO, where it is admitted that the Appellant produced 20 FIRCs involving a total amount of Rs. 43,94,36,103. Even if the refund claim was to be processed considering foreign exchange receipt of only this amount, even then the Appellant would be entitled to refund as claimed by them.
- the credit claimed on the basis of such challans for payment off service tax on reverse charge basis was never disputed by the jurisdictional authorities when the return was filed by the Appellant, therefore it is not permissible to raise such objection at this stage,

- for the difference in domestic export turnover, as disclosed in the return, there is no adverse finding by the Commissioner (Appeals) indicating thereby he is satisfied with the explanation offered before him
- denial of refund claim on the basis of correctness of the credit claim by the Appellant either on the ground of credit pertaining to un-registered premises or on the ground of nexus, is unwarranted. They have rightly claimed all the credit in accordance with law.
- It is settled law for claiming credit, requirement of registering the premises is not a pre-condition. Reliance is placed on the following:
    - mPORTAL India Wireless Solutions P. Ltd. [2012 (27) S.T.R. 134 (Kar.)]
    - Right Step Consulting Pvt. Ltd. [2023 (8) TMI 614-CESTAT Allahabad]
    - DMG Polypack Pvt. Ltd. [2024 (12) TMI 347 - CESTAT Allahabad]
    - Tata Business Support Services Ltd. [2021 (44) G.S.T.L. 169 (Tri. - Mumbai)]
    - ABM Knowledge Ltd. [2019 (027) GSTL 0694 (Tri. Bom)]
- all the input services on which credit have been claimed are used by them to provide output services as detailed in the grounds of appeal and submitted before lower authorities.
- Without prejudice to the above, perusal of the SCN indicates that the refund was sought to be rejected challenging validity of credit claimed on the above grounds without there being any demand raised against the Appellant under Rule 14 of the CCR. It is settled law that CENVAT credit claimed cannot be questioned or challenged at the stage of processing of refund. Reliance placed on
    - Circular No. 120/ 01/ 2010-ST dated 19.01.2010
    - Qualcomm India Pvt. Ltd. [2020 a) (43) G.S.T.L. 402 (Tri.-Hyd.)] Afirmed by the High Court of

Telangana as reported at [2021-TIOL-2305-HC-Telangana-ST]

- BNP Paribas India Solutions Ltd. [2022 (58) b) G.S.T.L. 539 (Tri.- Mumbai)]
- ADP Pvt. Ltd. [2024 (9) TMI 925-CESTAT Hyderabad]

➢ they are eligible to seek refund of EC and SHEC amounting to Rs. 1,55,464. During the relevant period the Appellant was duly entitled to claim credit of the same and hence were eligible to the refund of it. Non-consideration of refund of EC and SHEC by the lower authorities is gross error or omission, and hence the Appellant prays for allowing the said refund along with the refund of Service Tax, in light of the submissions made hereinabove. For seeking cash refund of EC/ SHEC, the Appellant relies upon the following:

- Nu Vista Ltd. [2022 (381) E.L.T. 681 (Tri. - Del.)]
- USV Pvt. Ltd. [(2023) 5 Centax 7 (Tri.- Ahmd)]

➢ even assuming without admitting that refund is rightly rejected, in view of introduction of GST with effect from 01.07.2017 any unutilized credit of the pre-GST regime needs to be transitioned to the GST regime or else the same needs to be refunded in cash as provided under Section 142 of the Central Goods and Services Tax Act, 2017. Reliance is placed on decision in case of Dhyan Networks and Technologies Pvt. Ltd. [(2023) 4 Centax 304 (Tri.-Mad)].

➢ Appeal be allowed and amount be refunded with applicable interest.

3.3 Authorized representative re-iterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of hearing.

4.2 Impugned order records the findings as follows:

7. At the very outset I want to place on record, that scope of appeal is limited to the extent of grounds/provisions and amount involved in the impugned Order against which the appeal is preferred. 1 find that the Appellant has filed the instant appeal to set aside the impugned Order involving rejection of refund of Rs 33,29,137/-, however the refund amounting to Rs 31,73,673/- only has been involved and rejected vide the impugned Order by the adjudicating authority. Considering the amount involved beyond the impugned Order is not in the purview of this appeal, accordingly, the same is not discussed or being taken up by me in this Order.

