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

Appeal(s) Involved:

ST/183/2009-DB, ST/190/2009-DB

[Arising out of Order-in-Appeal No. 294-2008 dated 28/11/2008 passed by CCE(Appeals-II), Bangalore]

ST/183/2009

CST BANGALORE
NO. 16/1, S.P. COMPLEX, LALBAGH ROAD,

Appellant(s)

Versus

ADITYA BIRLA MINACS WORLDWIDE LTD
3RD FLOOR, MILLENNIUM TOWERS, ITPL ROAD, BROOKEFEILDS, BANGALLORE

Respondent(s)

ST/190/2009

ADITYA BIRLA MINACS WORLDWIDE LIMITED
3RD FLOOR, MILLENNIUM TOWERS, ITPL ROAD, BROOKEFEILDS, BANGALLORE

Appellant(s)

Commissioner of Service Tax BANGALORE SERVICE TAX- I
NULL 1ST TO 5TH FLOOR,
TTMC BUILDING,above BMTC BUS STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

Respondent(s)

Appearance:
Shri G. Shivadass, Advocate — For the Assessee

Shri Pakshirajan, Asst. Commissioner(AR) — For the Respondent

Date of Hearing: 01/08/2018
Date of Decision: 01/08/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21082-21083 / 2018

Per : S.S. GARG

These two appeals, one by the assessee and another by the Department, have been filed against the impugned order dt. 28/11/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) remanded the matter back to the lower authorities for de novo proceedings by giving certain directions.

2. Briefly the facts of the case are that the assessee is engaged in Business Auxiliary Services (BAS) and Business Support Services (BSS) and have filed a refund claim of unutilized Cenvat credit of service tax paid on input services amounting to Rs.1,44,34,695/- under Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.05/2006-CE(NT) dt. 14/03/2006. The adjudicating authority vide the impugned order sanctioned an amount of Rs.72,07,785/- on services of telephone, internet telephone services, leased circuit services, courier and maintenance of computer network services, i.e. rent a cab service, manpower recruitment, management, maintenance or repair services, security, scientific or technical consulting services, event management, outdoor caterers services, real estate agency service, transport of goods by road service (total 10 services) on the grounds that there is no proportionate relationship directly or indirectly of these input services to the export services. Aggrieved by the Order-in-Original, assessee filed an appeal before the Commissioner(Appeals) on the ground that the adjudicating authority has

erred in law by travelling beyond the scope of existing show-cause notice and therefore the proceedings are ab initio void and further the refund has been rejected by the original authority without properly appreciating the definition of input service as provided in Rule 2(l) of CENVAT Credit Rules, 2004. The Commissioner(Appeals) vide the impugned order remanded the matter for de novo proceedings. Aggrieved by the said order, Department has filed appeal ST/183/2009 against sanctioning of the refund with respect to security services, transport of goods by roads services, manpower recruitment or supply services and scientific and technical consultancy service whereas the appellant on the other hand filed the present appeal ST/190/2009 against rejection of refund with respect of rent-a-cab service, outdoor catering service, BAS, Management Consultancy Service, Event Management Service and courier service. Since both the appeals arise out of the same order, we proceed to dispose of both the appeals by this common order.

3. Heard both sides and perused records.

4.1. Learned counsel for the assessee submitted that the impugned order remanding the matter for de novo proceedings is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the Order-in-Original rejecting the refund claim to the extent of Rs.72,26,910/- on the ground that travelled beyond the scope of show-cause notice. He further submitted that it is well settled law that by travelling beyond the show-cause notice, no demand of duty or recovery of erroneous refund or rejection of refund claim can be confirmed. For this submission, he relied upon the following decisions:-

i. CCE, Nagpur Vs. Ballarpur Industries Ltd. [2007(215) ELT 489 (SC)]
ii. CCE, Raigad Vs. Bhagirath Agro Plat Ltd. [2008(226) ELT 232 (Tri. Mum.)]
iii. Beekalene Fabrics Ltd. Vs. CCE, Mumbai-IV [2007(5) STR 212 (Tri. Mum.)]
iv. Seiko Brushware (India) Vs. CC, Mumbai [2005(192) ELT 603 (Tri. Del.)]
v. Electricity Pole Manufacturing Vs. CCE, Allahabad [1999(109) ELT 595 (Tri. Del.)] – appeal dismissed as time barred in 2000(116) ELT A66 (SC).

