CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 237 of 2010

(Arising out of Order-in-Appeal No. 117/2009 dated 30.10.2009 passed by Commissioner of Central Excise (Appeals-II), Bangalore.)

Siemens Information Processing Services Pvt., Ltd.,
Ozone Manay Tech Park,
B – Block, 6th Floor, No. 56/18 & 55/9,
G.B. Palya, Hosur Road,
Bangalore – 560 068. **......Appellant(s)**

VERSUS

Commissioner of Service Tax,
Division II, No. 16/1, S.P. Complex,
1st Floor, Lalbagh Road,
Bangalore – 560 027 . **...Respondent(s)**

Appearance:

Mr. Syed Peeran and Ms. Sneha Philip, Advocates for the Appellant
Mr. Neeraj Kumar, Authorised Representative for the Respondent

Coram:

Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 21532 /2024

Date Of Hearing:16.04.2024
Date Of Decision:15.10.2024

Per: P.A. Augustian

The issue in the present appeal is whether this Tribunal has jurisdiction to consider the appeal against the impugned order, since the issue relates to rebate claim on export and whether the Appellant is eligible for the rebate on taxable services exported in terms of Rule 3 of Export of Service Rules, 2005.

2. The brief facts are M/s. Siemens Information Processing Services Pvt., Ltd., the Appellant on 08.12.2006 on the ground that they have exported 'business support' services and 'maintenance and repair' services to USA and UK and they have received payment against such services exported in full in convertible foreign currency filed a rebate claim of the service tax paid on the exported output services as per Rule 5 of Export of Service Rules, 2005. However, the claim was rejected vide impugned order on the ground that output services provided/exported are not a taxable service in as much as the service rendered is not primarily in relation to operation of computer system. The Adjudication authority also held that since the Appellant failed to produce documentary evidence of having exported the said output service and having paid service tax on such output service, they are not eligible for the rebate as claimed. However, the Adjudication authority has taken note of invoices produced by them in support of the claim made by them. Aggrieved by the Order-in-Original, Appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) vide order dated 30.10.2008 dismissed the appeal. Aggrieved by said order, present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, Learned Counsel for the Appellant drew our attention to the documents including the rebate claim, invoices and the FIRCs related to the claim and submitted that the documents produced by the Appellant, while submitting the rebate claim are sufficient to prove that the Appellant had exported the service. The Learned Counsel also drew our attention to the finding of the Commissioner (Appeals), where it is held that documents produced by the Appellant relate to different entity not connected to the claim

filed by the Appellant, the said finding is totally against the finding given by the Adjudication authority.

4. Learned Counsel further submitted that the Appellant is providing 'support services' in the area of software, accounts, remote support as particularly described in the main object of the memorandum of articles. The support services are provided by the Appellant to foreign entities for which they were also registered with Software Technology Park (STP), as a unit of Special Economic Zone at Chennai and Bangalore. The Appellant is also registered with Service Tax authorities for 'Business Auxiliary services' and were filing returns in time. As regards the variation in the invoices, the Registrar of Companies has noted the change in the name of the entity from time to time and Appellant also produced the relevant document in support of the claim. Learned Counsel further submitted that there is no allegation in the show cause notice about filing the claim in the name of a different entity. In the absence of passing any order in this regard, both Adjudicating authority and Appellate authority deciding that the rebate claim was filed by the different entity is beyond the scope of show cause notice (SCN). Further, the changes are incorporated from time to time and the authorities have failed to appreciate the same. As regarding the nexus of service, the Adjudication authority has not made any conclusion to that effect and in the absence of any such finding, the Commissioner (Appeals) have no reason to conclude that there is no nexus between the input services and output services exported.

5. The Learned Counsel also drew our attention to the Export of Service Rules, 2005 and as per Rule 4, where any taxable service is exported, the Central Government may by notification grant rebate of

service tax paid on such taxable service or service tax or duty paid on input services or inputs as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any and fulfillment of such procedure as may be specified in the notification.

6. As regards evidence of payment of tax, Learned Counsel drew our attention to the Form ST-3 return submitted by the Appellant where amount paid for service on which tax is paid is separately shown. The Learned Counsel also drew our attention to the Notification No.11/2005-Service Tax dated 19.04.2005, where the following conditions are included**:-**

> ***"2. Conditions and limitations:-***
>
> *(a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;*
>
> *(b) that the service tax and cess, rebate of which has been claimed, have been paid on the taxable service exported;*
>
> *(c) the amount of rebate of service tax and cess admissible is not less than five hundred rupees; and*
>
> *(d) that in case,*
>
> > *(i) the service tax and cess, rebate of which has been claimed, have not been paid; or*
> >
> > *(ii) the taxable service, rebate on which has been claimed, has not been exported, the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if*

no service tax and cess have been paid on such taxable service".

