

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

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41130 of 2015

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant
Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent
Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH

Service Tax Appeal No. 41131 of 2015

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant
Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent
Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH

Service Tax Appeal No. 41132 of 2015

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant
Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent
Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41133 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41134 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41135 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41136 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41137 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41138 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

WITH**Service Tax Appeal No. 41139 of 2015**

(Arising out of Orders-in-Appeal No. 55,56,57,58,59,60,61,62,63 & 64/2015 (STA-I) dated 24.02.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

AND**Service Tax Appeal No. 41140 of 2015**

(Arising out of Order-in-Appeal No. 70/2015 (STA-I) dated 30.03.2015 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Verizon Data Services India Private Limited : Appellant

Plot No. 1, SIDCO Industrial Estate,
Olympia Technology Park, Citius-B Block,
8th Floor, Guindy, Chennai – 600 032

VERSUS

The Commissioner of Service Tax : Respondent

Newry Towers, 2054/1, II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040

APPEARANCE:

Shri K. Sivarajan, Chartered Accountant for the Appellant

Smt. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOS. 40299-40309 / 2022

DATE OF HEARING: 12.08.2022

DATE OF DECISION: 24.08.2022

Order : Per Hon'ble Smt. Sulekha Beevi C.S.

The issue involved in all these appeals being the same, they were heard together and are being disposed of by this common order.

2. Brief facts of the case are that the appellant, M/s. Verizon Data Services India Pvt. Ltd., is engaged in providing taxable services in the nature of Commercial Training and Coaching, Erection Commission and Installation Service, Maintenance or Repair Services, etc. They are a 100% Export Oriented Unit (EOU) under the Software Technology Park (STP) Scheme and hold Service Tax Registration. The appellant filed refund claims under Rule 5 of the CENVAT Credit Rules, 2004 for the refund of unutilized CENVAT Credit pertaining to various periods. After due process of law, the Original Authority sanctioned the refund partially and rejected some amounts, on various grounds. Being aggrieved by the partial rejection of the refund claims, the appellant filed appeals before the Commissioner of Service Tax (Appeals-I), who vide orders impugned herein rejected the appeals filed by the appellant. Hence, the appellant is now before the Tribunal.

3.1.1 On behalf of the appellant, Shri K. Sivarajan, Learned Chartered Accountant, appeared and argued the matter. He furnished a table showing the periods and amounts involved, which is reproduced below:-

Sl. No.	Period involved	Appeal No.	Amount (in Rs.)
1.	October 2008	ST/41135/2015	3,60,274/-
2.	November 2008	ST/41137/2015	2,80,536/-
3.	December 2008	ST/41131/2015	6,11,511/-
4.	January 2009 to March 2009	ST/41130/2015	9,70,191/-
5.	January 2010 to March 2010	ST/41138/2015	14,36,854/-

6.	April 2010 to June 2010	ST/41136/2015	30,99,021/-
7.	July 2010 to September 2010	ST/41134/2015	91,16,317/-
8.	October 2010 to December 2010	ST/41140/2015	11,89,790/-
9.	January 2011 to March 2011	ST/41133/2015	9,21,726/-
10.	April 2011 to June 2011	ST/41132/2015	2,05,396/-
11.	July 2011 to September 2011	ST/41139/2015	3,93,680/-
Total			1,85,85,295/-

3.1.2 The Learned Consultant for the appellant submitted that from the above, it can be seen that the period involved in the appeals at Serial Nos. 10 and 11 of the above table are after 01.04.2011 and the other appeals pertain to refund claims for the period prior to 01.04.2011.

3.2 Learned Consultant appearing for the appellant submitted that the Department has sought to deny the credit by alleging that the services do not qualify as 'input service' as per the definition under Rule 2(I) of the CENVAT Credit Rules, 2004. The authorities below have denied the eligibility of credit by applying the decision in the case of *M/s. Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III [2009 (240) E.L.T. 0641 (S.C.)]*. That the said decision analysed the issue with regard to inputs and not input services. In the case of *Commissioner of C.Ex., Nagpur v. M/s. Ultratech Cement Ltd. [2010 (260) E.L.T. 369 (Bom.)]* and *KPMG v. Commissioner of Central Excise, New Delhi [2014 (33) S.T.R. 96 (Tri. - Del.)]*, the same has been discussed and distinguished. Further, credit has been denied in refund proceedings. He relied upon the decision in the case of *M/s. Microsoft Research Lab India Pvt. Ltd. v. Commissioner of Central Tax, Bangalore North [2021 (8) TMI 806 - CESTAT Bangalore]* to argue that the

eligibility of credit cannot be questioned in refund proceedings.

