CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 965 of 2009, Service Tax Appeal No. 966 of 2009

(Arising out of Order-in-Appeal No. 66/2009 dated 11/09/2009 passed by the Commissioner of Central Excise, Bangalore)

(Arising out of Order-in-Appeal No. 67/2009 dated 14/09/2009 passed by the Commissioner of Central Excise, Bangalore)

Syngene International Limited
Biocon Park, Plot No.2 &3, Bommasandra IV Phase, Jigani Link Road,
Bangalore – 560 099
Karnataka

Appellant(s)

VERSUS

Commissioner of Service Tax
Bangalore Service Tax- I
1st To 5th Floor,
TTMC Building,
Above BMTC Bus Stand, Domlur
Bangalore - 560 071
Karnataka

Respondent(s)

Appearance:

Mr. Harish Bindumadhavan, Advocate
Prestige Trade Tower
Level 14, 46 Palace Road, High Grounds,
Bangalore – 560 001
Karnataka
For the Appellant

Mr. K.B. Nanaiah, Asst. Commr. (AR) — For the Respondent

CORAM:
HON'BLE MR. P.K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order Nos. 20283-20284 / 2020

Date of Hearing: 04/03/2020
Date of Decision: 04/03/2020

Per : P.K. CHOUDHARY

Appellants have filed these appeals against the impugned orders dated 16.9.2009 and 14.9.2009 passed by the Commissioner

(Appeals) whereby the Commissioner (A) has rejected the rebate claims on following findings:

- Appellant should have opted for refund under Rule 5 of CCR, instead they have filed the rebated claim under Notification 11/2005dated April 19, 2005.
- Appellant has not complied with conditions of Notification 11/2005.
- Appellant has failed to produce details of Cenvat credit availed/utilized, maintenance of proper records showing the receipt and consumption of the input services etc.
- Input services have no relation to the output service. They are not directly or indirectly related to the export services rendered.

Since the issue involved in both the appeals is identical, the appeals are being taken up together for disposal.

2. The details of the rebate claims in both the appeals and other details are given herein below:

Particulars	**Description**	
Appeal No.	**ST/965/2009**	**ST/966/2009**
SCN details	C.No. IV/16/23/2008.R bt/Rfd. S.T. dated February 28, 2008	C No. IV/16/150/2008 Rebate/Refund ST dated July 10, 2008
Period of dispute	April 2007 to September 2007	October 2007 to March 2008
Rebate claimed	INR 24,25,741	INR 53,02,663
OIO details	No.46/2008 Refund/Rebate dated May 30, 2008	No.III/2008 Refund/Rebate dated August 6, 2008
OIA/Impugned Order details	No.66/09 dated September 16, 2009	No.67/09 dated September 14, 2009

3. Briefly stated, the facts of the present case are that the appellants are a 100% Export Oriented Unit and is engaged in rendering custom research services in the field of Chemistry and Biology. Appellants are registered under the Service tax law under the category of "Scientific and Technical Consultancy Services". Appellant has exported services covered under the taxable service category of Scientific and Technical Consultancy Services and has paid service tax on such services exported. Pursuant to Rule 5 of the Export of Service Rules, 2005, Appellant has claimed rebate under Notification 11/2005 vide applications dated 3.1.2008 and 14.5.2008. Thereafter, show-cause notices were issued to the appellant seeking rejection of the claims on various discrepancy/shortcomings. After considering the reply filed by the appellant, the original authority rejected the rebate claims. Aggrieved by the said orders, appellant filed appeals before the Commissioner (A), who upheld the OIOs and rejected the rebate claims on the findings recorded in para 1 above. Hence, these present appeals before the Tribunal.

4. Learned counsel for the Appellant submitted that all the conditions under the rebate notification have been satisfied and all documents have been submitted. The conditions as satisfied by the Appellant were summarized as follows:

- Taxable service has been exported in terms of Rule 3 of the Export Rules – Appellant has exported "Scientific or Technical Consultancy Services" to Novartis institutes for Biomedical Research, USA, PTC therapeutics Inc, U.S.A. and Astrazeneca AB, Sweden. Further Appellant has also satisfied the conditions laid down under Rule 3 of the Export Rules. An acknowledgement to the same has already been submitted.
    - The consideration for export of services is received in convertible foreign exchange in India - The consideration for export of services has been received in fully convertible

foreign exchange in India vide the valid FIRC's in the hands of the Appellant.