4.2. He further submitted that the definition of input service as provided in Rule 2(l) of CENVAT Credit Rules, 2004 is inclusive and wide enough to cover services in relation to rent-a-cab, cleaning service, BAS, CHA service etc. as they are services in relation to activities relating to the business of the appellant. He further submitted that definition of input service itself specifically provides that any services used whether directly or indirectly, in or in relation to the manufacture of final products is eligible for CENVAT credit. He further submitted that all the input services on which the refund has been denied have been specifically held to be input service by the Tribunal and the High Court. The learned counsel has given in a tabular form the decisions vide which these services have been held to be input services which is reproduced herein below:-

SL.NO.	INPUT SERVICE	NEXUS	CASE LAWS
1.	Rent a cab service	These services are essential to get the employees to office in	*(i)* ***Comr. Of C Ex Bangalore III v. Stanzen***

		time so that the service levels are maintained as per agreements with the customers. Any deviation from the agreed service levels reduces revenue and the attendance of employees at proper times is critical to continue the business of providing services to the customers. Also, the safety of the employees who are arriving and departing at night is ensured only through the company provided transport.	***Toyotetsu India (P.) Ltd. 2011 (23) S.T.R. 444 (Kar.)***
2.	Manpower recruitment and supply	These services are required to hire employees for providing services to customers	*(i)* ***Utopia India Pvt. Ltd. v. Commissioner of Service Tax, Bangalore 2011 (23) S.T.R. 25 (Tri.-Bang.)***
3.	Cleaning Services	These services are used for maintaining computers, networking equipment, building and other assets used in providing services to the customers	*(i)* ***HCL Technologies Ltd. v. Commissioner Of Cus., C. Ex. & S.T., Noida 2017 (48) S.T.R. 129 (Tri. - All.)***
4.	Business Auxiliary Service	These are services for printing various documents and stationaries for office use, which are required for undertaking activities for providing services to customers	*(i)* ***Manhattan Associates (I) Dev. Centre Pvt. Ltd. v. C.S.T., Bangalore 2017 (5) G.S.T.L. 99 (Tri. - Bang.)***
5.	Custom House Agency Service	These services are used for couriering mail or correspondence which	(i) ***Birla Corporation Ltd v. Commissioner of Central Excise,***

		are required for rendering services to customers.	***2013 (288) ELT 427 (Tri-Del.)***
6.	Outdoor caterer's service	The employees of the Appellant are its precious input in providing its output services. The Appellant arranges for providing food to the employees in furtherance of the same	*(i)* ***Comr. Of C Ex Bangalore III*** **v.** ***Stanzen Toyotetsu India (P.) Ltd.*** **2011 (23) S.T.R. 444 (Kar)** *(ii)* ***Arm Embedded Technologies Pvt. Ltd. v. C.C.E., Cus. & S.T., Bangalore 2016 (45) S.T.R. 133 (Tri. - Bang.)***
7.	Real estate agent's service	These input services are required to provide shared accommodation for travelling/relocation of employees who are providing services to the customers	*i.* ***Prudential Process Management Services Pvt. Ltd. vs. CST, Mumbai 2016 (42) STR 764 (Tri-Mumbai)*** *i.* ***Qualcomm India Pvt. Ltd. v. Commissioner Of Service Tax, Mumbai-I 2016 (42) S.T.R. 886 (Tri. - Mumbai)***
8.	Scientific or technical consultancy services	These are various technical services used for training employees on required skills to provide services to the customers	*i.* ***Mercedes Benz Research & Dev. India P. Ltd. v. C.S.T., Bangalore 2017 (49) S.T.R. 227 (Tri. - Bang.)***
9.	Security agency services	These services are used for maintaining security for office premises and for other verifications. As the services offered to customers involve sensitive date and costly equipments, the	*i.* ***Utopia India Pvt. Ltd v. Commissioner of Service Tax, Bangalore 2011 (23) STR 25 (Tri-Bang.)*** *ii.* ***CCE, Hyderabad-IV v.***