The grounds for rejection are as under:-

3.3 **Services do not qualify as input services:** It is submitted by the Learned Consultant for the appellant that the major ground on which the CENVAT Credit has been denied and the refund claims have been rejected is for the reason that, according to the Department, the services are not eligible for credit as these were not consumed for providing output services, and therefore, do not qualify as input services. He submitted the details of the impugned services and their nature as to why the said services were availed by the appellant.

(a) **Outdoor Catering Service:** The said service was availed by the appellant-company for providing snacks and beverages to employees during their working hours and also for providing lunch during employee induction programmes. That such catering facilities were availed during training programmes and the amount has not been recovered from the employees. He submitted that the issue as to whether Outdoor Catering Service is eligible for credit or not prior to 01.04.2011 has been laid to rest by various decisions of the Tribunal as well as High Courts. He relied upon the decision in the case of *Commissioner of Central Excise v. M/s. HCL Technologies Ltd.* [2014 (11) TMI 663 – Allahabad High Court] and *M/s. R.R. Donnelley India Outsource Pvt. Ltd. v. Commissioner* [2019 (1) TMI 1244 – CESTAT, Chennai]. Learned Consultant added that after 01.04.2011, the appellant has not availed any credit on these services.

(b) **Customs House Agent:** These services were availed by the appellant for clearance of computers, laptops, etc., which were imported into India. The goods were used by the appellant for providing

output services and the services of the Customs House Agent was necessary for filing Bill-of-Entry and paying necessary Customs duties/charges. He relied upon the decision in the case of *M/s. Scope International Pvt. Ltd. v. Commissioner of Central Excise [2018 (7) TMI 1007 – CESAT, Chennai]* to argue that such services are eligible for credit.

- (c) **Insurance Service:** The appellant had availed insurance policies in the nature of Director's and Officer's Liability Policy, Group Gratuity Risk Premium, Group Personal Accident Policy, Group Medclaim Policy, Group Term Life Insurance Policy, Business Guard Policy and Property Insurance and Marine Import Policy. These insurance services were availed by the appellant to indemnify the risk that may be caused in various incidents attached to the policy. The Learned Consultant for the appellant submitted that after 01.04.2011, the appellant has not availed any credit on insurance services.
- (d) **Rent-a-Cab Service:** These services were used for transportation of employees by cab. The employees who work late in the night are required to be transported to their residences and therefore, these services were used for providing output services. Learned Consultant for the appellant added that after 01.04.2011, the appellant has not availed any credit on Rent-a-Cab Services.
- (e) **Maintenance of Building:** The Learned Consultant for the appellant explained that the services of vendors having specialized technical expertise and manpower for providing necessary maintenance for the building were availed so that the building and property can be maintained and operated in a good condition. He relied upon the decision in the case of *M/s. Dell International Services India Pvt. Ltd. v. Commissioner of Central Excise [2009 (6) TMI 447*

– *CESTAT, Bangalore*] to argue that such services are eligible for credit.

(f) **Commercial Training and Coaching Service:**

These services were used for providing training and coaching to the employees of the appellant and are eligible for credit since these were input services used for providing the output services.

(g) **Health and Fitness - MGC:** This service was used for providing gym facilities to the employees. Learned Consultant for the appellant submitted that the employees are the assets of the company and their health is of paramount importance for better productivity. That these services, being activities relating to the business of the company, are eligible for credit prior to 01.04.2011. The Learned Consultant for the appellant added that the appellant-company has not availed any credit on such services after 01.04.2011.

(h) **Sodexo Pass:** The Learned Consultant explained that Sodexo Passes were distributed to the employees for availing facilities provided by the company. The appellant has not made any recovery towards the service charges relating to this service. That such passes are eligible for credit prior to 01.04.2011. He relied upon the decision in the case of *M/s. Ford Motor Pvt. Ltd. v. Commissioner [2018-TIOL-2912-CESTAT-MAD]*. He added that after 01.04.2011, the appellant had not availed any credit on Sodexo Passes.

