**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. – III

Service Tax Appeal Nos. 41287, 41289 & 41290 of 2019

(Arising out of Order-in-Appeal No. 66 to 68/2019 (CTA – II) dated 29.3.2019 passed by the Commissioner of Central Tax (Appeals – II), Chennai)

M/s. BNY Mellon Technology Pvt. Ltd. Appellant
10th floor, Tidel Park 4 Canal Bank Road
Taramani, Chennai – 600 113.

Vs.

Commissioner of GST & Central Excise Respondent
Chennai South Commissionerate, MHU Complex
692, Anna Salai, Nandanam
Chennai – 600 035.

APPEARANCE:

Shri N.V.S. Ramani, Consultant for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **41152-41154 / 2019**

Date of Hearing: 30.09.2019
Date of Decision: 30.09.2019

Brief facts are that the appellants had filed Rule 5 refund claim for refund of the credit availed on input services used for export of output service. The original authority rejected the claim in certain services. The appellant filed appeal before Commissioner (Appeals) who allowed the credit in respect of input services except for membership fees, insurance service and also in respect of Krishi Kalyan Cess. Aggrieved, the appellant has filed the present appeal.

2. On behalf of the appellant, ld. consultant Shri N.V.S. Ramani appeared and argued the matter. He submitted that the membership fee was incurred by the appellant to obtain membership in National Association of Software and Services Company. This is a trade association of information technology and business process outsourcing industry. It is necessary for the appellant to have membership in such associations in order to provide output service in a good manner. The services of such association help the appellant to know the trends in the market as well as legal position with regard to the output services provided by the appellant. He relied upon the decision in the case of Northern Operating Service Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore – 2017 (11) TMI 1105-CESTAT Bangalore.

2.1 The lower authorities rejected the refund in respect of insurance services which were availed by the appellant to take directors and officer’s liability policy. Such policies indemnify the loss of advancement of defense costs in the event the loss has resulted due to wrong act or wrong decision of the Directors and officers. To support his contention, he relied upon the decision in the case of Braodbridge Financial Solutions India P. Ltd. Vs. Commissioner of Central Excise – 2019 (7) TMI 652 – CESTAT Hyderabad.

2.2 The third issue is with regard to rejection of refund claim in respect of Krishi Kalyan Cess. He submitted that the adjudicating authority has rejected the refund alleging that the appellant has not debited the amount in their ST-3 returns filed for the period covering 2016 – March 2017. The ld. consultant adverted to a copy of the ST-3 returns for the said period and submitted that the appellant has debited and allegations that the appellant has not debited is factually wrong.

3. The ld. AR Shri Arul C. Durairaj supported the findings in the impugned order.

4. Heard both sides.

5. The first issue is with regard to the rejection of refund claim in respect of membership fee. The appellant has availed such services for obtaining membership in NASSCOM. It is established from the argument as well as the facts that the appellant is required to take membership in such trade association so that it could help them to keep updated with the changed in the market. The Tribunal in the case of Northern Operating Services P. Ltd. (supra) has allowed credit in respect of membership fees. Following the said decision, I am of the view that the credit is eligible and the rejection of refund cannot sustain.

5.1 The second issue is with regard to rejection of refund claim in respect of insurance services. The said services are availed by the appellant for meeting the loss that may result on account of any wrong decisions taken by the top most officers. This indemnification would help the appellant-company in cases of wrong decisions or wrong acts by the persons in the capacity as Directors and officers. The decision relied by the ld. counsel has taken a view that the credit is eligible. From the face as well as the law placed before me, I am of the view that the rejection of refund is unjustified and the same requires to be set aside, which I hereby do.

5.2 The third issue is with regard to rejection of Krishi Kalyan Cess alleging that the appellant has not debited in ST-3 returns. On perusal of the returns, it is seen that the appellant has in fact debited the amount for the said period. The rejection is wrong on facts and therefore I hold that the same requires to be set aside.

6. From the discussions above, the impugned order is set aside to the extent of rejecting the refund in respect of the above issues. The appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

Rex