CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/21460 - 21466/2017-SM

[Arising out of No. Oder-in-Appeal No.8-14/2017 dated 30/06/2017 passed by Commissioner of Central Tax, BANGALORE-II (Appeal).]

M/s. Arris Group India Pvt. Ltd
(formerly known as Pace Micro Technology India Pvt. Ltd.)
The Senate 3rd Floor Khatha 33/1,
BBMP Ward No.81 Ulsoor Road
BANGALORE – 560 042.
KARNATAKA

Appellant(s)

Versus

The Commissioner of Central Excise & Service Tax
Office of the Commissioner of Central Excise & Service Tax
Bangalore-IV Commissionerate, 59,
HMT Bhavan, Bellary Road
BANGALORE – 560 032.
KARNATAKA

Respondent(s)

Appearance:

Mr. Siddarth, CA
Pricewaterhouse Cooper (P) Ltd
BUILDING NO.10, 18TH FLOOR,
TOWER C, DLF CYBER CITY,
GURGAON- 122002
HARYANA

For the Appellant

Mr. N. Jagadish, AR — For the Respondent

Date of Hearing: 20/03/2018
Date of Decision: 27/04/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20690 – 20696 / 2018

Per : S.S GARG

These seven appeals have been filed by the appellant against the common impugned order dated 30.6.2017 passed by the Commissioner (A), whereby the Commissioner (A) has allowed the refund in respect of certain input services and denied the refund in respect of other services and remanded the matter to the lower authority for re-quantification and allowing the refund to the appellant.

2. Since the issue involved in all the seven appeals is common and arising out of common impugned order, therefore, all the seven appeals are being disposed of by this common order.

3. Briefly the facts of the present case are that the appellants are engaged in providing taxable services viz., business auxiliary service, engineering services and the taxable services are exported outside India. For providing export of service, the appellant availed input service and paid service tax, which remained unutilized and therefore, the appellant applied for refund of the unutilized input credit under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.5/2006-CE dated

14.3.2006 and Notification No.27/2012-CX dated 18.6.2012. The details of the refund claim rejected in all the appeals are given herein below:

Sl. No.	**Appeal No.**	**Period**	**Refund claimed**	**Refund rejected**	**Refund allowed by Com. (A)**	**Voluntarily disallowed**	**Before CESTAT**
1	ST/21460/2017	Apr.-June 2012	Rs.31,16,642/-	Rs.5,20,247/-	Rs.2,627/-	Rs.12,509/-	Rs.5,05,111/-
2	ST/21461/2017	July – Sep. 2012	Rs.31,85,590/-	Rs.1,26,710/-	Rs.2,781/-	Rs.14,173/-	Rs.1,09,756/-
3	ST/21462/2017	Oct.-Dec.2012	Rs.32,75,610/-	Rs.1,84,991/-	Rs.2,581/-	Rs.22,298/-	Rs.1,60,112/-
4	ST/21463/2017	Jan.-Mar. 2013	Rs.31,78,288/-	Rs.1,54,939/-	Rs.2,781/-	Rs.20,829/-	Rs.1,31,329/-
5	ST/21464/2017	Apr.-June 2013	Rs.23,16,247/-	Rs.1,14,493/-	Rs.5,871/-	Rs.17,126/-	Rs.91,496/-
6	ST/21465/2017	July-Sep. 2013	Rs.27,80,703/-	Rs.71,061/-	Rs.2,781/-	Rs.9,923/-	Rs.58,357/-
7	ST/21466/2017	Oct.-Dec. 2013	Rs.30,53,573/-	Rs.1,18,945/-	Rs.28,136/-	Rs.31,436/-	Rs.59,373/-

Thereafter, show-cause notices were issued to the appellant proposing to reject the refund claim mainly on the ground that the documents in original supporting the claim filed by the appellant had not been furnished and proof of collaborative or nexus between the input services and services said to have been exported had not been provided and further, copy of original registration certificate, valid LOP and STPI approval, copies of service agreement with customers, original export invoices, copy of ST-3 returns, softex forms, original FIRC had not been furnished. Further, copy of registration certificate not furnished to verify the service tax registration for the business premise and the service category as mentioned in the export invoices had not been furnished. In reply to the show-cause notice, the appellant furnished all the required documents and the adjudicating authority after following the due process has partially allowed the refund and partially rejected the refund based on the fact that the CENVAT credit availed on certain input services has no nexus with output services. Aggrieved by the said order, appellant filed appeals before the Commissioner (A), who also partly allowed the appeals of the appellant and remanded the case back for quantification. Appellant has given in a tabular form the category-wise disallowance of input services on the ground of nexus which are reproduced herein below:

Sl. No.	Input Service	Total
(i)	Health Insurance Service	Rs.4,38,618/-
(ii)	Services by Air Conditioned Restaurants	Rs.5,070/-
(iii)	Management, Repair and Maintenance Service	Rs.77,834/-
(iv)	Renting of Immovable Property (rent for car parking space)	Rs.37,736/-
(v)	Supply of Tangible Goods Services (renting of chairs and other equipment and xerox)	Rs.32,528/-
(vi)	Event Management Services	Rs.1,18,146/-
(vii)	Transportation of employees services	Rs.2,74,756/-