(i) **Pre-employment Health Checkup:** It is explained by the Learned Consultant for the appellant that these services relate to the health checkup of the employees done during the recruitment process. That after issuing the offer letter, the employees have to undergo health checkup, which is done by the appellant-company. Since such services are

availed in relation to recruitment of the employees, they would fall within the definition of input service. It is submitted by him that credit on such services have been availed after 01.04.2011 also.

- (j) **Event Management Service:** These services were availed in relation to conducting events related to the employees and are eligible for credit.
- (k) **Travel Agent Service:** These services were availed towards employees' travel for business related activities and were availed even after 01.04.2011.
- (l) **Supply of Tangible Goods:** Learned Consultant for the appellant submitted that the appellant had availed such services for hiring audio-video equipment and printers. That the same were necessary for various events as well as the business of the company.
- (m) **Real Estate Agent Service:** Such services were availed for identification of premises for conduct of business. That the appellant had to find out new places suitable for conducting business and that these services were availed in order to identify the required premises.
- (n) **Consulting Engineer Service:** These services were used by the appellant towards real estate consultancy services received from M/s. Cushman & Wakefield (India) Pvt. Ltd. and that such services are essential for providing the output service.
- (o) **Manpower Recruitment Agency – Carpet Shampooing / Maintenance:** These services relate to carpet shampooing / maintenance services provided at the office premises of the appellant.
- (p) **Technical Inspection and Certification Service:** Learned Consultant for the appellant submitted that the appellant had availed these services towards

inspection charges by M/s Asian Enviro Labs in relation to the quality of food supplied to employees. That after 01.04.2011, they have not availed these services.

(q) **Management Consultant Service:** These services are received in relation to the professional fees paid for business. Learned Consultant for the appellant submitted that after 01.04.2011, the appellant has availed credit to the tune of Rs.1,81,958/- on these services. He relied upon the decision in the case of *M/s. Dell International Services India Pvt. Ltd. v. Commissioner of Central Excise [2009 (6) TMI 447 – CESTAT, Bangalore]* to support his argument

(r) **Convention Centre Service:** The said service was availed after 01.04.2011 towards the services of convention centres / hotels during the travel of the employees for the purpose of conducting business activities. In this regard, Learned Consultant for the appellant placed reliance upon the decision in the case of *M/s. IBM India Pvt. Ltd. v. Commissioner of Central Excise, Customs & Service Tax [2014-TIOL-1946-CESTAT-BANG]*.

(s) **Business Auxiliary Service / Goods Transport Agency Service:** Learned Consultant for the appellant explained that such services were availed for transportation of goods imported and in regard to Customs House Agent services, which were received from M/s. Anvase Exim Pvt. Ltd.

(t) **Printing of spot awards:** Credit in regard to these services was availed prior to 01.04.2011 and such services were used for felicitation of employees who contribute to work exceptionally. That these services are in the nature of activities relating to business and are eligible for credit as these were availed prior to 01.04.2011 only.

- (u) **Annual Maintenance Contract (AMC):** These services were availed towards Annual Maintenance Contracts for fire alarms and security control equipment. Learned Consultant for the appellant submitted that these services are essential for providing output services and are eligible for credit.
- (v) **Business Support Services:** The appellant had availed these services for day-to-day updates on forex market from M/s. Green Back Forex Services Pvt. Ltd. and also towards necessary printing of stationery / awards for employees. Learned Consultant added that these services were availed after 01.04.2011 as well.
- (w) **Information Technology and Software Service:** Such services were availed from M/s. Dell India Pvt. Ltd. for providing output services.
- (x) **Management Maintenance or Repair Service:** Learned Consultant for the appellant submitted that an amount of Rs.7,963/- under the category of Management, Maintenance and Repair Service has been disallowed, for which breakup of disallowance was not provided to the appellant.

