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

Appeal Nos.ST/41558 to 41564/2017

[Arising out of Order-in-Appeal No.163-169/2017 (STA-I) dt. 28.03.2017 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

Visual Graphics Computing Services India Private Ltd. — Appellant

Versus

Commissioner of Central Excise, Chennai-III — Respondent

Appearance:

Shri Harish Bindu Madhavan, Advocate
For the Appellant

Shri B.Balamurugan, AC (AR)
For the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision : 27.12.2017

FINAL ORDER No. 43375-43381/2017

All these appeals arise out of common impugned order and hence they are taken up for common disposal.

Customs, Excise & Service Tax Appellate Tribunal

2. The facts of the case are that appellants were engaged in application of customized graphic software and special templates of visual communication materials like graphics and charts as a captive unit of M/s.Mckinsey & Company, USA. The entire services are exported by the appellant. Appellant filed refund claims pertaining to various periods between October 2012 and June 2013 under Rule 5 of the Cenvat Credit Rules, 2004 (CCR 2004). The original authorities rejected part of the refund claims. The grounds for rejection of part of the refund claims was (i) invoices without address and missing invoices (ii) input services on which credit taken are ineligible input service since they did not have any nexus with output services exported. The Commissioner (Appeals) vide the impugned order 28.03.2017 did not find any force in the averments of the appellant to establish nexus between the input services received and the output services provided. On the issue of admissibility of credit on certain documents without STC code, without address, missing invoices etc. the lower appellate authority held that the validity of the said documents have not been sufficiently proved by the appellant. For these reasons, the lower appellate

authority upheld the orders of the original authority and rejected the appeals. Hence the appellants are before this form.

3. Today, when the matter came up for hearing, on behalf of the appellant, Shri Harish Bindu Madhavan made oral submissions which can be broadly summarized as under :

i) For providing output services exported, they sent / received experienced professionals to / from other locations to render expert opinion to meet the requirements of the project.

ii) In the same connection, appellant also incurs short term accommodation services from hotels and air travel agents by paying air travel charges.

iii) In a plethora of decisions, it has been held that input tax credit on air fare for business purposes and alternate accommodation charges are eligible input services.

iv) So also, business consultancy services are very much required for smooth functioning of business and hence it is a valid input service.

v) Appellant also availed services for training of their employees and availed services of Man Power Recruitment Agency Service and Advertisement Agency Service etc. which are also eligible and essential input services for their business.

vi) Apart from their eligibility of the disputed input services, Ld.Advocate submits that Rule 5 of the CCR 2004 was completely overhauled ~~while~~ when the Union Budget 2012 was presented. He submits a copy of the Budget Speech wherein in para 173 of the speech, the Hon'ble Finance Minister has conveyed to the Parliament ~~that~~ introduction of the new scheme to simplify refunds without resorting to voluminous documentation or verification.

vii) Ld. Advocate draws attention to TRU circular No.334/1/2012-TRU dt. 16.3.2012 where it has been clarified that by substituting the entire Rule 5 of CCR 2004, the claim for refunds under that rule will not require the kind of correlation that was earlier needed between exports and input services used in such exports. Ld. Advocate submits a copy of recent Tribunal's decision in the case of *Exl Service. Com India Pvt. Ltd. Vs CCE Noida* - 2015-TIOL-3379-CESTAT-ALL where it was held that without issue of show cause notice under Rule 14 Cenvat credit would not be disallowed under Rule 5 of CCR.

viii) On the dispute concerning inadmissibility of cenvat credit on certain documents without STC code, missing invoices, etc ld. Advocate has submitted that if an opportunity is accorded, they would be able to satisfy the refund sanctioning authority with necessary documentation in their support.

4. On the other hand, on behalf of department, Ld. A.R, Shri B. Balamurugan supports the impugned order. He contends that even after the substitution of Rule 5 of the CCR 2004, the relevancy of Rule 2(l) of the Rules which defines 'eligible input services' has not been diminished and that any input service availed will have to necessarily also face the test of eligibility under Rule 2(l).