(viii)	Management or Business Consultant's services	Rs.18,874/-
(ix)	Security Agency Services	Rs.20,000/-
(x)	Catering or Staff Welfare Services	Rs.20,032/-
(xi)	Telecommunication Services – invoice pertains to next quarters	Rs.2,764/-
(xii)	Sponsorship Services	Rs.6,600/-
(xiii)	Courier Service – Invoice missing	Rs.6,650/-
(xiv)	Business Exhibition Service	Rs.22,248/-
(xv)	Share Valuation Service	Rs.16,068/-
(xvi)	General Insurance Services (against property damage and business interruption)	Rs.17,610/-
(xvii)	invoices not available	Rs.6,90,950/-
(xviii)	Service Tax Registration number was not available	Rs.9,466/-
Total Disallowed		**Rs.18,15,950/-**

4. Heard both the parties and perused the records.

5. Learned counsel for the appellant submitted that the impugned order rejecting the refund on the ground that certain services do not fall in the definition of input service as provided under Rule 2(l) of CENVAT Credit Rules, 2004 (CCR) is not tenable in law as these services have been held to be input

services by various decisions rendered by the Tribunal and the High Court.

6. Now, I will proceed to take each input services on which refund has been rejected on the ground of nexus.

(i) As far as '**Health Insurance Service'** is concerned, learned counsel submitted that the appellant has obtained group medical insurance for its employees which is an essential requirement for the safety of the companies employees, hence, these services are integral part of the business and essential for carrying on the business and same fall in the definition of 'input service' as per Rule 2(l) of CCR. In respect of this submission, appellant relied upon the following decisions:

- *Stanzen Toyotetsu India vs. CCE: 2011-TIOL-866-HC-ST*
- *Micro Labs Ltd. vs. CCE: 2011 (12) Taxmann.com 82 (Kar.)*
- *Hindustan Coca Cola Beverages vs. CCE: 2016-TIOL-3355-CESTAT-KOL.*
- *Laserwoods Pvt. Ltd. vs. CST: 2017-TIOL-688-CESTAT-MAD.*
- *Aptuit Laurus Pvt. Ltd. vs. CC: 2016-TIOL-1107-CESTAT-HYD.*

The learned Commissioner (A) has rejected the refund on this service on the ground that after the amendment in the definition of 'input service' w.e.f 1.4.2011 certain input services have been specifically excluded and health insurance is one of the 'input service' which has been specifically excluded from 1.4.2011 and therefore, the learned Commissioner (A) after perusal of the definition of 'input service' and also the case laws wherein it has been rejected after 1.4.2011, has come to a conclusion that this service does not fall under the purview of 'input service'. Therefore, I do not find any infirmity in the findings of the learned Commissioner (A) as far as rejection of the refund on health insurance is concerned.

(ii) As far as **'Services by Air Conditioned Restaurants'** are concerned, the appellant himself have admitted that it has been inadvertently availed and the same will be reversed.

(iii) As far as input service **'Management, Repair and Maintenance'** is concerned, the appellant has submitted that these services are consumed for the maintenance and repair of the office premises, facility management charges and charges for housekeeping, which are required for effectively and efficiently providing the export of service. In my view, this falls in the definition of 'input service' subject to the verification of the invoices which are enclosed by the appellant along with the appeal papers.

(iv) As far as **'Renting of Immovable Property'** is concerned, the appellant submitted that the said services are in the nature of car parking space availed on rental basis. This service has been held to be 'input service' in the case of *KPMG vs. Commissioner* reported in *2013-TIOL-761-CESTAT-DEL.* and *Nuware Systems Pvt. Ltd. vs. Commissioner: 2014-TIOL-882-CESTAT-BANG*. Therefore, this service falls in the definition of 'input service' and the appellant is entitled to the refund of service tax paid on this 'input service' subject to verification of the invoices.

(v) As far as **'Supply of Tangible Goods Services'** (renting of chairs and other equipment and xerox, etc.) are concerned, the appellant has submitted that they have obtained equipments like photocopier machine on lease to be used for provision of output service and without such equipment the appellant may not be in a position to render the services smoothly. In support of this submission, he relied upon the decision rendered in the case of *CST vs. Manhattan Associates (India) Development Centre Pvt. Ltd.: 2016-TIOL-3083-CESTAT-BANG.* In view of the above decision, in my view this service also falls in the definition of 'input service' and therefore, the appellant is eligible for credit subject to verification of the invoices.

