CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 20676 of 2021 [SM]

[Arising out of Order-in-Appeal No. 153-155/2021 dated 30/03/2021 passed by Commissioner of Central Tax (Appeals-I), Bengaluru]

M/s. Methode Electronics India Private Limited ....**Appellant**
No .17, 2nd Main Road Electronic City Phase 1
Bengaluru Urban
Karnataka-560100

VERSUS

The Commissioner Of Central Tax, Bangalore South Commissionerate ....**Respondent**
5th Floor, C.R. Buildings, PB No-5400, Queens Road
Bangalore
Karnataka
560001

WITH

Service Tax Appeal No. 20677 of 2021

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APPEARANCE:

Shri Jayaram Hiregange, Advocate for the Appellant
Shri P.Rama Holla, Authorized Representative for the Respondent

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

FINAL ORDER NO. 20200-20202/2022

DATE OF HEARING: 13/04/2022
DATE OF DECISION: 27/04/2022

PER: P.ANJANI KUMAR

The appellants, M/s Methode Electronics (India) Private Limited have filed these three appeals against the impugned orders as below:

Sl. No.	Appeal No.	OIA No. and Date	Impugned period
1.	ST/20676/2021	153-155/2021 dated 30.03.02021	(a) October 2016 to December 2016 (b) January 2017 to March 2017
2.	ST/20677/2021	153-155/2021 dated	(a) April 2012 to September 2012

		30.03.02021	(b) October 2013 to December 2013 (c) January 2014 to March 2014 (d) April 2014 to June 2014 (e) October 2014 to December 2014
3.	ST/20678/2021	153-155/2021 dated 30.03.02021	July 2013 to September 2013

The issue involved in all the appeals is rejection of refund claims filed under Rule 5 of CENVAT Credit Rules, 2004 consequent to the issuance of Notification No.27/2012 and amendment of Rule 5 of said Rules. Also involved is the issue of nexus between the input service on which credit is availed and the output service provided.

2. Learned Counsel, Shri Jayaram Hiregange, appearing for the appellant, submits that the credit of Krishi Kalyan Cess has been denied on the ground that the same is not mentioned in the invoices though it was paid; credit availed on input services like Business Support Services, Health Insurance, Event Management Services, Rental Charges on accommodation provided to employees, Rent of cafeteria was denied; out of pocket expenses incurred on Chartered Accountant Service and Management Business Consultant Service was also denied. On the other issues, he submits as follows:

2.1. In respect of Appeal No. ST/20676/2021, he submits that the issue of nexus cannot be looked into at the stage of granting of refund in view of the decision in CC Vs Convergys (India) Pvt. Ltd., 2009 (16) STR 198 and Sentinin Technologies Pvt. Ltd. Vs CCE & ST, Appeal-II, [2021] 123 taxmann.com 372 (Hyderabad-CESTAT).

2.2. In respect of Appeal No. ST/20677/2021, he submits that whereas the refund application is made in Form-A for Rs.41,31,073/-, Adjudicating Authority, in the de novo order No. 8/2019 dated 21.06.2019 held that refund of CENVAT credit of Rs.6,73,315/- was admissible and the same was upheld by the OIA; whereas in the original round, learned Commissioner (Appeals) has categorically held that the refund of credit availed in the previous quarters is eligible.

2.2.1 He submits that learned Commissioner has held as follows:

> *12. With regard to the total rejection of refunds (S.No.5 in Table supra) on the ground that the credit has been availed prior to the quarter of export, namely April to June 2012, the original authority has not appreciated the fact that the appellant is a 100% EOU and in terms of Board Circular No.120/01/2010, dated 19.01.2010, the appellant is entitled to avail the credit being a 100% EOU and the restriction of the credit to be availed only for the quarter for export does not apply as has been clarified in the said Circular. Therefore, total rejection of refund on this ground alone is unwarranted.*
>
> *18……..*
>
> *ii. The Order-in-Original listed at S. No.5 in Table supra is set aside and the corresponding appeal against this OIO is allowed by way of a remand to the original adjudicating authority for fresh adjudication taking due note and cognizance of the discussions on specific issues in the preceding paras (para 12 supra) and the general principles as laid down in this order. The appellant shall furnish the requisite documents as are statutorily required, before the original adjudicating authority, who shall process the claims and pass appropriate speaking orders after following the principles of natural justice.*

2.2.2. He submits that Department has not appealed against the order and therefore the same is binding on them and the same cannot be ignored in the second round of litigation. Further, he submits that the original authority finds as follows:

> *17. On verification of the input invoices and CENVAT Register for the period April, 2012 to June, 2012, it was observed that the input credit that can be availed as per invoices and the CENVAT Statement submitted for the said period is Rs.6,73,315/- (Incl Cess) and further as per ST-3 return for the period April, 2012 to June, 2012, the input Tax credit availed is Rs.6,57,247/- (incl cess). However, as per Form-A submitted, the CENVAT credit taken on inputs for the said period is declared as Rs.41,31,073/-, as the claimant have claimed inputs credit availed from May, 2009 to June, 2012 by bunching all the quarter together and claiming refund of Rs.35,85,534/- in the quarter April, 2012 to June, 2012.*
>
> *In para 12 of OIA 36 to 40/2017 dated 13.01.2017, the Ld. Commissioner (Appeals) has stated that the original authority has not appreciated the fact that the appellant is a 100% EOU and in terms of Board Circular No.120/01/2010-ST, dated 19.01.2010, the appellant is entitled to avail the credit being a 100% EOU and the restriction of the credit to be availed only for the quarter for export does not apply. The OIO was therefore remanded back to the original authority for fresh adjudication, taking due note and cognizance of the discussion on specific issue in para 12 of the OIA and the general principles as laid down in the order.*
>
> *I have taken due note and cognizance of the above and I observe that this Circular (No.120/01/2010-ST, dated 19.01.2010) is applicable to Notification No.5/2005-CE (NT) dated 14.03.2006. The original refund claim pertains to the quarter April, 2012 to June 2012 and was filed on 30.03.2013 as per the OIO 71/2014. This claim is therefore covered by Notification No.27/2012-CE (NT) dated 18.06.2012. In view of this, the provisions of Rule of the CENVAT Credit Rules, 2004 and the definition of Net CENVAT credit as per this rule should be the basis for calculating the eligible refund.*

2.2.3. He submits that in fact, the revised application was filed at the insistence of the Department and the same is evident from the Order-in-Original in the first round. It was observed that:

> *The claimant has preferred refund of accumulated/ unutilized CENVAT credit in terms of notification No.05/2006 dated 14/03/2006 CE (NT) read with Export of Service Rules, 2005. Subject notification has been superseded by Notification No.27/2012 CE (NT) dated 18.06.2012 w.e.f. 01.04.2012. As such, the claimant should have claimed the refund under the superseding notification. In this connection claimant in his reply to SCN dated 23.07.2013 denying the objection stated since the proviso to sub rule (2) of Rule 5 as amended by Notification 18/2012 CE (NT) dated 17.03.2012 provides a window to file refund under the erstwhile provisions. However, they have filed updated revised refund application in Form A in the format prescribed under Notification No.27/2012 CE (NT) dated 18.06.2012 with relevant enclosures with reply to SCN and along with revised refund application claiming refund amount of Rs.35,85,534/-. I find that claimant's request merit consideration as during the transitional period, it is quite possible that procedural lapse of above sort is likely to happen and therebefore it appears that such a procedural lapse is condonable as long as export of service, receipt of consideration in convertible foreign exchange and other statutory procedures followed are not in doubt or dispute. Accordingly, I proceed to examine the case in the light of provisions contained in the amended Rule 5 of CENVAT Credit Rules, 2004 read with Notification No.27/2012-CE (NT) dated 18.06.2012.*

2.2.4. He further submits that in the following cases, it was held that credit relating to prior quarter can be claimed as refund and that credit can be claimed as refund in the quarter in which exports are made irrespective of the availment of credit:

> *(i) Commissioner of Central Excise, Mysore Vs Chamundi Textiles (Silk Mills) Ltd.,2010 (258) ELT 141 (Tri. Bang.)*

(ii) Fine care Bio-systems Vs Commissioner of Central Excise, Ahmedabad, 2010 (20) STR 193 (Tri. Ahmd.)

(iii) Amdocs Business Services Pvt. Ltd. Vs Commissioner of Central Excise, Pune, 2013 (31) STR 249 (Tri. Mumbai)

(iv) Texport Overseas Pvt. Ltd. Vs CCE, Bangalore-I, 2018 (5) TMI 1710-CESTAT Bangalore

2.2.5 He submits that this Bench in the case of John Deere (India) Pvt. Ltd. vide Final Order MANU/CM/0193/2019 dated 14.06.2019 held that refund claim needs to be filed within time frame provided under the amended provisions of CENVAT Credit Rules. They have filed the refund claim within the period prescribed and the same cannot be denied.

2.3. In respect of Appeal No. ST/20678/2021 learned Counsel submits that in the first round of litigation, learned Commissioner had allowed the appeal filed by the appellant and set aside OIA No.173/2017 holding that: Thus, the time limit therefore has to be computed from the last dated of the last month of the quarter, which should be the relevant date for the purposes of examining if the claim is filed within the limitation of time or otherwise. This view has also been upheld by CESTAT WRB in the case of Commissioner of Service Tax, Mumbai-II Vs M/s SITEL India Ltd. (2016-TIOL-818-CESTAT-MUM) and more recently in the case of CCE Bangalore Vs M/s Trianz Holdings.

3. Learned Authorized Representative reiterates the findings of the impugned orders and submits that the appellant claimed refund availed from May 2009 to March 2012 even when the claim period is from April 2012 to June 2012; as CENVAT credit of Rs.6,57,247/- was availed by the appellants in ST-3 returns for the period April 2012 to June 2012 and therefore, refund was restricted for that period in terms of Rule 5 of CENVAT Credit Rules,

2004 and Notification No.27/2012 CE (NT) dated 18.06.2012; the Circular No.120/01/2010-ST dated 19.01.2010 is applicable to refund claims under Notification No.5/2006 dated 14.03.2006; similarly in respect of Appeal No. ST/20678/2021 refund of Rs.35,11,074/- was rejected as the refund does not pertain to the period for which refund claimed; clear findings were given in the OIO and OIA. Learned Authorized Representative further submits that the items on which the credit was availed by the appellant and claimed for refund are not input services relatable to the export service made. He also submits that this Bench in the case of John Deere India Pvt. Ltd. (supra) held as follows:

> *5.4…..*
>
> *We find that the formula given for the calculation of eligible refund and the definition of Net Cenvat Credit are very clear. It is obvious that "during the relevant period" applies to both the components. Therefore, we find that the contention of the Revenue is correct. We hold that the words 'during the relevant' period apply both to the Net Cenvat Credit and the amounts referred to in Rule 3 (5C). We do not find any ambiguity in this regard.*
>
> *5.5…..*
>
> *5.6. We find that the Revenue's contention is on a strong footing.*
>
> *The definition of 'net Cenvat credit' uses only one "," before the word 'relevant period'. Therefore, the word 'relevant period' should necessarily apply to both 'net Cenvat Credit' as well as the rebate refers to in Rule 3(5C). Moreover, we find that the Revenue could successfully demonstrate that the appellants did not adhere to.*
>
> *5.7. Following the ratio of the above decision, we find that quasi-judicial authorities are not expected to traverse beyond the scope of established law and therefore, calculation of Net Cenvat Credit and thus eligible refund was in order.*

3.1. He further submits that Health and Insurance Service availed by the appellants in some quarters is not admissible as consequent to the amendment in CENVAT Credit Rules from April 2011 as held in the following case laws:

> *(i) Bharat Fritz Werner Ltd Vs CCT, Bengaluru North Commissionerate as reported in 2019 (6) TMI 67-CESTAT Bangalore.*
>
> *(ii) Rittal India Pvt. Ltd. Vs CCT, Bengaluru North Commissionerate as reported in 2019 (6) TMI 66-CESTAT Bangalore.*

4. Heard both sides and perused the records of the case.

5. I find that the main submissions of the appellant are that the issue of nexus cannot be discussed at the stage of refund and that the departmental officers cannot traverse beyond the directions in the remand order. Coming to the first issue, the appellants have claimed credit on input services like Business Support Services, Health Insurance, Event Management Services, Rental Charges on accommodation provided to employees, rent of cafeteria was denied; out of pocket expenses incurred on Chartered Accountant Service and Management Business Consultant Service. We find that the appellants have a prima facie case in their favour inasmuch as the issue of nexus cannot be raised at the point of grant of refund. Following the ratio of the case laws cited by the appellant, I find that nexus cannot be discussed and credit cannot be denied while deciding refund under Rule 5 of CENVAT Credit Rules. Moreover, I find that except for Health Insurance, the nexus of other services to the output services have been decided. Therefore, in my considered opinion, I find that the appellants are eligible for the credit and consequential benefit of refund. However, coming to the Health Insurance

Service, I find that the Authorized Representative has submitted that w.e.f. 1st April, 2011, Health/ Medical Insurance has been specifically excluded from the definition of Input Service in CENVAT Credit Rules, 2004 and the same has been upheld in the cases of *Bharat Fritz Werner Ltd* and *Rittal India Pvt. Ltd.* (supra). Therefore, I hold that the credit of Rs. 2,38,404/- availed by the appellants is not admissible to them. Similarly, I find that the appellants have wrongly availed CENVAT credit even when the invoices were not available with them. Learned Counsel for the appellants has fairly conceded that this credit of Rs.4,65,712/- availed by them and claimed for refund is not admissible to them. Hence, I hold that the appellants are not entitle to the refund of Rs.4,65,712/-. Also, the appellants have availed CENVAT credit of Rs.11,354/- on the strength of invoices which are not addressed to the company. During the course of argument, learned Counsel for the appellants submits that the refund of this amount was not granted on the ground that the invoice was not on the name of the registered premises of the company but was in the name of the company. However, no evidence to this effect has been produced by the learned Counsel. Hence, I find that this credit is also not admissible to the appellants. The appellants have also submitted that a refund of Rs.200/- was denied on no specific grounds and there appear to be a calculation error. In the result, I hold that refund of a total of Rs.7,15,470/- (Rs.2,38,404 + Rs.4,65,712+Rs.11354) is not admissible to the appellants.