5. Heard both sides and have gone through the facts. The Rule 5 of the CCR was substituted vide Notification No.18/2012-CE (NT) dt.17.3.2012 w.e.f. 01.04.2012. As pointed out by Ld.Advocate this substitution was the resultant of the proposal brought about through the Union Budge of 2012. Para 173 of the Budget Speech referred to by ld. Advocate reads as follows :

> "**173.** While the problems faced by exporters of goods with respect to taxes on input services was addressed earlier this year, disbursement of taxes that go into the export of services has been an irritant for long. I now announce a new scheme that will simplify refunds without resorting to voluminous documentation or verification. As an added incentive, such refunds will also be admissible for taxes on taxable services that have been exempted."

6. I also find that Tax Research Unit of the CBEC had issued a Circular No. 334/1/2012-TRU dt. 16.3.2012 elabnorating the changes made in service tax. The relevant portions relating to the change brought about in Rule 5 of the CCR Rules is reproduced for ready reference :

> "**2.** No more will the most often-asked question "which taxable service is being provided?" be relevant; no more will an exporter be asked whether an input service has been used in export to claim a Cenvat refund; and no more will a host of questions confront a tax-payer filing his new one page return.
> … ,..,. …..
>
> **F.1. Simplified scheme for refunds :**
> 1. A Simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turn over."

A comparison of old Rule 5 prior to 1.4.2012 will indicate that refunds of such input or input services were allowed which were "used in the intermediate product cleared for export or used in providing output service which is exported". Thus in the erstwhile Rule 5, there was a direct correlation between, inter alia input services and the output services. This provision had led to a lot of litigations wherein in a number of Tribunal decisions, it was held that there was no necessity of any direct one-to-one correlation of exports due to some level of difficulty in sanctioning of the refund under that rule. That is the precise introduction of amendment to Rule 5. As seen from the clarification given in TRU's circular the overhaul was brought only to simplify claim of refund of credit by the exporters without insisting on any direct correlation. This being so, the processing of refunds after the amendment to Rule 15 w.e.f 1.4.2012 is required to be done on a more liberal basis without insisting for one to one correlation. That however will not mean that the input service can also be one which is specifically barred by Rule 2(l) of the CCR 2004. To this extent, I find merit in the argument of Ld. A.R. However, while this may be so, before rejecting any credit on the ground that the related input service will not fall within the ambit of Rule 2(l), a show cause notice will necessarily have to be issued to the claimant, which is the ratio laid down in the Tribunal's decision in *Exl Service. Com India Pvt. Ltd.* cited by the ld. Advocate supra. Discernably, in the instant case, appellants have waived their right to show cause notice. However in case, sanctioning authority finds that any particular credit amounts are liable for rejection for the reason that they fall foul of the Rule 2(l), a SCN should have been issued to the appellant. This is certainly was not done. In any case, on a reading of the input service credits rejected as seen in the Annexure-I to OIO No.62/2016 dt. 23.05.2016 ineligible in page 55 of the appeal book, I find that the input services found fault are those relating to management maintenance, short term accommodation, hotel room charges for stay of VGI staff, air fare charges. Even after the amendment to Rule 2(l) w.e.f. 1.4.2011, it has been consistently held that so long as a particular input service is not specifically barred by Rule 2(l) or is not used for the personal consumption of an employee etc. that would very much an eligible input service. For all these reasons, I find that the impugned order in these appeals cannot sustain for which reason that will require to be set aside, which I hereby do. In consequence, appellants will be eligible for refund of the credits in respect of inputs services availed by them as listed out in the said annexures.

7. Coming to the other dispute concerning inadmissibility of cenvat credit on certain documents without STC code, missing invoices, etc. ld. Advocate has submitted that if an opportunity is accorded, they would be able to satisfy the refund sanctioning authority with necessary documentation in their support. It is also noted that there is no separate worksheet in the SCN in respect of the disputed cenvat credits on this score. Accordingly, for the limited purpose of providing an opportunity to the

appellant to produce necessary documents in respect of credits availed without STC code, missing invoices etc., the matter is remanded to the original authority concerned.

Appeal is thus partly allowed and partly remanded on above terms.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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Customs, Excise & Service Tax Appellate Tribunal

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12/01/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.