8. I find that the adjudicating authority has rejected the refund claim of service tax mainly on the ground that the Appellant could not produce the relevant documents viz BRC/ FIRCs, GAR-7 Challans, import invoices etc., supporting their claim, and also because the information provided by the Appellant in the refund claim was not correlated with the supporting documents. The adjudicating authority has further observed that the CENVAT credit has been availed on service tax paid on unregistered premises and there is no nexus with the output service tax, and no substantial evidence has been placed on record regarding receipt of the impugned services or their use in their unit for providing output service.

9. I find that Rule 3(1) of the Cenvat Credit Rules, 2004 provides that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit inter alia of the Service Tax leviable under Section 66 of the Finance Act, paid on the following:

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004;

(ii) input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004.

The expression 'input service' is defined in Rule 2(l) as follows :.

(l) "input service"" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of the provider output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes

(A) ……. (B)…….

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption by any employee.

10. Further, Rule 9(5) of the CENVAT credit Rules 2004 provides that

> *"The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit"*

11. Thus, the Rule clearly provides that the burden to prove regarding the admissibility of the CENVAT credit is upon the service provider who takes the credit. In the present case, the onus of admissibility of CENVAT credit taken on the impugned services is upon the Appellant by virtue of Rule 9(5) ibid. However, no material evidences have been placed on record by the Appellant to prove that the aforesaid disputed services have been used for manufacture of goods or for providing output service and has failed to show how the provision of these services has any nexus with the manufacturing/clearance process of their final products, to substantiate their claim, as observed in the impugned order.

12. 1 find that the adjudicating authority has also denied the CENVAT credit on the ground that the Appellant could not produce BRC/FIRCs and other corresponding material evidence in support of their refund claim. I find that the Appellant has failed to discharge their responsibility, in as much as they did not furnish the supporting documents or plausible explanation neither before the adjudicating authority nor before me during the personal hearing or with their grounds of appeal.

> *13. In view of the foregoing discussions it is concluded that the, Appellants could not make any strong assertion against the impugned order and in absence of sufficient material evidence on record by the Appellant to substantiate his claim and denial of refund on this ground by the adjudicating authority is justified."*

4.3 From the impugned order it is evident that the refund has been rejected primarily on the following two grounds:

(i) Appellant has taken CENVAT Credit which was not admissible to them for the reasons that
   a. Input services against which the credit was taken was not received by them in the registered premises from where they were providing the output services exported.
   b. There was no nexus between the input services and output services exported.
   c. Credit was taken against the challans for payment of the service tax under reverse charge mechanism without production of relevant invoices.

(ii) Appellant has failed to produce the BRC/FIRC in respect of the services exported against which the refund has been claimed.

4.4 I do not find any merit in the ground stated at (i) for the reason that the if the credit claimed was inadmissible for any reason then proper proceedings for the denial of the CENVAT Credit should have been initiated under Rule 14 of the CENVAT Credit Rules, 2004. When the Appellant has claimed refund of the unutilized credit in terms of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE, the question of admissibility of the CENVAT Credit could not be questioned and refund claim denied for this reason. In case of Qualcomm India Pvt. Ltd. [2020 (43) GSTL 402 (Hyd)] Hyderabad Bench has held as follows:

> ***"6.****Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer of excisable goods*

and the provider of output service to take Cenvat credit of the duties and taxes paid on the inputs and the input services, with the objective of utilisation of the same for payment of Excise duty on the products and service tax on the output services. In case of exportation of output service, there is no question of utilisation of Cenvat credit available in the books of accounts. Thus, Rule 5 ibid provides for refund of accumulated Cenvat credit, subject to compliance of the procedures/guidelines laid down under the notifications issued thereunder. We find that the refund benefit was denied to the assessee-Appellant on the sole ground that there was no nexus between the input services and the output service exported by the Appellant. Further, in Revenue's appeal, it has been contended that certain disputed services are not conforming to the definition of input service provided under Rule 2(l) ibid. Insofar as taking of irregular Cenvat credit is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilisation, such credit can be recovered from the assessee and for effecting the recoveries, the provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is an admitted fact on record that the department has not invoked the provisions of Rule 14 ibid for effecting recovery of the alleged irregular Cenvat credit availed by the assessee-Appellant. Thus, under such circumstances, it can be said that taking of Cenvat credit on the disputed services by the Appellant is in conformity with the Cenvat statute. Rule 5 ibid nowhere specifies that Cenvat credit can be denied on the ground of irregular availment or utilisation of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 ibid, in our considered opinion, cannot stand for judicial scrutiny. Since the department has not specifically alleged regarding actual exportation of services by the assessee-Appellant and use/utilization of disputed services *for such activities, benefit of refund should be available in terms of the unambiguous provisions contained in Rule 5 ibid, subject only to adherence of the formula laid down thereunder. ….”*

