

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI**

**APPEAL NO.ST/42248/2018 to ST/42255/2018**

[Arising out of Order-in-Appeal No.271 to 278/2018 (CTA-II) dt.27.6.2018 passed by the Commissioner of Central Tax (Appeals-II), CGST & Central Excise, Chennai]

Scientific Games India Pvt. Ltd. : Appellant

Vs.

Commissioner of GST & Central Excise  
Chennai South Commissionerate : Respondent

Appearance:-

Shri M.Bharathkumar, Consultant  
for the Appellant

Shri L.Nandakumar, AC (AR)  
for the Respondent

**CORAM:**

**Hon'ble Shri P Dinesha, Member (Judicial)**

**Date of Hearing/Decision: 21.12.2018**

**Final Order No. 43152-43159/2018**

In these appeals, the assessee has questioned the denial of refund claimed in respect of Cenvat Credit availed on certain input services for the following eight periods :

- i. July to Sep.2014;
- ii. April to June 2014;

- iii. Oct to Dec 2015;
- iv. Oct to Dec 2014;
- v. Jan to March 2015;
- vi. Jan to March 2016;
- vii. April to June 2016; and
- viii. July to Sep 2016.

The refund claim was denied in respect of input services relating to Guest House Maintenance Expenses, Residential premises, Outdoor Catering etc. and the reasons given by the revenue for denial is that the inclusive definition of input services under the amended provisions of Rule 2(l) of the Cenvat Credit Rules, 2004 does not cover the above input services and that the appellant had not proved the nexus of the above input services with its output services.

2. Today when the matter came up for hearing Shri M.Bharathkumar, Consultant appearing for the assessee submitted that the very same issue has been considered by this very Bench in the appellant's own case for a different period. Per contra Ld.DR. Shri L.Nandakumar, appearing for the revenue supported the findings of the lower authorities. On going through the order of this bench relied on by the Consultant, I find that the very same issue has been addressed to and answered in favour of the appellant. The relevant portion of the order (supra) reads as under :-

3. I find that the above issue involved in the case on hand is no more *res integra* as the same has been addressed to and settled by different Benches of the CESTAT. I also find that Rule 5 of the CENVAT Credit Rules embodies a formula for sanction of

refund of CENVAT Credit when goods or services are exported. In this scheme, proportionate refund on CENVAT Credit availed by the appellant during the particular period on input services or goods is available whether or not the goods or services are related to the exported output goods or services and this is clear from a bare reading of Rule 5 of the Rules.

4. On a perusal of the Order-in-Original as well as the impugned Order-in-Appeal, I find that the Revenue has not disputed the export nor is there any whisper about the assessee/appellant claiming duty drawback and this being so, I am of the view that the denial is contrary to the statute.

5. My above view is supported by the Order of the Mumbai Bench of the CESTAT in the case of *MSCI Services Pvt. Ltd. Vs. Commissioner of C.G.S.T., Mumbai East – 2018-TIOL-2849-CESTAT-MUM* and the relevant observation is as under :

*“7. With regard to the allegation that there is no nexus between the input services viz., renting of immovable property, cleaning service, works contract service, real estate service, management, maintenance or repair service, courier service, the said services are no doubt used/utilized by the appellant for providing the output service, which were exported. For claiming the refund benefit of service tax paid on the input service, Rule 5 of the rules provides for refund, subject to observance of the procedures laid down therein. The said rule provides the formula, which has to be complied with by the assessee for claiming the refund benefit. The authorities below have not disputed the fact that the appellant had not complied with the requirement of the said rules for claiming the refund benefit. However, the benefit of refund on those services had been denied on the sole ground that there was no nexus between such services with the output service provided by the appellant. With regard to establishing the nexus between the input and output services, the Tax Research Unit of CBEC vide letter dated 16.03.2012, has clarified that the new scheme introduced by substituting Rule 5 does not require the kind of correlation between exports and input services, which were hitherto provided under the unamended rules. It has been further clarified that service tax paid on the input services will be entitled for refund, on the basis of the ratio of the export turnover to total turnover. Since the TRU has clarified the legislative intent behind the amendment of Rule 5 of the Rules, explaining that no nexus need to be established, denial of refund benefit on sole ground of non-establishment of nexus cannot be sustained for judicial scrutiny. Accordingly, I am of the view that the refund benefit denied to the appellant in respect of those disputed services is not proper and justified and the appellant should be entitled for the benefit of refund of service tax paid thereon. Held accordingly. “*

6. For the above reasons, I am of the view that the impugned Order is not sustainable and therefore, I set aside the same and consequently, allow the appeals with consequential benefits, if any.

3. The Ld.DR was unable to point out any change in law or the facts and therefore following the above ratio the appeals of assessee are allowed with consequential benefits if any as per law.

***(Order Dictated and Pronounced in open court)***

**(P Dinesha)**  
Member (Judicial)

vsr