- Service tax and cess has been paid by the Appellants on the taxable service exported.
- The amount of refund of service tax and cess admissible is not less than five hundred rupees.
- Export of service must be to countries other than Nepal and Bhutan - The recipient of service was Novartis institutes for Biomedical Research, U.S.A is situated in U.S.A and for the period April 2007 to September 2007. The recipient of service was PTC Therapeutics inc and Astrazeneca AB which are situated in U.S.A and Sweden respectively for the period October 2007 to March 2008. Hence, the export of "Scientific or Technical Consultancy Services" is to a country other than Nepal and Bhutan.
- The claim for refund of service tax and cess has been made to Jurisdictional Assistant Commissioner or Deputy Commissioner of Excise.
- The application has been accompanied with documentary evidence of payment of service tax and cess on taxable services exporterie, copy of service tax return filed for the impugned period evidencing the utilization of CENVAT credit towards remittance of Service Tax and cess.
- Declaration stating that the services have been exported in terms of Rule 3.
- Relevant documentary evidence evidencing export of taxable service has been provided.

4.1 Learned counsel for the appellant further submitted that the impugned orders rejecting the rebate claim are not sustainable in law as the Appellant has the option to choose the notification under which rebate is to be claimed. It is a settled position of law that when there is more than one option available to the Appellant to claim refund/rebate, it is at the discretion of the Appellant to opt for the option he wishes to exercise, as per the decision of ***Share Medical Care v. Union of India 2007 (209) E.L.T 321 (S.C).***

4.2 Learned counsel also submitted that the Order in Appeal No.66/09 dated 16.9.2009, for the period April 2007 to September 2007), the finding that the Appellant has not filed their rebate claim under the proper provisions of the rule and that the Appellant should have opted for refund under Rule 5 of CCR instead of rebate claim under Notification 11/05 was never brought out earlier either in the SCN or in the OIO. The Appellant submits that the impugned order has travelled beyond the SCN, which is not permitted in law as per the decisions of ***Raymond Ltd. v. CCE, Mumbai-III 2014-TIOL-493-CESTAT-MUM*** and ***CCE v. Manish Rubber Enterprises 2015-TIOL-265-HC-MUM-CX.***

4.3 He further submitted that with regard to nexus between input services and output service, the Appellant has availed CENVAT Credit only in respect of those services which qualify to be input service as per Rule 2(l) of the CENVAT Credit Rules, 2004. The impugned order has erred in recording that premises are not essential requirement for providing output service or even that input services such as interior decorator service, Commercial and construction service, erection and Commissioning service which are mainly in relation to factory and premises have no relation to Scientific and Technical Consultancy services.

4.4 It is the submission of the learned counsel that Notification No. 11/2005 cannot be read in a narrow manner so as to defeat the object of notification. It is a settled principle of law that a beneficial notification must be interpreted in the light of the words employed by it and not on any other basis. The Appellant placed reliance on case of ***Commissioner of Customs (Import) v. M/s Dilip Kumar and***

Company & Ors-2018 (361) E.L.T. 577 (S.C.) wherein it was held that a beneficial notification must be construed strictly with regard to the letter of the law.

4.5 He also submitted that while dealing with the question of rebate, the question of which input was used in terms of availment of cenvat credit does not arise and placed reliance on the case of ***Ivy Comptech Pvt. Ltd. v. CCE, C & ST, Hyderabad-II 2016 (42) STR 66 (Tri.-Bang.).***

5. The learned AR defended the impugned order.

6. Heard both sides and perused the appeal records.

7. After considering the submissions of both the parties and perusal of the material on record, we find that the Commissioner (A) has rejected the rebate claims on the ground that Appellant should have opted for refund under Rule 5 of CCR and conditions under Notification 11/2005 have not been fulfilled. The Appellant have produced the decision of Supreme Court in Share Medical Care, to hold that the Appellant is allowed to choose the rebate option, when more than one options are available. Therefore, we hold that denial of rebate on the ground of not opting for refund under Rule 5 of CCR, is not sustainable in law and therefore, we hold that appellants are entitled to the rebate under the provisions of Notification 11/2005. We also hold that the appellant is also entitled to rebate under Notification 11/2005 since all conditions are fulfilled by the Appellant.

7.1 Further, we find that rebate has been rejected on the ground that there is no direct nexus between the input service and the output services which is not legally sustainable. The appellant produced various decisions cited supra wherein these services have been held to be input services and has nexus with the output service. Further, in case of a rebate, the question of which input was used in terms of availment of cenvat credit does not arise as settled by Tribunal judgments quoted by the Appellant. Therefore, we hold that denial of rebate on lack of nexus is not sustainable in law and therefore, we hold that appellants are entitled to the rebate on these input services.

7.2 In respect of the finding of impugned order that the Appellant has failed to produce details of Cenvat credit availed/utilized, maintenance of proper records showing the receipt and consumption of the input services etc., despite Appellant's claim that all the documents were submitted even at the time of rebate claim, we remand back the case to the original authority who will examine the documents.

8. In view of the discussions above, the impugned orders are set aside and the matter is remanded to the original authority for verification of the documents required as per the conditions prescribed in the Notification 11/2005 and grant rebate as per the same Notifications. The Appeals are disposed in the above terms.

(Operative portion of the Order was pronounced
in Open Court on **04/03/2020**)

(P.K. CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

othr...