4.5 Similar view has been expressed by the Mumbai Bench in the case of BNP Paribas India Solution Ltd. [2022 (58) GSTL 539 (T-Mum)] observing as follows:

“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."*

4.6 In case of Credit Suisse Business Analytics India Pvt. Ltd. [(2023) 9 Centax 248 (Tri.-Bom] the above referred decisions were followed after noting as follows:

> ***"6.*** *Therefore 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. The decision of the Tribunal in the matter of Qualcomm India Pvt. Ltd. (supra) has been affirmed by the Hon'ble High Court of Hyderabad in 2021-TIOL-2305-HC-TELANGANA-ST by dismissing the appeals filed by the Revenue against the aforesaid decision of Tribunal."*

4.7 I also take note of the Circular No 120/1/2010-ST dated issued by CBIC clarifying the entire issue as follows:

> *Subject: Problems faced by exporters in availing refund of excess credit – regarding*
>
> *CENVAT Credit Rules, 2004 permit taking of credit of inputs and input services which are used for providing output services or output goods. In order to zero-rate the exports, Rule 5 of CENVAT Credit Rules, 2004 provides that such accumulated credit can be refunded to the exporter subject to stipulated conditions. Notification No. 5/2006-CE (NT) dated 14.03.2006 provides the conditions, safeguards and limitations for obtaining refund of such credit.*
>
> *2. It has been represented by the exporters of services (mainly the call centres or the BPOs) that they are facing difficulties in getting refund under the said notification. In order to ascertain the causes for such delay a number of meetings were held with the refund sanctioning authorities. During these meetings the officers pointed out the following legal/procedural impediments partly responsible for such delays:*
>
> *(a) The major reason causing delay in granting refunds as well as rejecting the claims is that as per the wordings of the notification, refund is permitted of duties/taxes paid only on such inputs/input services which are either used in the manufacture of export goods or used in providing the output services exported. As against this, the phrases*

used in the CENVAT Credit Rules permit credit of services used " whether directly or indirectly, in or in relation to the manufacture of final product" or "for providing output service ". The field formations tend to take the view that for eligibility of refund, the nexus between inputs or input services and the final goods/services has to be closer and more direct than that is required for taking credit. Many refund claims are being rejected on this ground.

(b) Even if a nexus is considered acceptable, the officers processing the refund claims find it difficult to co-relate goods or services covered under a particular invoice with a specific consignment of export goods or specific instance of export of service.

(c) As per the notification, the claims are to be filed quarterly. For large exporters, the procurement of inputs/input services in a quarter is substantial resulting in each refund claim being accompanied with hundreds of invoices. Verification of these documents with corroborative documents showing exports (such as export invoices, bank certificates, shipping bills) consumes a long time;

(d) Though the notification prescribes that refund claims should be filed quarterly in a financial year, it is not clear whether the refund is eligible only of that credit which is accumulated during the said quarter or the accumulated credit of the past period can also be refunded; and

(e) In certain cases, the invoices accompanying the refund claim are incomplete in as much as either the description ofservice or its classification is not mentioned. In some cases, even the name of the receiver of the inputs/input services is alsonot mentioned.

3. The matter has been examined. At the outset it is necessary to understand that the entire purpose of Notification No. 5/2006-CX (NT) is to refund the accumulated input credit to exporters and zero-rate the exports. Accumulated credit and delayed sanction of refund causes cash flow problems for the exporters. Therefore, the sanctioning authorities are directed to dispose of the refund claims expeditiously based on the following clarifications to the issues raised in paragraph 2 above.

3.1 Use of different phrases in rules and notification [para 2(a)] :

3.1.1 The primary objection indicated by the field formations is that the language of Notification No. 5/2006-CX (NT) permits refund only for such services that are used in providing output services. In other words, the view being taken is that to be eligible for refund, input services should be directly used in the output service exported. As regards the extent of nexus between the inputs/input services and the export goods/services, it must be borne in mind that the purpose is to refund the credit that has already been taken. There cannot be different yardsticks for establishing the nexus for taking of credit and for refund of credit. Even if different phrases are used under different rules of CENVAT Credit Rules, they have to be construed in harmonious manner. To elaborate, the definition of input services for manufacturer of goods, as given in Rule 2 (l) (ii) of CENVAT Credit Rules, 2004, includes within its ambit all services used "in or in relation to the manufacture of final products "and includes services used " directly or indirectly ". Similarly Rule 2 (l) (i) of CENVAT Credit Rules also gives wide scope tothe input services for provider of output services by including in its ambit services "used....for providing an output service ".Similar is the case for inputs.