3.4.1 **Credit taken subsequent to last date of export:**

The second ground on which the refund was rejected is that the appellant has availed credit subsequent to the last date of export. In this regard, it is submitted by the Learned Consultant that the authorities below have rejected an amount of Rs.23,93,873/- pertaining to the period from April 2010 to June 2010 and January 2011 to March 2011, alleging that the credit has been taken after the last date of export and that there is no one-to-one correlation. He adverted to Notification No. 05/2006-C.E.(N.T.) dated 14.03.2006 read with Rule 5 of the CENVAT Credit Rules, 2004 to argue that neither the Notification nor the Rule bars credit availment after the last date of export. In fact, the Rule does not specify the time period in a month or

quarter for which such claim can be submitted. That there is no requirement for one-to-one correlation for claiming refund.

3.4.2 He submitted that when the CENVAT Credit taken after the last date of export is not held to be ineligible during the relevant refund period, the said credit ought to be considered for the purpose of computation of eligible refund in the subsequent period. He relied upon the decision in the case of *M/s. HCL Comnet Systems and Services Ltd. v. Commissioner of Central Excise & Service Tax [2015 (6) TMI 871 – CESTAT, New Delhi]* to support his arguments. That there is no requirement of one-to-one correlation between an input service and an output service.

3.5.1 Unbilled revenue factored in total turnover:

The Learned Consultant for the appellant submitted that refund has been rejected by the authorities below alleging that it is unbilled revenue and is not includible in the total turnover. In this regard, he explained that the turnover as per the trial balance as on 31.12.2010 is considered as the total turnover for the purpose of computing eligible refund; the unbilled revenue as on 31.12.2010 has to be recognized as revenue as per the Accounting Standards. That such unbilled revenue is billed subsequently in the month of January 2011 as per the billing cycle and also disclosed as export turnover.

3.5.2 In the half-yearly Service Tax returns for the relevant period, the appellant is required to disclose the gross amount for which bills / invoices / challans are issued relating to service provided / to be provided (including export of service and exempted service) and the gross amount received in money against services provided. That there is no requirement to disclose accruals / unbilled revenue in the Service Tax return. If the Original Authority had included the unbilled revenue in the total turnover, he should also have included the same in the export turnover as well. That for this reason, the computation of total turnover is not proper.

3.6 **Wrong formula applied for computation of eligible refund:** The Learned Consultant for the appellant added that the authorities below have erred in computing the refund formula as they have computed on the basis of the net credit for the period and not on the total credit availed by the appellant for the disputed period. That the authorities below have referred to the formula as per the refund Notification to be 'total CENVAT Credit taken on input services during the given period', but however, have applied the net credit for computation of the eligible refund, which is erroneous. He relied upon the decision in the cases of *Commissioner of Service Tax, Mumbai-I v. M/s. Global Markets Centre Pvt. Ltd. [2015-TIOL-242-CESTAT-MUM]* and *Commissioner of C.G.S.T., Mumbai v. M/s. Morgan Stanley Investment Management Pvt. Ltd. [2019-TIOL-977-CESTAT-MUM]* to argue that the credit utilized towards domestic Service Tax liability need not be deducted from the total credit taken for computation of the eligible refund claim.

3.7 **Non-mentioning of Service Tax registration and Chartered Certificate not produced:** The Learned Consultant for the appellant submitted that for the reason that the Service Tax registration is not mentioned and the correlating Chartered Accountant Certificate has not been produced, the amount of Rs.9,280/- has been rejected by the authorities below.

3.8 **Invoices not produced:** It is submitted by the Learned Consultant that an amount of Rs.13,147/- has been rejected for the reason that the credit is ineligible as the invoices have not been produced by the appellant.

3.9 **Incorrect excess credit taken:** That an amount of Rs.52/- has been rejected on the ground that this is excess credit taken by the appellant.

3.10 **Export turnover restricted to realization of export proceeds:** The Learned Consultant for the appellant submitted that for computation of the eligible

refund, the export turnover was restricted by the authorities below to the documents for realization of export proceeds produced by the appellant and the refund to the tune of Rs. 36,744/- was denied to this extent.

3.11 **Service Tax not charged by service provider:** He submitted that an amount of Rs.50,730/- has been denied on the ground that the invoices do not show that Service Tax has been charged by the service provider.

