

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20602 of 2021

(Arising out of Order-in-Appeal No. 84 to 87/2021 dated 26.02.2021 passed by the Commissioner of Central Tax (Appeals - I), Bengaluru.)

**M/s. KPMG Global Delivery Center
Private Limited**

RMZ Ecoworld,
Campus 7, Floor 6,
Deverabeesanahalli,
Outer Ring Road,
Bangalore - 560 103.

.....**Appellant(s)**

Versus

**The Principal Commissioner of
Central Tax,
GST Commissionerate (Bangalore East),**

Traffic Transit Management Center,
Above BMTC Building,
4th Floor, Old Airport Road,
Domlur,
Bengaluru - 560 071.

.....**Respondent(s)**

WITH

Service Tax Appeal No. 20635 of 2022

(Arising out of Order-in-Appeal No. 239/2022 dated 30.06.2022 passed by the Commissioner of Central Tax (Appeals - I), Bangalore.)

**M/s. KPMG Global Delivery Center
Private Limited**

RMZ Ecoworld,
Campus 7, Floor 6,
Deverabeesanahalli,
Outer Ring Road,
Bangalore - 560 103.

.....**Appellant(s)**

Versus

**The Principal Commissioner of
Central Tax,**

Traffic Transit Management Center,
Above BMTC Building,
4th Floor, Old Airport Road,
Domlur,
Bengaluru - 560 071.

.....**Respondent(s)**

APPEARANCE:

Mr. Omkar Sharma, Advocate for the Appellant.

Mr. M. Sreekanth, Asst. Commr. (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE SMT. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order Nos. 22021 – 22022 / 2025

Date of Hearing: 20.11.2025

Date of Decision: 20.11.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding refund of service tax paid on specified services in terms of Export of Services Rules, 2005 and as per Rule 5 of CENVAT Credit Rule, 2005.

2. Appellant is engaged in export of back office services and obtained Service Tax Registration under the category of Business Auxiliary Service and Management Consultancy Service. Appellant had exported services and filed refund claim as per Rule 5 of CENVAT Credit Rule, 2005. The Appeal No. ST/20635/2022 pertains to period from April 2016 to June 2016 and Appeal No. ST/20602/2021 pertains to period from October 2014 to December 2014. Alleging various defects in the refund claim, show cause notice was issued and Adjudication Authority as per the Order-in-Original dated 13.01.2017 denied the refund on the ground that the Appellant has not availed any CENVAT Credit during the quarter became ineligible for refund of any CENVAT Credit for the said period. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the Order-in-Appeal No.486/2017 dated 29.04.2017 held that the refund is mainly rejected on procedural grounds that nothing substantive has been pointed out to validly denied the refund. Further held that the issue has not been addressed substantively and only such technicalities have been raised while rejecting the refund in toto/ with

specific regard to such procedural infractions, and other sundry issues these are at best procedural infractions and by itself cannot be a sufficient ground to reject a refund claim. Ld Commissioner (Appeals) also observed that in the case of **CST, Delhi v. Convergys India Pvt. Ltd. [2009 (16) S.T.R. 198 (Tri. Del.) 2009-TIOL-888-CBSTAT-DEL)**, Tribunal has held that "non observance of procedural condition is technical in nature and cannot be used to deny substantive concession" By following the ratio of the said judgment, held that technical/procedural lapses like these should not be a ground for rejection of the refund by the lower authority and appeal is remanded to the Original Adjudication Authority for fresh adjudication taking due note and cognizance of the discussion on the issue.

3. While considering the issue in Denovo proceedings, Adjudication Authority vide Order-in-Original dated 26.11.2019 has considered the entire issue and held that the Appellant had satisfied all the conditions stipulated under Rule 6A of the Service Tax Rules, 1994, complied the condition specified in Notification No. 27/2012-CE, verified the export turn over as claimed and held that Appellant is eligible for CENVAT credit of Rs. 54,73,173/- out of Rs. 54,84,975/- and held ineligible for CENVAT Credit of Rs.11,802/- against Hotel Inn Club and Guest House service and supply of Tangible goods. However by following the very same method of rejecting the refund in the first round of litigation which was held unsustainable by the first Appellate authority, Adjudication Authority rejected the claim on the ground that the claimant has not availed any CENVAT credit in their ST-3 return filed for the period October 2014 to December 2014. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per order dated 26.02.2021 disposed appeals against different refund claims. The refund claim against the present claim is rejected by quoting the very same reason given by the Adjudication Authority though the very same Appellate Authority in previous appeal had held that such finding is unsustainable. Aggrieved by said order, appeal No. ST/20602/2021 is filed.

