CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 61427 of 2018

[Arising out of Order-in-Appeal No. 57/ST/GGN/CGST-Appeal-Gurugram/SG/2018-19 dated 23.05.2018 passed by the Commissioner (Appeals), Central Excise and Service Tax, Gurugram]

M/s Genpact India Pvt. Ltd. **……Appellant**
Sector-53, DLF city, Phase V, Gurugram,
Haryana-122002

VERSUS

Commissioner of Central Excise and Service Tax-Gurgaon-I **……Respondent**
Plot No. 36-37, Sector 32, Gurugram, Haryana-122001

APPEARANCE:

Shri Prasad Paranjape, Advocate for the Appellant

Shri Aniram Meena and Shri S.K. Meena, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61741/2025

DATE OF HEARING: 01.10.2025
DATE OF DECISION: 09.12.2025

P. ANJANI KUMAR:

Genpact India Pvt Ltd, the appellants, challenge the order, dated 23.05.2018, passed by Commissioner of Central Goods & Service Tax, Gurugram-I.

2. Brief facts of the case are that the appellants involved in provision of various kinds of back-end services in the nature of book-keeping,

revenue accounting, call centre, back-office management, IT helpdesk services, collectively called as "BPO Services", to third parties, on behalf of its client located outside India viz. Genpact International Inc, Hungary Branch; the appellants claimed refund of Service tax, paid on input services, under Rule 5 of CENVAT Credit Rules, 2004 (CENVAT Rules) read with Notification No. 27/2012-CE(NT) dated 18.06.2012 and under Notification No.39/2012-ST dated 20.06.2012, as amended by Notification No.03/2016-ST dated 03.02.2016. Order-in-Original, dated 23.05.2018, rejected refund claim of Rs.3,60,00,754, for the period Apr. 2016 to Sep. 2016. The impugned Order-in-Appeal, dated 25.01.2018, upholds such rejection, the rejection was mainly on the grounds that the input services have no nexus with output services; Swachha Bharat Cess (SBC) paid on input service invoices issued prior 03.02.2016; some Export invoices were of prior period though realized during the period in question; error in calculation as turnover excluded only from export turnover and not from total turnover etc.

3. Shri Prasad Paranjape, Learned Counsel for the appellants reiterates the grounds of appeal and submits that Revenue neither raised any objection on eligibility of CENVAT credit nor issued any notice demanding the credit wrongly availed, if any, under Rule 14 of the CENVAT Rules, either with respect to Service tax credit availed on SBC or on input services used in provision of output services; the same cannot be objected at the time of refund; the Appellant fulfils all the conditions for availing CENVAT credit and accordingly are eligible for refund; Circular No.120/01/2010-ST dated 19.01.2010, clarifies there cannot be two different yard sticks

i.e., one for determining the eligibility of CENVAT credit and the other for determining the eligibility of refund; the facts, that the services provided by the Appellant qualify as export and the Appellant has fulfilled all other conditions of eligibility, such as limitation, receipt of foreign exchange, are not in dispute. He submits that even on merits, many services disputed herein were held to be admissible by Tribunal and Courts; Larger Bench of this Hon'ble Tribunal held that credit of service tax paid on group medical insurance policy for family members is admissible, in the case of TTA Teleservices, by the larger Bench CST (2024) 16 Centax 160 (Tri – LB). Further, he relies upon the following case.

- Qualcomm India Pvt. Ltd. 2020 (43) G.S.T.L. 402 (Tri. -Hyd.) affirmed by the High Court of Telangana 2021-TIOL-2305-HC-Telangana-ST.
- BNP Paribas India Solutions Ltd2022 (58) G.S.T.L. 539 (Tri. Mumbai)
- Final Order No. 60766-60769 dated 09.07.2025 passed by CESTAT, Chandigarh in Appellant's own case.

4. Learned Counsel submits further on the issue of credit of SBC on input invoices issued prior to 03.02.2016, that the said claim, on account of SBC, is of the amount remaining accumulated on the date of filing the refund application; no one to one co-relation required either in claiming of CENVAT credit or refund; especially, for services of intangible nature, it is impossible for someone to establish one-to-one correlation between input service and output service; the same is clarified by Circular No .120/01/2010-ST dated 19.01.2010; relevant notification permits refund of SBC paid on input services used in exported output services. He relies on WNS Global Services 2008 (10) STR 273 (T) affirmed by Hon'ble Bombay

High Court at 2011 (22) STR 609 (Bom.) and JP Morgan Services vs CCE – 2016 (42) STR 982 (T).