3.12.1 **Dispute settled under the Sabka Vishwas Scheme:** Apart from the above grounds, Learned Consultant appearing for the appellant was fair enough to submit that with regard to the periods covered in Service Tax Appeal Nos. 41133, 41134, 41136 and 41140 of 2015, the refund amount claimed also takes in the amount that has been settled and paid by the appellant under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. He submitted that for the period covered in these appeals, the appellant was issued Show Cause Notice alleging wrong availment of ineligible CENVAT Credit. After due process of law, the Original Authority vide Order-in-Original No. 06/2013 dated 31.01.2013 confirmed the demand of Rs.1,04,56,207/- along with interest and also imposed penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under Rule 15(1) of the CENVAT Credit Rules, 2004. During the pendency of the appeal against such order, the appellant opted for the benefit of the Sabka Vishwas Scheme and paid 50% of the dues as confirmed in the above order. He submitted that the refund claim pertaining to the above appeals for the period from April 2010 to March 2011 is Rs.1,43,26,854/- [Rs.30,99,021/- + Rs. 91,16,317/- + Rs. 11,89,790/- + Rs. 9,21,726/-]. The amount confirmed pursuant to the Show cause Notice alleging wrong availment of credit is Rs.1,04,56,207/-.

3.12.2 He adverted to the "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 – FAQs" issued by the Central Board of Indirect Taxes & Customs, stating that question numbers 42 and 43 would show that even if a

declaration under the Scheme is filed, it cannot be assumed that the person has admitted to the position and agreed with the allegations in the Show Cause Notice. In continuation of this argument, he relied upon the decision in the case of *M/s. Bosch Chassis Systems India Ltd. v. Commissioner of Central Excise, Delhi-III, Gurgaon* reported in 2008 (232) E.L.T. 622 (Tribunal – LB). It is argued by him that even if the appellant has opted for the Sabka Vishwas Scheme and paid up the liability as per the scheme, it does not mean that the appellant has admitted to the allegations and therefore, the refund ought to be granted.

3.12.3 He also drew support from Sub-section 124(1) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 [Chapter V of the Finance Act, 2019] to submit that the appellant had availed the benefit of the scheme under this provision as settlement of its tax dues. That as per Section 127(1)(6), an appeal shall be deemed to be withdrawn on final settlement of all dues. That Discharge Certificate is issued in terms of Section 129(1) and the said Discharge Certificate would mean that the liability for payment of tax dues has been discharged. That the scheme would not take away the eligibility of the appellant for refund under Rule 5 of the CENVAT Credit Rules, 2004.

3.13 He therefore prayed that the appeals may be allowed.

4.1 Smt. Sridevi Taritla, Learned Authorized Representative appearing for the Department, supported the findings in the impugned orders.

4.2.1 With regard to the rejection of credit on the ground that the services do not qualify as 'input services', she submitted that the credit availed in respect of Pre-Employment Health Checkup is not eligible for credit. That the said services are availed even before a person becomes the employee of the appellant-company. The credit is

availed prior to the recruitment of the person and therefore, cannot be considered to be a service availed in relation to the business of the company.

4.2.2 She pointed out that even after 01.04.2011, the appellant has availed credit for services of Travel Agent. That there is no evidence provided to show that the travels were performed for business related purposes only. That such services have been rightly rejected for the lack of evidence to show that these services were availed for providing output services.

4.2.3 She argued that Business Support Services have been availed by the appellant after 01.04.2011 not only for updates on Forex Market, but also towards printing of stationery and awards for employees. That printing of awards for the employees cannot be held to be eligible after 01.04.2011 and has been rightly rejected by the authorities below.

4.3 It is submitted by the Learned Authorized Representative for the respondent that the credit denied for the reason that the appellant has not produced invoices to the tune of Rs.13,147/- is legal and proper.

4.4 So also, that the rejection of an amount of Rs.50,730/- on the ground that the invoices do not show that Service Tax has been charged by the service provider is correct and the rejection on this ground has to be upheld.

4.5 With regard to the arguments put forward by the Learned Consultant for the appellant that they are eligible for the refund pertaining to the period from April 2010 to March 2011, where the appellant has settled the dues by opting for the Sabka Vishwas Scheme, she submitted that when the appellant has opted for the benefit of the Sabka Vishwas Scheme, the same amount cannot be claimed as refund in parallel refund proceedings.