4. Similarly for the period from April 2016 to June 2016, refund was filed for an amount of Rs. 1,27,76,531/- and on the very same reason, said refund claim of Rs 90,09,133/- was also rejected vide order dated 11.06.2020. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per order dated 30.06.2022 only allowed limited prayer of interest on the sanctioned amount and upheld the order partially rejecting the refund claim. Aggrieved by said order, Appeal No. ST/20635/2022 is filed.

5. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that issue is squarely covered by the decision of this Tribunal in the matter of **M/s Broadcom India Research Pvt. Ltd. Vs. Commr. of S.T., Bangalore (2015 (6) TMI 1030 CESTAT (Bang)** held that:-

"6. The next ground is that Cenvat credit shown in the ST-3 returns does not tally with the amount claimed in the refund claims. In my opinion, the refund claim is not based on ST-3 returns and ST-3 return is nothing but a report of transactions that have taken place over a period covered by the returns. On the ground that the figures in ST-3 returns were not correct or there was a substantial difference, refund claim cannot be rejected. For the purpose of consideration of refund claim, the relevant documents on the basis of which credit was taken, nature of service and its nexus and utilization of the service for rendering output service are relevant and merely because there was some mistake in the ST-3 returns, substantive right of assessee for refund cannot be rejected. Therefore, I do not consider it necessary to consider the issue as to whether figures in ST-3 returns tallied with the amounts claimed in the refund claims or not".

5.1. Same view was upheld by the Tribunal in the matter of **M/s. Morning Star India Pvt. Ltd. Vs. CST, Delhi 2017 (10) TMI 510 CESTAT New Delhi** where it is held that:-

"In view of the above observation, I hold that on the ground that the appellant has not shown Cenvat Credit in their ST-3 returns, cannot be the ground to deny refund to the appellant".

6. As regarding Appeal No. ST/20602/2021, the Learned Counsel submits that the entire issue regarding eligibility of the refund claim was considered when an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the Order-in-Appeal No.486/2017 dated 29.04.2017 held that the refund is mainly rejected on procedural grounds and nothing substantive has been pointed out to validly deny the refunds. Fact being so, the Adjudication Authority ought to have followed the finding of the first Appellate Authority and by considering the issue which is beyond the remand order, impugned order is unsustainable.

7. As regarding the Appeal No. ST/20635/2022, the Learned Counsel brought out attention to the various documents to substantiate that the claim was made in accordance with law. However it is an admitted fact that the details were not considered by the Adjudication authority, since the claim is rejected on procedural lapse.

8. The Learned Authorized Representative (AR) for the revenue reiterated the finding in the impugned order.

9. Heard both sides. We find that merely if ST-3 returns does not tally with the amount claimed in the refund claim, is not a reason to reject the refund claim, since the refund claim is not based on the ST-3 returns. The purpose of considering the refund claim, the relevant documents on the basis of which credit was taken, nature of service and its nexus and utilization of the services for rendering output services are relevant. Moreover all these issues were considered in the first round of litigation by the Original Authority and considering the same, there is no reason or justification to deny the refund on procedural lapse. However, as regarding the denial of CENVAT Credit taken during the period from July 2012 to September 2012 of Rs.11,802/- against Hotel Inn Club and Guest House service and supply of Tangible goods which was held as ineligible CENVAT Credit, Learned Counsel has fairly admitted that they are not disputing the said finding. Considering the decision of the Tribunals in similar issue, rejection of the refund claim as done by the Lower Authority is not in accordance with law.

10. Thus Appeal No. ST/20602/2021 is partially allowed by upholding claim except the claim of Rs.11,802/- against Hotel Inn Club and Guest House service and supply of Tangible goods CENVAT Credit taken during the period from July 2012 to September 2012. As regarding appeal No.ST/20635/2022 for the period from April 2016 to June 2016, since the Original Authority has not considered other issues including compliance of the conditions stipulated under Rule 6A of the Service Tax Rules, 1994, the condition specified in Notification No. 27/2012-CE and verification the export turn over as claimed while rejecting the claim for Rs 90,09,133/-, impugned order is set aside and matter is remanded to Adjudication authority for reconsidering the said issues as per the above directions and to pass appropriate order in accordance with law. The Adjudication Authority is directed to extended an opportunity for personal hearing to the Appellant.

11. Accordingly, Appeal No.ST/20602/2021 is partially allowed with consequential benefits if any in accordance with law. Appeal No.ST/20635/2022 is remanded for Denovo Adjudication.

(Operative portion of the order was pronounced in open court
on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)