4. Learned Counsel submits in addition that the rejection of refund on this account is erroneous; Ld. Commissioner (Appeals) has erroneously relied upon Rule 5 of CENVAT Rules whereas the present case is refund of SBC which is governed by a separate notification viz. Notification 39/2012-ST, as amended, read with Rule 6A of Service Tax Rules, which does not prescribe any condition; as per Rule 6A of the Service Tax Rules, export is complete only upon receipt of foreign exchange; thus, the Appellant has rightly considered the said turnover in its export turnover after receipt of foreign exchange irrespective of the invoice date; Commissioner was not correct in drawing support from Rule 5(2) of the CENVAT Rules; the said rule states that it shall apply to exports made on or after the 1st April, 2012; even by applying the said rule the Appellant is entitled to refund as claimed, as export is complete only upon receipt of foreign exchange; proviso to Rule 5(2) of the CENVAT Rules only clarifies that if someone is claiming refund under erstwhile Rule 5, then he should do so within 1 year from the commencement of the new rule; as the Appellant is claiming refund of exports completed after the new rule came into existence, the said proviso will not have any application to the Appellant’s case.

5. Learned Counsel submits also that Ld. Commissioner (Appeals) has wrongly upheld exclusion of turnover pertaining to invoices where consideration was received after 21 months from the date of the said invoices, wrongly relying on Rule 6(8); the said rule deals

with obligation of the service provider to treat the service as exempt service, where consideration is delayed; however, Rule 6A of the Service Tax Rules, which defines export of service, does not prescribe any time period for receiving consideration against exported service; once the consideration is received, the service qualifies as export and the Appellant becomes entitled to refund as claimed; it is pertinent to note that Ld. Commissioner (Appeals) records that the Appellant has duly reversed the credit as required under Rule 6(8) and restored it when consideration in foreign exchange was received; the restoration of credit was not objected to; the same cannot be raised at the stage of processing refund claim.

6. Learned Counsel submits also that reducing only export turnover without corresponding reduction in total turnover in the formula is in correct; the exclusion from export turnover is itself incorrect and hence reduction of the same from export turnover is not tenable in law; notification granting refund of SBC does not prescribe any formula; the Appellant has, on its own, adopted the formula prescribed under Rule 5, while the refund is of SBC under Notification 39/2016-ST.

7. Learned Counsel submits also that since the legitimately due to the Appellant was delayed, the appellant is entitled to grant of interest, as per Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. He relies on Ranbaxy Laboratories Ltd2011 (273) E.L.T. 3 (SC); Qualcomm India Pvt

Ltd2021 (50) G.S.T.L. 269 (Bom.) and Microsoft Corporation (India) Pvt Ltd. (Microsoft) 2024 (5) TMI 780 (Tri. Chandigarh).

8. Learned Authorized Representative reiterates the findings of the impugned order and submits that the period involved in the present proceedings is after the amendment in the CENVAT Credit Rules; after 01.04.2011 the definition of input services excluded services-(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee; therefore, learned Commissioner(Appeals) has rightly rejected the refund related to Hotel etc and short term accommodation Services, Outdoor Caterer's Services, Club or association Services while allowing the Credit on other Services such as Event Management Services, Work Contract Services, Civil Construction Services, Mandap Keepers' Services, Club or association Services, which were denied by the original authority. He submits that the cases relied upon by the appellants deal with the period prior to the amendment and therefore, not applicable.

9. Learned Authorized Representative submits also that the argument that if any credit is to be denied, it should be done by invoking Rule 14 of CENVAT credit Rules, 2004 and not while deciding a refund application, is not valid after the amendment in 2012. He submits that vide Notification No. 18/2012-C.E. (N.T.),

CENVAT Credit Rules, 2004 were amended and w.e.f. 17.03.2012, for the words "taken **or** utilized wrongly", the words "taken **and** utilized wrongly" stand substituted; in the instant case, credit having not been utilized, invocation of Rule 14 is not necessary; accordingly, the cases relied upon by the appellants are not applicable.

10. Heard both sides and perused the records of the case. In the impugned case, learned commissioner has upheld the rejection of the refund claim filed by the appellants to the extent of Rs 3.60 Cr mainly with reference to short term accommodation Services, Outdoor Caterer's Services, Club or association Services alleging lack of nexus. A small portion is rejected on grounds like date of credit of Swachha Bharat Cess and realization of export proceeds. The gist of the argument of the Learned Counsel for the appellants is that

- Revenue did not raise any objection on eligibility of CENVAT credit and did not give any notice under Rule 14 of the CENVAT Rules; Circular No.120/01/2010-ST dated 19.01.2010, clarifies that there cannot be two different yard sticks i.e., one for determining the eligibility of CENVAT credit and the other for determining the eligibility of refund. Tribunal has decided that the services disputed have nexus with the exports.
- as per Rule 6A of the Service Tax Rules, export is complete only upon receipt of foreign exchange; Rule 6A does not prescribe any time period; once the consideration is received, the service qualifies as export and the Appellant becomes entitled to refund; the Appellant has duly reversed the credit as required under Rule 6(8) and restored it when consideration in foreign exchange was received; the restoration of credit was not objected to;

11. On the other hand, learned authorized representative submits that the legal position has changed and therefore, the cases relied upon by the appellants are no longer applicable as the cases relied

upon interpreted the position of law as prevalent during the period under discussion on the question of merits and the invocation of the Rule 14 of the CENVAT Credit Rules. We find that Commissioner (Appeals) has rejected the claim of the appellants in respect of services like short term accommodation Services, Outdoor Caterer's Services, Club or association Services. We find that this Bench decided a case in respect of the appellants themselves. However, the period involved there was February 2008 to September 2010.Similarly, in the case of Tata Teleservices (Maharashtra) Ltd Supra), decision by Larger Bench, the period involved was April 2007 to March 2011.

12. We find that w.e.f. 1.4.2011 the 'input service" **means** any service, - (i) used by a provider of taxable 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 it i**ncludes** services used in relation to 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, 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 and **excludes**, inter alia, services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club,

health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee. Thus, w.e.f. 01.04.2011 the services which were held to be ineligible for refund in the impugned order are in the excluded category. However, the services are excluded only when they are used primarily for personal use or consumption of any employee. We find that there is nothing on record to indicate the use of the said three services by the appellants. The Commissioner (Appeals) and in the original authority have not discussed the nexus of the services from this angle. Therefore, the issue requires to travel back to the original authority to allow the credit if the appellants can establish with the evidence that the said services are not used primarily for personal use or consumption of any employee.

13. Regarding the issue of need for invocation of Rule 14 to deny the credit before disallowing the refund for want of nexus, Learned Authorized Representative submits that vide Notification No. 18/2012-C.E. (N.T.) dated 17.03.2012, CENVAT Credit Rules, 2004 were amended and words "taken **or** utilized wrongly", stand substituted by the words "taken **and** utilized wrongly and therefore, w.e.f 17.03.2012, the taking and utilization of credit is a necessary requirement for denying the credit under Rule 14 of the CENVAT Credit Rules, 2004. We find that the learned Authorized Representative presented only Part, i.e sub-rule (ii) of Rule (1) of Rule 14 amended w.e.f. 17.03.2012. We find that Rule 14 is as follows after amendment:

> [RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. — (1)
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> (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;
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> (ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

14. We find that in view of the above, even in the cases where the assesses, exporting 100 % of the services provided, would have no need to utilize the CENVAT credit, the credit wrongly availed can be recovered under the provisions of Rule 14 (i) of CCR, 2004. Therefore, we are not inclined to accept the argument of Learned AR. We find that the eligibility of a particular service to refund under Rule 5 is inextricably linked to the eligibility of such service under Rule 2(l) of CENVAT Credit Rules, 2004. Therefore, even if credit on particular service, is held not eligible to be eligible for refund, recourse has to be taken to Rule 14 of CCR, 2004 and as held in a number of cases, Revenue is not permitted to decide the nexus of the input service to the output service while deciding a refund claimed under Rule 5.

15. We find that the Learned Counsel for the appellants submits that even assuming that the refund claimed by the appellant is rightly rejected, still the appellant would have been entitled for recredit of the amount rejected in terms of Notification No. 27/2012-

CE(NT) dated 18-06-2012 and in terms of section 142 of CGST Act, 2017 as held in Jindal Steel & Power (2023) 7 CENTAX 130(Orissa); Thermax Ltd 2019(31)GSTL 60(Guj); Veer-O-Metals Pvt Ltd 2021(51) GSTL 315 (Tri-Bang) and Samsung India (2024) 16 CENTAX 343(T). However, this discussion has no relevance now as the issue was not discussed by the impugned order; moreover, it would be relevant only after the adjudicating authority decides the nexus of the said services, afresh, as discussed above. Therefore, we are not inclined to give findings on the issue, at this stage.

16. Regarding the other issues as to the admissibility of refund/rebate of Swachh Bharat Cess paid on input services, on invoices issued prior to 03.02.2016 and prior to 01.04.2012 and in cases where export proceeds are realized after 21 months, we find that the submission of Learned Counsel for the appellants is acceptable. we find that Tribunal in the case of WNS Global Service (Supra), relying on the various judgments, held that when it comes to substantial Benefit, in the absence of specific embargo in the rules, the benefit should not be denied to an assessee. Similarly, on the issue of reduction of export turn over without commensurate reduction in total turnover, we find that there is nothing wrong in adapting the formula under Rule 5, where no formula is prescribed in the Notification claimed. We also find that the Learned Authorized Representative for the Revenue did not oppose the submissions advanced.

17. In view of the above, the appeal is allowed by way of remand, in above terms.

(Order pronounced in the open court on 09.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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