4.6 She prayed that the appeals may be dismissed.

5. Heard both sides.

6. It is an undisputed fact that the appellant is a 100% Export Oriented Unit and is under the Software Technology Park (STP) Scheme. The refund claims have been filed by the appellant under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006-C.E.(N.T.) dated 14.03.2006.

7.1 The first ground on which refund has been rejected by the authorities below is that the services availed by the appellant do not qualify as "input service" as per Rule 2(l) of the CENVAT Credit Rules, 2004. It is seen that the period involved in all the appeals, except Service Tax Appeal Nos. 41132 and 41139 of 2015, are prior to 01.04.2011. Prior to 01.04.2011, the definition of "input service" had a wide ambit as it included the words 'activities relating to business'. Almost all the services availed by the appellant under this category, were used by the appellant-company for its business activities. In the decisions of various fora, it has been held that almost all the said services would fall within the definition of "input service" when they are used for providing output service, for the period prior to 01.04.2011. The appellant has relied on the decisions in the cases of *Commissioner of Central Excise v. M/s. HCL Technologies Ltd. (supra)*, *M/s. R.R. Donnelley India Outsource Pvt. Ltd. (supra)* and various other decisions which have held that such services availed for business activities are eligible for credit prior to 01.04.2011. For this reason, we are of the view that the rejection of refund claims for all the services availed by the appellant prior to 01.04.2011, on the allegation that they do not qualify as "input service", cannot be justified.

7.2.1 After 01.04.2011, a major amendment was brought forth in the definition of "input service" whereby certain services have been excluded. Services in the nature of Outdoor Catering Service, Rent-a-Cab Service, Health Insurance, Leave and Home Travel Concession, etc., which are availed primarily for the personal use of an employee,

are excluded from the purview of input service. Learned Consultant for the appellant has submitted that the appellant has not availed credit on Outdoor Catering Service, Insurance Service, Rent-a-Cab Service, Health and Fitness, Sodexo Pass and services for Printing of Spot Awards after 01.04.2011. Needless to say, these services are not eligible for credit after 01.04.2011.

7.2.2 It is also seen that the appellant has availed credit on Pre-employment Health Checkup services even after 01.04.2011. The Learned Authorized Representative for the Department has argued that these services are not eligible for credit since such services are availed prior to the recruitment of an employee. From the details given by the Learned Consultant for the appellant, we find that such services are availed even before the employee is recruited by the appellant-company. For this reason, accepting the arguments put forward by the Learned Authorized Representative for the Department, we are of the view that credit on these services is not eligible after 01.04.2011.

7.2.3 So also, with regard to Travel Agent Service, it is submitted by the Learned Consultant for appellant that such services are availed for business travel and related activities. After 01.04.2011, there are certain restrictions with regard to leave and home travel concessions. The appellant is required to furnish details in respect of the purpose and places of travel along with evidence regarding the order given by the appellant-company to undertake the travel, etc. As the appellant has failed to produce such evidence, we cannot conclude that the Travel Agent Services were availed for providing output services. We are of the view that such services are not eligible for credit after 01.04.2011.

7.2.4 The appellant has also availed Business Support Services to obtain updates on forex market from M/s. Green Back Forex Services Pvt. Ltd. It is seen that Business Support Services were also availed for printing of stationery and for disbursing awards to employees. We

cannot consider the disbursement of awards to employees as an eligible "input service" after 01.04.2011. The appellant has not furnished any break-up with regard to the various services that are bundled under the category of Business Support Services. In our view, the credit under this head, for the categories of service explained by the Learned Consultant for the appellant, are not eligible for credit after 01.04.2011.

8. The second ground on which the refund has been rejected is that the appellant has availed the credit subsequent to the last date of export. The main discussion made by the authorities below is that there is no one-to-one correlation with regard to input service and output service. We are of the view that the rejection of refund on this ground is not justified. There is no requirement under Rule 5 of the CENVAT Credit Rules, 2004 or under Notification No. 05/2006-C.E. (N.T.) dated 14.03.2006 that there has to be one-to-one correlation between input and output services for claiming refund. It is also submitted by the Learned Consultant for the appellant that the computation of eligible refund is not correct for the reason that the credit taken after the last date of export has not been considered for the subsequent period also. These facts, in our view, are required to be verified once again.