7. Learned Counsel further drew our attention to the decision of this Tribunal in the matter of **M/s Del International Services India Pvt., Ltd., Vs. CC, Bangalore-2010 (17) STR 540 (Tri. Bangalore),** wherein it is held that input services to be interpreted liberally in view of the phrases activities related to business. The Learned Counsel also relied on catena of judgments/decisions including the following:-

i. **Dell International Services India P. Ltd. Vs. C.C.E., Bangalore, 2010 (17) S.T.R. 540 (Tri.-Bang.)**
ii. **Zenta Pvt. Ltd. Vs. CCE, Mumbai, 2012 (27) S.T.R. 519 (Tri. – Mumbai).**
iii. **KPIT Cummins Infosystems Ltd Vs. CCE, Pune-I, 2013-TIOL-931-CESTAT- MUM**
iv. **Hindustan Platinum Vs. CCE, Mumbai-IV, 2017 (352) E.L.T. 105 (Tri. Mumbai)**
v. **Commissioner Vs. Suncity Alloys Pvt. Ltd. 2007 (218) ELT 174 (Raj.)**
vi. **Ravi Foods Pvt. Ltd. Vs. Commr. of Cus. & C. Ex. (Appeals), Hyderabad, 2018 (16) G.S.T.L. 80 (A.P.)**
vii. **Punjab Stainless Steel Industries Vs. Commr. of C. Ex., Delhi-1 2008 (226) E.L.T. 587 (Tri. - Del.)**
viii. **Commissioner of C. Ex., Coimbatore Vs. Power Link Systems Pvt. Ltd., 2016 (41) S.T.R. 667 (Tri. - Chennai)**
ix. **Carl Bechem Lubricants India Pvt Ltd Vs. Commissioner of Central Tax, 2019- TIOL-1578-CESTAT-BANG**
x. **Comm. of C.Ex, Bangalore Vs. KVR Construction, 2012 (26) STR 195 (Kar.) maintained in in 2018 (14) GSTL J70 (SC).**
xi. **Ivy Comptech Pvt. Ltd. Vs. Commr. of C. Ex., Cus. & S.T., Hyderabad, 2016 (42) S.T.R. 66 (Tri. - Bang.)**

xii. **Commissioner, Customs and Central Excise, Hyderabad - IV Vs. Qualcomm India Private Limited, 2021-VIL-766-TEL-ST**

xiii. **Ranbaxy Laboratories Ltd. Vs. Union of India & Ors., 2011-VIL-02-SC-CE**

xiv. **Welspun Trading Ltd. Vs. Union of India, 2017 (354) E.L.T. 90 (Guj.) maintained in 2017 (354) E.L.T. A24 (S.C.).**

8. The Learned Counsel also drew our attention to the judgment of Hon'ble High Court of Telangana in CEA No. 7 & 8 of 2021 dated 28.09.2021 in the matter of **CC vs M/s Qual Comm India** (reported in **2021-VIL-766-TEL-ST)**, wherein it is held that:-

> *"17. Further, it is to be noted that these appeals relate to period prior to amendment made to Rule 5 of Rules w.e.f 01.04.2012 and also thereafter. In so far, the claim for refund of CENVAT credit for the period prior to 01.04.2012 is concerned, as Rule at the relevant point of time did not contain any prescription as to the nexus between input services and output service, the denial of refund on the said ground cannot be held to be valid. For the period subsequent to the introduction of substituted Rule 5 of Rules, the only prescription for grant of refund in respect of export of output service is by applying the formula specified.*
>
> *18. The Tribunal, while considering the above aspect, had observed as under:-*
>
> > *'In so far as taking of irregular CENVAT is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilization, 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 CENVAT statute. Rule 5 ibid nowhere specifies that CENVAT credit can be denied on the ground of irregular availment or utilization of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 of ibid, in our considered opinion, cannot stand for judicial scrutiny.'

9. Learned Counsel as regards interest for the delayed payment relied on the judgment of Hon'ble Supreme Court **M/s Ranbaxy Laboratory (**2011 (273) E.L.T 3 (SC) wherein it is held that:-

"14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of

three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

10. The Learned Counsel also relied on the judgment of the Hon'ble High Court of Gujrat in the matter of **M/s Well Spun Trading Ltd (2017 (354) E.L.T 19 (Guj).** The Learned Counsel further submitted that even if it is held that the service exported by the Appellant during the relevant period are not taxable, the levy of service tax on such services would be without any authority of law and the Appellant would be eligible for refund of such service tax paid under Section 11B of the Central Excise Act, 1944. The Appellant also relied on the judgment of the Hon'ble High Court of Karnataka in the matter of **CC, Bangalore Vs. M/s KVR Construction (2012 (26) STR 195 (Kar).** The Learned Counsel further submitted that the eligibility of credit cannot be disputed in proceedings relating to rebate claim. While considering the rebate claim for output services, the issue of nexus between input services with the output services exported cannot be raised. On a bare perusal of the Notification No.11/2005-ST dated 19.04.2005, it is clear that the only condition which is required to be satisfied is that the assessee has paid service tax on the export. The Learned Counsel relied on the decision of the Tribunal in the matter of **M/s. Ivy Computech**

Vs. CC Cus ST, Hyderabad (2016 (42) STR 66 (**Tri. Bang),** wherein it is held that rejecting the refund/rebate claim by clubbing it with denial of CENVAT credit is not proper. The Learned Counsel also relied the following judgments/decisions:-

a. **Vandana Overseas Vs. Union of India, 2019 (368) E.L.T. 306 (Bom.)**
b. **General Motors Technical Centre India Pvt. Ltd. Vs. Commissioner of Central Tax, Bengaluru 2021-VIL-164-CESTAT-BLR-ST**
c. **24/7 Customer Pvt. Ltd. Vs. Commissioner of Central Tax, Bengaluru East 2021-TIOL-160-CESTAT-BANG-2021-VIL-86-CESTAT-BLR-ST.**

11. The Learned Counsel also relied on the Circular No.81/2/2005-ST dated 07.10.2005 wherein it is stated that: -

> *"4. Any service provided to a customer by any person in relation to maintenance or repair is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. "Maintenance or repair" is defined under section 65(64) of the said Act. Accordingly, "maintenance or repair" means any service provided in relation to maintenance or repair or servicing of any goods or equipment".*

12. Learned Authorised Representative (AR) for the Revenue submitted that the Appellant is not eligible for the rebate and reiterated the finding in the impugned order. As regarding the jurisdiction, the Learned AR strongly objected to the jurisdiction of this Tribunal to consider the appeal and submitted that the issue is settled by the Tribunal in the matter of **M/s Glyph International Ltd., Vs. CC, Noida (2014 (34) STR 732 (Tri.Del),** where it is held that after the amendment brought under Section 35EE of the Central Excise Act, 1944

on 28.05.2012, the issue regarding rebate of duty can be agitated only before the Revision authority.

13. Heard both sides and perused the records. As regards the jurisdiction, the issue is considered by the Tribunal in the matter of **M/s Glyph International Ltd.,** (supra) as to whether the appeal filed by the Appellant on 10.12.2012 is beyond jurisdiction of the Tribunal in view of the provisions under Section 35 of the Finance Act, 1994. We find that the present appeal was filed in 2010 and the issue of jurisdiction in such cases is not applicable in such cases. As regards merit of the case, we find that Appellant had exported the goods and also produced sufficient evidence by way of that the rebate claim amounts were paid by them through proper channel and it is properly reflected in the ST-3 returns submitted by the Appellant. Facts being so, the rejection of the claim on the ground that there is no documentary evidence is unsustainable.

14. As regarding the contention of the Appellate authority that the invoices are in the name of different entity, we have gone through the decisions relied on by the Appellant and the judgment of Hon'ble High Court of Karnataka in Company petition No.27/2011 dated 30.09.2011 and the relevant documents filed before the Registrar of Companies, shows that the title of the Appellant was changed from time to time. Thus, invoices produced by the Appellant cannot be considered as issued to different entities to reject the rebate claim. As regards the eligibility, as per the Notification No.11/2005-ST dated 19.04.2005, Appellant have fulfilled the criteria for claiming the rebate and facts being so, there is no justification to reject the rebate claim. As regarding the interest, issue is settled by the Apex Court in the matter

of **M/s Ranbaxy** (supra) and this Tribunal also considered the issue in the matter of **M/s. Well Spun Trading Ltd.,** (supra). Considering the same, the Appellant is also eligible for interest on the due amount as applicable.

15. In view of the above discussion, the appeal is allowed with consequential relief if any, in accordance with law.

(Order pronounced in Open Court on 15.10.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Hr