		security of the premises is of paramount importance.	***Deloitte Tax Services India Pvt Ltd. 2008 (11) STR 266 (Tri.-Bang)***
10.	Transport of goods by road	These services are required to transport the capital goods which are required to be installed for providing the services to the customers.	*i.* ***Sitel India Ltd. V. Commissioner Of Central Excise, Mumbai-II 2016 (43) S.T.R. 424 (Tri. - Mumbai)***
11.	Courier Service	These services are used for couriering mail or correspondence which are required for rendering services to customers. In any case, the OIO had already allowed credit on courier service and therefore the rejection by the OIA is misplaced.	*i.* ***CCE, Hyderabad-IV v. Deloitte Tax Services India Pvt Ltd. 2008 (11) STR 266 (Tri.-Bang)***

4.3. The learned counsel also submitted the appellate authority has not granted the interest on delayed payment of refund claim on Rs.72,07,785/- under Section 11BB of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. It is his further submission that as per Section 11BB, it is clear that the refund of any amount has to be sanctioned within three months from the date of application for refund and if there is a delay in granting the refund, the same has to be sanctioned along with interest till the date of payment of the same. In support of this submission, he relied upon the following decisions:-

a. ***Rama Vision v. CCE****, reported at* ***2004 (170) ELT 13 (T-LB);***

b. ***Commissioner of Central Excise v. Reliance Industries Ltd.**, reported at **2010 (259) E.L.T. 356 (Guj.)** affirmed by the Hon'ble Supreme Court of India in **2011 (274) E.L.T. A110 (S.C.);***
c. ***Ranbaxy Laboratories Limited v. Union of India**, reported at **2012 (27) S.T.R. 193 (S.C.)***
d. ***Union of India v. Hamdard (Waqf) Laboratories**, reported at **2016 (333) E.L.T. 193 (S.C.)**; and*
e. ***C.C., Airport & ACC, Bangalore v. Pfizer Products India P. Ltd.**, reported at **2015 (324) E.L.T. 259 (Kar.)***
f. Final Order No. 20443/2017 dated 27.03.2017/31.03.2017 passed by Hon'ble CESTAT, Bangalore in the matter of Videocon Industries Ltd
g. Final Order No. 20464/2017 dated 5.04.2017 passed by Hon'ble CESTAT, Bangalore in the matter of Kyocera Wireless (India) Pvt. Ltd

5. On the other hand, the learned AR defended the impugned order and submitted that the Department has filed the appeal mainly on the ground that these services are not related with export and therefore no refund is maintainable.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the appellant is a 100% EOU and is engaged in the Business Process Outsourcing, Call Centre etc. which are liable to service tax under BAS/BSS. For rendering the export service, the appellant utilized various input services and has taken the credit of the same and thereafter filed refund claim under notification No.5/2006 which was partially allowed by the sanctioning authority. Further we find that the definition of input service as contained in Rule 2(l) of CENVAT Credit Rules is very wide and is reproduced herein below:-

(l) "input service" means any service, -

(i) used by a provider of [output service] ***for*** *providing an output service; or*

(ii) used by a manufacturer, ***whether directly or indirectly, in or in relation to the manufacture of final products*** *and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,* ***activities relating to business*** *such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal*

7. Further we find that all the input services have been held to be input services by various case laws cited supra. Further we find that the period involved in the present appeal is prior to 01/04/2011 where the definition of input service was very wide and exhaustive as held in various decisions cited supra. Therefore by following the ratios of the above said decisions, we are of the opinion that the impugned order rejecting the refund of Rs.72,26,910/- is not sustainable in law and therefore we set aside the impugned order and held that the appellant is entitled to the refund of Rs.72,26,910/- along with applicable interest for the delay in grant of the refund. As far as Department's appeal is concerned, we do not find any merit as all those input services against which the Department has filed appeal have been specifically held as input services by various decisions

cited supra. Therefore we do not find any merit in the Department's appeal, which we dismiss.

8. In view of our discussion above, the assessee's appeal is allowed and Department's appeal is dismissed.

(Operative portion of the Order was pronounced
in Open Court on **01/08/2018**)

P. ANJANI KUMAR **TECHNICAL MEMBER**	**S.S GARG** **JUDICIAL MEMBER**

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