3.1.2 Therefore, the phrase, " used in " mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, *mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need.*

3.2 One-to-one co-relation between inputs and outputs and scrutiny of voluminous record [para 2(b) & (c) above] :

3.2.1 Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme[Notification No. 41/2007-ST dated 06.10.2007] which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009-ST] where under an exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under notification No. 5/2006-CE (NT). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect.

3.2.2 Procedure : The exporter should, alongwith the refund claim, file a declaration containing the following details:

…….

The declaration should be certified by a person authorized by the Board of Directors (in the case of a limited company) or the proprietor/partner (in case of firms/partnerships) if the amount of refund claimed is less than Rs.5 lakh in a quarter. In case the refund claim is in excess of Rs.5 lakh, the declaration should also be certified by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of1961), as the case may be.

The Assistant or Deputy Commissioner may, after verification of the fact that the input credit has been correctly claimed, sanction the refund on the basis of the declaration. In case there is a doubt about the correctness *of the claim of CENVAT credit on any service, the undisputed amount may be refunded and the balance claim may be decided after following the dispute settlement process.*

3.4 Incomplete invoices [para 2(e) above]:

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."

4.8 Admittedly in the present case I am not in position to ascertain whether any proceedings for denial of the CENVAT Credit were initiated in terms of the Rule 14 of the CENVAT Credit Rules, 2004. Nothing to this effect has been stated either in the show cause notice, order in original or the impugned order. Thus in absence of any assertion that proper proceedings have been initiated under Rule 14, in view of the above decisions I do not find any merits in the impugned order denying the refund claim by holding certain credits as inadmissible.

4.9 In respect of the point at (ii) in para 4.3, I find that impugned order is totally silent. Whereas the order in original specifically records as follows:

"9.2 It has been alleged in the SCN that the party failed to provide the copies of all relevant FIRCs/BRCs in support of export turnover said to be Rs.72,90,37,061/-. I find that the

party has provided copies of 20 FIRCs involving total amount of INR 43,94,36,103/- (approx.) only (as in some FIRCs, remittance is not shown in INR) towards remittance received during the period of refund claim i.e. Jan, 12 to March, 12. As such, I find that the party has failed to produce all the relevant FIRCs/BRCs related to the said export turnover of Rs.72,90,37,061/-, and hence they have not fulfilled the condition of Notfn. No.05/2006-CE (NT) dated 14.03.2006. As such, I am inclined to reject instant refund claim on this ground alone."

4.10 Appellant has submitted in their appeal memo, following calculation to show that the amount claimed as refund by them would remain unaltered even if the export turnover is taken as per the above findings recorded in the order in original.

Particulars	Refund Claim	
	Original	Revised as per findings in OIO
Gross Export Turnover	741046595	439436103
Less Outstanding	12009534	12009534
Export Turnover (ET)	729037061	427426569
Gross Export Turnover	741046595	741046595
Gross Domestic Turnover	108484704	108484704
Total Turnover (TT)	849531298	849531298
Ratio (ET/TT) in percentage	85.82	50.31
CENVAT Credit availed	7961817	7961817
Amount that can be refunded	6832544	4005847
Credit Balance	3329137	3329137
Amount Claimed as refund	3173673	3173673

I find merits in the submissions of the Appellant that for determining the admissibility of the refund the authorities should have made the revised calculations by taking those FIRCS/BRCs which were produced by the Appellant. Undisputedly the entire amount claimed as refund by the Appellant as per the refund claim filed by them 28.12.2012, would be admissible even if the export turnover for the purpose of calculating the admissible refund as per notification No 5/2006-CE (NT). Thus I do not find any merits in the rejection of the refund claim on this account also.

4.11 I do not find any merits in the submissions made by the Appellant claiming refund over and above the amount claimed by them in the claim filed by them on 28.12.2012. Impugned order correctly records that the Appellant could not have claimed any amount which was not the subject matter of proceedings before the lower authorities.

4.12 Thus I do not find any merits in the impugned order to the extent it uphold the rejection of the refund claim filed by the Appellant in terms of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No 5/2006-CE (NT).

5.1 Appeal is thus allowed to the extent of the amount claimed as refund in the refund claim filed by the Appellant on 28.12.2012, and was subject matter of the show cause notice dated 07.04.2014.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal