CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20630 of 2021

[Arising out of Orders-in-Appeal No. 57 & 58/2021 dated 15.02.2021 passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

M/s Hewlett Packard India Software Operation Pvt. Ltd.
Sy. No. 192, Whitefield Road ……………………**Appellant**
Mahadevapura Post.
Bengaluru – 560 048

Versus

Commissioner of Central Tax ………………..**Respondent**
Bengaluru East
BMTC Building, Old Airport Road
Domlur, Bangalore – 560 071

WITH

Service Tax Appeal No. 20631 of 2021

[Arising out of Orders-in-Appeal No. 57 & 58/2021 dated 15.02.2021 passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

M/s Hewlett Packard India Software Operation Pvt. Ltd.
Sy. No. 192, Whitefield Road ……………………**Appellant**
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BMTC Building, Old Airport Road
Domlur, Bangalore – 560 071

APPEARANCE:

Mr. Harish Bindumadhavan & Ms Disha Gursahaney, Advocates for the Appellant
Mr. M.A. Jithandra, Authorised Representative for the Respondent

Coram:

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

<u>Final Order Nos.: 21544 - 21545 / 2024</u>

Date of Hearing:12.06.2024

Date of Decision: 11.12.2024

Per: P.A. Augustian

M/s Hewlett Packard India Software Operation Pvt., Ltd., Appellant herein is an 100% EOU and exporting their output services without payment of any duties of customs by availing the exemption under Notification No. 52/2003 and 22/2003 both dated 31.03.2003. Since appellant could not use the cenvat credit, they have filed a refund application under Rule 5 of Cenvat Credit Rules, 2004. However, the adjudication authority rejected the same on the ground that the FIRC's do not correlate to the export invoices and they have availed cenvat credit on input services, which have no nexus with the output services. Aggrieved by said order, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order, rejected the appeals. Aggrieved by said order, present appeals are filed. The appeal pertains to the period January 2010 to March 2010 and October 2010 to March 2011 against Order-in-Appeal No. 57 and 58/2021 dated 15.02.2021 arising out of Order-in-Original No. 310-316/2019 dated 30.09.2019.

2. When the appeals came up for hearing, learned counsel for the appellant submitted that the impugned orders are issued without considering the statutory provisions and the law laid down by the appellate forums. As regards denial of the claim on the ground that there is no nexus between each input/output services, learned counsel submitted that as per the definition of 'input service' under Rule 2(l) of Cenvat Credit Rules, 2004 it does not include the term 'direct nexus'. The Rule defines 'input services' to mean any service. Therefore, the services to be eligible for the benefit of cenvat credit need not be used directly in connection with the provisions of taxable service. It is

enough, if they are used for provision of such service. Since they are 100% EOU, the entire input is exclusively used for export of goods and there is no justification to deny the cenvat credit on the ground that there is no nexus between the input and output services. As regarding the difference between Form 'A' and Chartered Accountant (CA) certificate, the learned counsel drew our attention to the CA certificate and submits that it is very clearly stated that date of payment to the vendor invoices have been considered to claim refund of input credit for the period 1st October 2010 to March 2011 though the appellant had filed ST-3 returns on accrual basis which has not been considered by the respondent while passing the impugned order. As regards the objection of non-submission of the documents, proper Chartered Accountant (CA) certificate, the learned counsel submitted that as per Rule 5 of Cenvat Credit Rules, read with Notification No. 5/2006, the appellant had submitted all supporting documents in compliance with the above said Rules and insistence of the certificate from the Chartered Accountant (CA) is made only as per the direction issued by the Board vide circular No. 120/01/2010 dated 19.01.2010. In this regard, learned counsel drew our attention to para 11 of the Order-in-Original, where the adjudication authority had gone through the details furnished by the appellant and also after verifying the ST-3 returns filed by the appellant, it is held that "*on verification of the documents furnished by the claimant along with the refund application, it is seen that they have availed cenvat credit on various input services. I find that these services, other than those which are specifically mentioned, are essential for providing the output services and covered well within the ambit of "input services" defined under Rule 2(l) of the*

Cenvat Credit Rules, 2004. Hence, the claimant is eligible for refund of cenvat credit availed on these input services, other than those which are specifically mentioned".

