

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

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 992 of 2012

(Arising out of Order-in-Appeal No. 01/2012 dated 30.01.2012 passed by the
Commissioner of Central Excise (Appeals), Mangalore.)

Cable & Wireless Networks India Pvt Ltd

Unit-2(B), II Floor, Creator, International Tech Park,
Whitefield, Bangalore,
Karnataka- 560066.

.....Appellant

VERSUS

**Commissioner of Service Tax,
Bangalore**

No. 16/1, S P Complex, Lalbagh Road,
Bangalore, Karnataka.

.....Respondent

Appearance:

Shri V Raghuraman, Sr. Advocate,

Shri. C. R. Raghavendra, Advocate for the Appellant

Mrs. Money Jain, Authorized Representative for the Respondent

CORAM:

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

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

Final Order Nos. 20029 /2026

Date of Hearing: 09.07.2025

Date of Decision: 08.01.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding eligibility of the Appellant to claim refund of the CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004. Appellant is engaged in exporting their entire services to its parent company, M/s Cable & Wireless U.K and availed CENVAT credit on leased circuit service, telecommunication services, consulting engineering services, etc., and claimed refund of unutilized credit on the ground that all the services on which credit has been availed are input services that are used either directly or indirectly for the provision of output services. Accordingly appellant filed refund claim. However alleging that for the period from April, 2009 to

September 2009, few of the services have no nexus with output services, show cause notice as issued on 15.02.2010. Adjudication authority vide order dated 31.01.2011 rejected the refund claim. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per Order dated 30.01.2012 rejected the refund claim. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the Sr. Learned Counsel for the Appellant submits that entire services on which CENVAT availed by the Appellant are essentially required for providing output service. Sr. Learned Counsel further submits that the impugned order is issued without application of mind as evident from the finding that the application was filed for refund of the credit availed between 01.10.2006 to 30.10.2006 and it is barred by limitation. Whereas the refund is pertaining to the period from April, 2009 to September, 2009 and impugned order is issued in 2011 only. Further submits as per the impugned Order-in-Original, it is specifically stated that the refund application was filed on 30.11.2009 for the period from April, 2009 to September, 2009 and the claim is filed within the time limit in terms of Section 11B of Central Excise Act, 1944.

3. The Sr. Learned Counsel further submits that the entire proceedings is also unsustainable since the refund was filed under Rule 5. As per Rule 14, it 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, provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1944 shall apply Mutatis mutandis. It is an admitted fact on record that Department has invoked the provisions of Rule 14 of the ibid for affecting recovery of alleged irregular CENVAT credit availed by the Appellant. Thus under such circumstances, it can be said that taking of CENVAT credit on the disputed service by the Appellant is in conformity with CENVAT statue. Rule 5 ibid nowhere specified that refund can be rejected on the ground of irregular availment of such credit. Thus in the absence of any specific provision containing the statue, denial of the refund benefit provided under Rule 5 ibid is unsustainable. In this regard, Ld. Sr. Counsel draw our attention to the finding of the Tribunal in the matter of **M/s Can Com India Pvt Ltd vs CC, Hyderabad (2020 (43) GSTL 402 (Tri. Hyderabad)**. The Sr. Learned Counsel also relied on the decisions in the matter of **M/s WNS Global Services Pvt Ltd. Vs. Commr. of CGST, Navi Mumbai 0 2023 (73) GSTL 77 (Tri.-Mumbai)**.

4. As regarding the issue on merit, the Sr. Learned Counsel submits that the Appellant is engaged in exporting their entire services its parent company, M/s Cable & Wireless U.K. All the services used in this process qualify as input services under Rule 2(I) of CENVAT Credit Rules, 2004. Therefore there is no further requirement for the Appellant to demonstrate the nexus between the input services received and exported services. Burden is on the Department to prove that the appellant is not eligible for such credit. In this regard the Sr. Learned Counsel relied on the Rule 5 of the CENVAT Rules amended by Notification No. 4/2015-CE (NT) dated 14.03.2006 and Notification No. 5/2006-CE(NT) dated 27.02.2010. Sr. Learned Counsel also draw our attention to the decision of the Tribunal in the matter of **Olam Information Services (P.) Ltd. Vs. Commr. of GST & CE – 2022 (64) GSTL 485 (Chennai-Cestat)**. Sr. Learned Counsel also draw our attention to the definition of input services under Rule 2(I) of the CENVAT Credit Rules, 2004 and submits that the services for which the refund of input credit is being denied were indeed utilized by the service provider. These services were employed directly or indirectly in connection with delivery of taxable service. In this regard, Sr. Learned Counsel also draw our attention to the decision of the Tribunal in the matter of **M/s Microsoft Global Service Centre India Pvt Ltd vs CC, Hyderabad (2021 (44) GSTL 264 (Tri. Hyderabad)** where it is held that;

"8.1 A service provider is permitted under the Cenvat statute to take credit on the input or input service used in output service, which is exported by it. The credit so taken by such type of service provider is allowed for utilisation for payment of service tax on the output service. However, for any reason, where such credit adjustment is not possible, a service provider is allowed for refund of such credit amount, subject to fulfilment of the conditions and limitations, as may be specified by the Central Government by way of issuance of notification. Such refund provisions are governed under Rule 5 *ibid*. In this case, the Central Government has issued the Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006, providing the procedure for grant of refund of input or input service used in providing output service, which has been exported without payment of service tax. The condition No. 5 in the said notification has provided that "the refund of unutilised input service credit will be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates". The said notification has also prescribed the formula, which has to be followed by the service provider for claiming refund of input tax credit. The notification dated 14-3-2006 (*supra*) was amended vide Notification No. 7/2010-C.E. (N.T.), dated 27-2-2010, by substituting the words 'used in' as 'used for' in clause (b) and the words 'used in' was

substituted with the words as 'used in or in relation to' in the Form 'A' appended thereto. The effect of amendment of the earlier notification dated 14-3-2006 was that the input or input service may not be used directly in providing the exported output service and even indirect use also would suffice for the purpose of refund benefit. Further, the Finance Act, 2010 has amended the provisions of Rule 5 *ibid* with retrospective effect to read the words 'in or in relation to', in place of the words 'used in'. As a result of the changes made in the Service Tax statute in the Union Budget, 2012, the Tax Research Unit of Department of Revenue in the Ministry of Finance has issued the letter dated 16-3-2012, clarifying that establishment of nexus or correlation between exports and input services used in such exports may not be insisted upon and the refund claim be decided on the ratio of the export turnover to total turnover. The relevant paragraph in the letter dated 16-3-2012 (*supra*) is extracted herein below :

"F. 1. Simplified scheme for refunds :

1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover".

5. Further Department of Revenue has issued Circular dated 16.03.2012 vide BO F.No. 334/1/2012-TRU where it is clarified that a simplified scheme for refund is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of co relation that is made at present between export and input services used in such export. Duties for taxes paid on any goods or services that qualified as goods for input services will be entitled for refund of said in the ratio of the export turn over to total turnover.

6. The Sr. Learned Counsel also draw our attention to the certificate issued by the authorized Chartered Accountant of the Appellant for claiming refund of service tax produced by the Appellant before the Adjudicating authority specifying that;

On the basis of the examination carried out by us and on the basis of information and explanations given to us, we, BSR & Co. hereby certify that:

(i) The above contents for the period from 1 April 2009 to 30 September 2009 with respect to M/s Cable & Wireless Networks India Private Limited are correct and true to our best knowledge;

(ii) The inputs/ input services for which the refund is claimed have been used with regard to services exported by the Company; and

(iii) We are the statutory auditors of the Company under the Companies Act, 1956 (1 of 1956).

7. As regarding the objection that the debit notes produced by the appellant are not in conformity with the requirement of Rule 4A of Service Tax Rules, 1994, Sr. Learned Counsel also draw our attention to the Debit note produced in support of the claim and submits that from the Debit note, it is evident that all the details related to the export are available with the Debit note. Facts being so, there is no reason or justification to deny the refund alleging that the Appellant failed to produce invoice related to said. Thus the finding given by the Adjudication authority that the Debit notes raised by the Appellant for export of services are not in conformity with the requirement of Rule 4A of Service Tax Rules, 1994 is unsustainable.

8. As regarding the objection related to address mentioned in the rent invoices, the Sr. Learned Counsel submits that the CENVAT credit availed on invoices/documents which is not addressed to the Appellant's registered office cannot be denied only on the ground that the invoices are in the name of various un registered Branch offices. Such a procedure discrepancy is regarding invoices cannot be a reason to deny the substantial benefit of refund. In this regard, the Sr. Learned Counsel draw our attention to the decisions in the matter of **Manipal Advertising Services Pvt Ltd Vs. CCE, Mangalore – 2010 (19) STR 506 (Tri.-Bang.)**, **Nexus Engineers Vs. CCE & CGST Lucknow (2024) 17 Centax 259 (Tri.-All.)** and **Rajender Kumar & Associates Vs. Commr. of S. T., Delhi-II – 2021 (45) GSTL 184 (Tri.-Del.) (page No. 10, last column)**.

9. As regarding finding that the refund claim is barred by limitation, Sr. Learned Counsel submits that the relevant date for one year claiming refund shall be the end of the quarter on which FIRC is received. In Appellant's case, the refund claim is submitted on 30.11.2009 which is one year from the date of the quarter and due to that reason, the claims are well made within time. The issue is also considered by the **Hon'ble High Court of Karnataka in the matter of Suretex Prophylactics India Pvt Ltd. Vs. C.Ex. & ST, Bangalore - (2020 (373) E.L.T 481 (Kar))**.

10. As regarding the finding in the impugned order that the services provided by the Appellant does not qualify as export of services, Sr. Learned Counsel submits that said finding is also erroneous and contradictory to the Circular No. 111/05/2009-ST dated 24.02.2009 which clarifies that; for services that fall under the Category III, the deciding factor for eligibility to export is the location of service recipient and not the place of performance. Further, it is clarified that 'used outside India' in such cases means that the benefit of the services should accrue outside India. Further such objection was not part of the show cause notice or the Order-in-Original and by rejecting the claim by raising such issues, the First Appellate authority travelled beyond the scope of show cause notice and impugned order is unsustainable for that reason also.

11. The Sr. Learned Counsel also draw our attention to the details statement showing each and every input service on which claim was made and also draw our attention to the case laws where it is categorically held that such input services are eligible services for claiming CENVAT credit. The Sr. Learned Counsel draws our attention to the decision of Larger Bench in the matter of **CC, Bangalore Vs. Span Infotech (India) Pvt Ltd (2018 (12) GSTL 200 (Tri. LB)** where it is held that;

"10. After considering the provisions of the notifications issued under Rule 5 of the CCR, we note that there is a specific condition that the refund claims are required to be filed within the period specified under Section 11B. Consequently, we are of the view that completely ignoring the provisions of Section 11B may not be appropriate. This view is supported by the decision of Hon'ble Madras High Court in the case of GTN Engineering (supra) wherein Hon'ble High Court has disagreed with the view expressed by Hon'ble Karnataka High Court in the case of mPortal (supra) that Section 11B will have no application with respect to refund under Rule 5 of CCR.

11. The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give its meaning such that the objective of the provisions; i.e. to grant refund of unutilized Cenvat credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Services Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh High Court has held that the date of receipt of consideration may be taken as relevant date in the case of Hyundai Motors [[2015 \(39\) S.T.R. 984](#) (A.P.)].

12. The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra), has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.

13. Revenue has expressed the view that relevant date in the case of export of services may be adopted on the same lines as the amendment carried out in the Notification No. 27/2012, w.e.f. 1-3-2016. Essentially, after this amendment the relevant date is to be considered as the date of receipt of foreign exchange. While this proposition appears attractive, we are also persuaded to keep in view the observations of the Hon'ble Supreme Court in the case of Vatika Township (supra), in which the Constitutional Bench has laid down the guideline that any beneficial amendment to the statute may be given benefit retrospectively but any provision imposing burden or liability on the public can be viewed only prospectively. Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis."

12. The Learned AR reiterated the finding in the impugned order and submits that requirement of producing invoices in support of the refund claim is mandatory as per the Notification No. 5/2006-C.EX (NT) dated 14.03.2006 and this deficiency of necessary basic requirement impedes the process of a complete verification of the claim. As regarding eligibility of input services Learned Counsel submits that it is important since Service & Revenue Share Agreement signed between the appellant and Cable & Wireless, UK to provide each other on a reciprocal basis national and global telecommunication services and that the appellant would provide certain services within India and Cable & Wireless UK would provide certain services outside India. The effective date of agreement is unavailable and the payment terms is found to be on revenue share basis; the service provider is made responsible for invoicing the customers and collecting the payments; on a quarterly basis the appellant should prepare a monthly settlement to Cable & Wireless, UK setting out the amounts due in relation to this agreement, and also that both the party involved would invoice each other in Sterling Pounds, this buttresses the findings rejecting the claim. Further, if Certified Softex Copies were not produced, FIRC No: 161489 dated 16/05/09 could not be co-related with Debit Note No.003/09-10 dated 31/08/09. Thus, as in view of the ambiguity of the eligibility of the service rendered by the appellant to qualify as export in terms

of Export of Service Rules, 2005 and also in terms of the clarification given by the Board vide Circular No.111/05/2000-ST dated 24/02/2009, appellant failed to comply with the conditions of the Notification and adjudication authority rightly rejected the refund claim.

13. Heard both sides. As regarding the rejection of the claim by Adjudicating the nexus between inputs services, we find that as per Rule 14, it 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, provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1944 shall apply and not while considering the refund claim under Rule 5 of the proceedings. The issue is squarely covered by the Tribunal in the matter of **Qualcomm India Pvt Ltd Vs. Commr. of Cus., Hyderabad 2020 (43) GSTL 402(Tri.-Hyd.)**. As regarding rejection of refund claim alleging non submission of invoice, we find that on perusal of the debit note submitted by the appellant, and details being available in the invoices refund cannot be rejected on such procedural issues. As regarding the finding limitation we find that no such contention made by the adjudication authority or in the show cause notice, further as per the finding in the impugned order it is specifically stated that refund claim was submitted on 30.11.2009 for the period for April 2009 to September 2009 and adjudication authority specifically held that the claim is filed within the time limit in terms of the section 11B of the Central Excise Act, 1944 made applicable to service tax under Section 83 of the Finance Act, 1944. As regarding the finding related to improper of address in some documents, the issue was considered by this Tribunal in the matter of **M/s Nexus Engineers vs CCE & GST, Lucknow (2024 (17) CENTAX 259 (Tri. Allahabad)** where the refund was denied on the ground that the invoices against which the Appellant taken the credit was not addressed to the registered premises of the Appellant and it was held that the issue is no more res integra as it was decided that for claiming the benefit of inputs services it is not necessary that the invoices being addressed to the registered premises of the Appellant. The issue was also considered by this Tribunal in the matter of **M/s Manipal Advertising services Pvt Ltd vs CC, Mangalore (2010 (19) STR 506 (Tri. Bang)** where it is held that;

"7. If a person is discharging Service tax liability from his registered premises, the benefit of Cenvat credit on the Service tax paid by the service providers cannot be denied to the appellant, only on the ground that the said invoices are in the name of branch offices. There is no dispute that the branch offices are not registered with the Service tax authorities and they are not

discharging the Service tax liability, obviously, as the appellant is discharging Service tax liability on the services provided by branches.

8. We find that the document on which the appellant has taken the Service tax credit, though in the name of branch office are actually being paid from the premises wherein the Service tax registration has been taken. We find that the ratio of the decision of the Tribunal in the case of *Stadmed Pvt. Ltd.* (supra) and *Gujarat Heavy Chemicals Ltd.* (supra) though being delivered in respect of Cenvat/modvat credit on the Central Excise duty, it squarely applies to the case in hand.

9. In view of the findings, the impugned order is unsustainable and we set aside the same and allow the appeal with consequential relief if any.”

14. Thus, considering the above findings, the appellant is eligible for the refund as claimed by them, however, it is necessary to prove that the refund claimed by the appellant on the input services are utilized in the output services which are being exported for which foreign inward remittances are received. We, therefore, find that the matter needs to be remanded to verify the same. Needless to say, an opportunity of hearing may be given to the appellant to place on record the documents, to justify the refund claims. We also direct the appellant to cooperate with the authorities in placing all records/documents to correlate the export invoices as against the FIRC's. It is also to be noted that vide letter dated 12.03.2009 the Board has clarified that in cases where bank do not issue FIRC's, refund may be allowed on the basis of duly certified bank statement. Accordingly, the bank statements in lieu of FIRC's can also be accepted for the purpose of sanctioning the refund claims.

15. Appeal is allowed by way of remand only for the limited purpose of verifying the FIRC's.

(Order was pronounced on 08.01.2026.)

(P.A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)