(vi) As far as **'Event Management Service'** are concerned, the appellant has submitted that they organize various events for its prospective clients/employees vide which the employees are updated with the latest development in the industry. He also submitted that keeping in view the nature of service industry and its technicality, it is essential for the employees to be technically updated to provide good quality output services. In support of this, he relied upon the following decisions:

- *Hindustan Coca Cola Beverage Pvt. Ltd. vs. CCE: 2010 (251) ELT 125 (Tri.-Del.)*
- *Castrol India Ltd. vs. CCE: 2013 (291) ELT 469 (Tri.-Ahmd.)*
- *IBM India Pvt. Ltd. vs. CCE: 2014 (35) STR 384 (Tri.-Bang.)*
- *Honda Motorcycle & Scooter (I) Pvt. Ltd. vs. CCE: 2016 (45) STR 397 (Tri.-Bang.)*
- *CST vs. Manhattan Associates (India) Development Centre Pvt. Ltd.: 2016-TIOL-3083-CESTAT-BANG.*
- *CST vs. Megma Design Automation India Pvt. Ltd.: 2015-TIOL-1845-CESTAT-BANG.*

In view of the decisions relied upon, I am of the view that this service falls in the definition of 'input service' as the said services are integral to the provision of output service.

(vii) As far as **'Transportation of employees services'** are concerned, the appellant submits that it is an essential 'input service' as the employees have to work in shifts and had different hours and therefore, the company hires vehicles to provide pick-up and drop facilities to these employees from the residence and office or provide reimbursement of transport cost incurred by them in this regard. These services are directly linked to the performance of the employees and are required for provision of export of output service. in support of this submission, he relied on the decision rendered in the case of *Hindustan Coca Cola Beverage Pvt. Ltd. vs. CCE, Meerut: 2010 (251) ELT 125 (Tri.-Del.)*. In view of the decision relied upon, I am of the view that this service falls in the definition of 'input service' as the same is necessarily required for provision of output service.

(viii) As far as **'Management or Business Consultant's service'** is concerned, the appellant submits that these services are in relation to profession or business consultancy charges paid towards preparation of statutory documents like Form 16 under Income Tax Act, 1961 and this service includes professional consultancy services in relation to information technology and its related equipments. This service falls in the definition of 'input service' and therefore, the appellant is entitled to refund of service tax subject to verification of invoices.

(ix) As far as **'Security Agency Service'** is concerned, the appellant submits that it relates to the food bill which is a cost to the appellant for the security agency. The Commissioner (A) has rightly rejected the refund on account of this service and I do not find any infirmity in rejection of refund on this service because according to him this does not fall in the definition of 'input service' and it is only a welfare activity for the security agency.

(x) As far as **'Catering or Staff Welfare Services'** are concerned, in view of the Larger Bench decision dated 9.2.2018 in the case of Wipro Ltd. vs. CCE, wherein it has been held that outdoor catering service is not eligible for input service credit post amendment dated 1.4.2011 and therefore, the appellant is not entitled to refund on account of this service.

(xi) As far as **'Sponsorship Services'** are concerned, the appellant has submitted that these services are used in relation to its output services by way of sponsoring various events. Advertisement banners and booths displaying the appellant's services at these events help in brand development and to boost revenue of the services rendered by the appellant. In my view, this falls in the definition of 'input service' as sales promotion service are specifically included in the definition of 'input service' as per Rule 2(l) of CCR. Refund has been rejected for an amount of Rs.6,660/- on account of invoices not provided and the appellant has submitted that they have the copies of the same which will be provided to the original authority.

(xii) As far as **'Business Exhibition Service'** is concerned, the appellant submits that they conduct business exhibition for the prospective customers and the said service are specially included in the definition of 'input service' as per Rule 2(l) of CCR. I am also of the view that this service falls in the definition of 'input service'.

(xiii) As far as **'Share Valuation Service'** is concerned, this service is in relation to the share valuation service received from an authorized share valuator and this fall in the definition of 'input service'.

(xiv) As far as **'General Insurance Services'** are concerned, the appellant submits that it relates to premium paid towards property damage and business interruption. According to the appellant, business faces risks every day and the only way to protect from such risk is to take adequate business liability insurance. In my view, this kind of insurance falls in the definition of 'input service' as it is required in connection with the business operation and providing output business services.

(xv) Both the authorities have rejected the refund of Rs.6,90,950/- on the ground that the **invoices have not been produced**, whereas the appellant submits that the invoices were submitted before the authorities but they were not examined and he undertakes to submit the invoices again before the adjudicating authority if the matter is remanded.

(xvi) Further, an amount of Rs.9,466/- was rejected on the ground that **Service Tax Registration number was not available**. Appellant submits that the CENVAT credit has been availed on the basis of invoices in compliance with Rule 9(1) of CCR read with Rule4A of the Service Tax Rules. He further submitted that this is only a procedural non-compliance and relied upon the decision rendered in the case of *Malt Company*

India Pvt. Ltd. vs. CCE: 2015-TIOL-665-CESTAT-DEL. In view of the above said decision, I am of the view that refund cannot be rejected on procedural infractions. Therefore, this amount is also eligible for refund.

(xvii) As far as **'Telecommunication Services'** and **'Courier Services'** are concerned, the learned counsel did not press for refund on these services being the amount involved is small.

7. Keeping in view the above said findings on various input services, the matter is remanded back to the original authority to verify and examine the documents which may be produced by the appellant in support of their refund claims and thereafter, decide the refund claims keeping in view my findings above.

8. All the appeals are allowed by way of remand.

(Order was pronounced in Open Court on **27.04.2018.)**

S.S GARG
JUDICIAL MEMBER

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