6. On the issue of availability of refund of CENVAT credit in terms of Notification No.27/2012, I find that the appellants have relied upon the cases of *Commissioner of Central Excise, Mysore Vs Chamundi Textiles (Silk Mills) Ltd., Fine care Bio-systems Vs Commissioner of Central Excise, Ahmedabad, Amdocs Business Services Pvt. Ltd. Vs Commissioner of Central*

Excise, Pune and Texport Overseas Pvt. Ltd. Vs CCE, Bangalore-I (all supra). However, I find that the impugned case is factually different from the above cases. In the above cases, the refunds under question were under Notification No.05/2006 whereas the refund in the impugned case is as per Notification No.27/2012. The appellant claimed that initially, they have filed refund claim under Notification No.5/2006 however on the insistence of the Department they have filed the same under Notification No.27/2012. I find that this Bench has gone into the issue, in the case of John Deere (supra), as submitted by the learned Authorized Representative, and has observed as under:

> *5.4. The appellant argues that the definition of 'net Cenvat Credit' consists of two parts. The first part deals with total Cenvat Credit availed on input services by the output service provider whereas the second part deals with reduction in the total Cenvat credit, which is to be reduced in terms of sub-Rule (5C) of Rule 3 of the Rules during the relevant period. Sub-Rule (5C) of Rule 3 of the CENVAT Rules deals with remission of duty as per the provisions of Rule 21 of the Central Excise Rules and therefore, is relevant to the present issue. Therefore, the words 'during the relevant period' are related to second part of the definition of net Cenvat credit and not the first part of the said Notification and not to the Cenvat credit availed----- which will invariably include the opening balance for the period for which refund claim i.e. credit availed for earlier period also. The Revenue pleads that the above interpretation is incorrect; it is apparent that so far as definition of 'net Cenvat credit' is concerned, it consists of a difference of credit availed on input/input services as reduced by the amount pertaining to Rule 3 (5C) ibid which is necessarily followed by "," before during the relevant period. We find that the formula given for the calculation of eligible refund and the definition of Net Cenvat Credit are very clear. It is obvious that "during the relevant period" applies to both the components. Therefore, we find that the contention of the Appeal No. ST/86111 & ST/86112/2015 MUM 13 Revenue is correct. We hold that the words 'during the relevant' period apply both to the Net Cenvat Credit and the amounts referred to in Rule 3 (5C). We do not find any ambiguity in this regard.*

I find no reason as to why the above decision should not be applied to the impugned case. I find that learned Counsel for the appellants relying on the same case submits that the refund claim being filed within one year in terms of Notification No.27/2012 should be entertained. I find that the learned Counsel for the appellants has not appreciated the facts of the case. In the above cited case, CESTAT while holding that the refund claim needs to be filed within the time limit specified under Notification No.27/2012, has given a categorical finding that the words "during the relevant period" are as much applicable to the credit availed as it applies to the exports made. However, for the reasons discussed henceforth, I do not pass any remarks on the issue in the impugned case, as the above decisions cited was by a Division Bench.

7. However, in the facts of the present case, I find that in the second round of litigation, the original authority has traversed beyond the scope of the remand order, which I hold that they are not entitled to. In Appeal No.ST/20677/2021, the original authority has given a categorical finding, as quoted above that the credit is admissible to the appellants. Therefore, I find that the original authority could not have decided the other way as no appeal was filed against the said OIA No.36–40/2017 dated 13.01.2017 by the Department. Similarly, in respect of Appeal No. ST/20678/2021, I find that Commissioner (Appeals) vide Order-in-Appeal No.766/2017 dated 18.08.2017 has allowed the appeal of the appellants and has not even remanded the matter to the lower authority however, the lower authority has denied the credit once again vide OIO No.4/2019-20 dated 07.05.2019 and categorically refers to the above OIA. This OIA is also not appealed against by the Department. Therefore, I find that there is force in the argument of the appellants. To this extent, I find that the impugned orders are not sustainable as both the OIAs in the first round attained finality as the

Department has not appealed against the same. Therefore, it is not free for the original authority to traverse beyond the remand order and to reject the refunds. It is not correct on the part of the appellate authority such blatantly wrong and perverse orders. Without going into the merits, I find that the appellants succeed on this count alone. Accordingly, I hold that the appellants are eligible for refund on this count.

8. In view of the discussion above, I hold that the appellants are not eligible for refund of Rs. 7,15,470/- out of the total refund claimed. Accordingly, the appeals are partly allowed in the above terms.

(Order pronounced in the open court on 27/04/2022)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

PK