3. Learned counsel further submitted that as per para 11, there is a categorical finding by the adjudication authority that "as regards the amount received under FIRCs issued by JP Morgan Chase bank, I find that the claimant has received the consideration for the services exported in convertible foreign exchange duly fulfilling the provisions of Export of Services Rules, 2005". Fact being so, there is no reason or justification to allege that there is no corelation between the FIRCs produced by the appellant with the export of service. The learned counsel for the appellant further submitted that the Circular No. 120/01/2010-ST dated 19.01.2010 is issued to mitigate the problems faced by the exporters in availing refund of excess credit and as per paragraph 3.2.1, it held as follows:

> *"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] whereunder 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."

4. Thus, if the appellant complied with Rule 5 of Cenvat Credit Rules, even if there is defect in the certificate as alleged or non-production of the Chartered Accountant (CA) certificate as per the Circular cannot be considered as mandatory to reject the refund claim. The learned counsel to substantiate the same relied on the decisions of the Hon'ble Supreme Court in the matter of ***M/s Sandur Micro Circuits Ltd. V. Commissioner of Central Excise, Belgaum [2008 (8) TMI 3 – SC]*** and ***M/s The Bank of Nova Scotia Vs. Commissioner of Customs, Kolkata [2023 (10) TMI 825 CESTAT Kolkata***. Hon'ble Supreme Court in the matter of ***Commissioner of Central Excise, Bolpur Vs. M/s Ratan Melting & Wire Industries [2008 (10) TMI 5 – SC]*** held that Circular/ clarification representing the Board's understanding on statutory provisions are not binding on the Court. Thus, the appellant cannot be denied refund merely on the ground of defect in CA certificate.

5. The learned counsel further submitted that the CA certificate was issued in accordance with ICAI guidelines and cannot be arbitrarily rejected. The learned counsel also submitted that CA certificate cannot be discredited unless the Department adduce contradictory evidence in this regard. Reliance is placed on the following:-

a. **Gillette India Ltd. V. Commissioner [F.O. No. 60581/2023 dated 02.11.2023]**
b. **Commissioner V. Elgi Tyres & Tubes [2009 (4) TMI 751 – CESTAT Bangalore]**
c. **Johnson Lifts Pvt. Ltd. V. Assistant Commissioner [2020 (9) TMI 226 -Madras High Court]**

6. Thus, the finding regarding the rejection of the claim on the ground of defect in the CA certificate is unsustainable. Learned counsel further submitted that on the very same CA certificate, the refund was allowed for the previous period. Fact being so, following the decision of the Hon'ble High Court of Allahabad in the matter of ***M/s Samsung India Electronics Private Limited Vs. State of U.P. and others [2024 (3) TMI 631 – Allahabad High Court]***, when faced with analogous factual and legal circumstances, tax authorities must apply consistent view in sanction of refund. Thus, the impugned order is unsustainable. Learned counsel also relied on the judgment of the Hon'ble High Court Delhi in BT (India) Private Limited Vs. Union of India & Anr. in W.P. (C) 13968/2021 dated 06.11.2023.

7. Learned Authorised Representative(AR) for the Revenue reiterated the findings in the impugned order and held that the appellant failed to furnish sufficient evidence and also has not complied with the Circular by producing proper Chartered Accountant (CA) certificate to allow the refund claim as submitted.

8. Heard both sides. We have gone through the refund claim and the finding given by Adjudication/Appellate authorities. It is an admitted fact that while submitting the refund claims, appellant have produced the relevant documents including invoices on which input service credit has been availed, certificate from bank certifying list of export services,

copy of RC Register, extract of Cenvat Credit Register for the period April 2010 to June 2010 and copy of export of invoices for the period from January 2010 to March 2010. As regards the refund claim for the period from January 2011 to March 2011, the appellant had submitted the refund application along with extract of cenvat credit register for the period January 2011 to March 2011, input credit Register for the period January 2011 to March 2011 along with summary of input credit, list of import of services, payment and challan copies, list of export, billing list of export sales, invoice copies along with large number of documents including copy of ST-3 returns, ST-3 copy of the declaration etc and also corelation of input service towards output service. The above said documents are sufficient enough to sanction the refund under Rule 5 of Cenvat Credit Rules, 2004. Even if the Chartered Accountant (CA) Certificate was not according to the satisfaction of the Adjudication Authority, the claim made by the appellant under Rule 5 of Cenvat Credit Rules, cannot be rejected on such insubstantial grounds.

9. In view of the above discussion and considering the facts, the appeals are allowed with consequential relief, if any in accordance with law.

(Order pronounced in Open Court on 11.12.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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