9. The next ground on which the refund has been rejected is that unbilled revenue was not taken into consideration for computing the total turnover of the appellant. It is the case of the appellant that the unbilled revenue as on 31.12.2010 ought to have been recognised as revenue for computing the eligible refund. We are of the view that the matter is required to be re-looked by the Adjudicating Authority.

10. It is also argued by the Learned Consultant for appellant that the formula has been wrongly applied by the authorities below for computing the quantum of eligible refund since the net credit has been used instead of the total credit taken by the appellant, while applying the

formula for the disputed period. The said issue as to whether net credit or total credit has to be taken into consideration while applying the formula for computing refund is settled by various decisions as in the case of *M/s. Global Markets Centre Pvt. Ltd. (supra)* and *M/s. Morgan Stanley Investment Management Pvt. Ltd. (supra)* and this issue has to be re-looked by the Adjudicating Authority.

11. Another ground with regard to computation of eligible refund is that the export turnover has been restricted by the authorities below to the documents proving the realisation of export proceeds. In this regard, we have to say that the refund is eligible only in respect of the Foreign Inward Remittance Certificates (FIRCs) (realization of export proceeds) produced by the appellant. However, taking note of the argument put forward by the appellant with regard to wrong computation of eligible refund, we are of the view that the matter has to be once again verified and considered by the Adjudicating Authority.

12. Refund has also been rejected on the ground that Service Tax Registration has not been mentioned in the invoice and that the appellant has not produced any Chartered Accountant certificate to this effect. In this regard, we are of the opinion that if the appellant is able to furnish sufficient evidence to prove the payment of Service Tax, the amount of Rs.9,280/- rejected on this ground, should be considered.

13. It is seen that amounts of Rs.13,147/- and Rs.52/- have been rejected for the reasons of 'invoices were not produced' and 'excess credit taken' respectively. We are of the view that the appellant is not eligible for refund in the case where invoices have not been produced; so also, in respect of excess credit taken, the refund is not eligible.

14. Refund has been rejected to the tune of Rs.50,730/- on the ground that Service Tax was not charged by the service provider in the invoices. If the appellant has not

paid Service Tax, there is no question of granting any refund. The rejection of refund on this ground, in our view, is required to be upheld.

15.1 A major argument put forward by the Learned Consultant for the appellant is that for the periods covered in Service Tax Appeal Nos. 41133, 41134, 41136 and 41140 of 2015, though the credit availed during the relevant period was denied and the dues had been settled by the appellant by opting for the benefit of the Sabka Vishwas Scheme, 2019, they are eligible for refund. It is stated by him that for the period from April 2010 to March 2011, Show Cause Notice was issued to the appellant proposing to deny the credit to the tune of Rs.1,43,26,854/-. After due process of law, the Original Authority confirmed an amount to the tune of Rs.1,04,56,207/-. The appellant had settled these dues to the tune of Rs.1,04,56,207/- under the Sabka Vishwas Scheme, by making required payment under the Scheme.

15.2 It is argued by the Learned Consultant for the appellant that settlement under the Sabka Vishwas Scheme cannot be considered as an admission of the allegations in the Show Cause Notice and that the entire amount to the tune of Rs.1,43,26,854/- (i.e., including Rs.1,04,56,207/-) should be allowed as refund. This argument is without any substance. We have no quarrel with the proposition that settlement under the Scheme cannot be considered as an admission of guilt or admission of the allegations raised in the Show Cause Notice. However, such settlement puts a finality to the dispute. The demand confirmed was Rs.1,04,56,207/-. This demand (dues) was settled under the Sabka Vishwas Scheme. The appellant, therefore, cannot claim refund of such amount. However, the balance amount of Rs.38,70,647/- not being part of the dues that were settled, has to be considered for refund by the authorities below.

16. We do note that the periods of dispute for the various grounds for rejection of the refund claim overlap with the period for which the dispute is settled by the appellant under the Sabka Vishwas Scheme, 2019.

17. From the foregoing, we hold that the matter requires to be remanded to the Original Authority for re-considering/re-processing the refund claims. In such remand proceedings, the Original Authority shall look into the discussions made hereinabove in this order with regard to the various grounds of rejection. The refund has to be processed taking into account the view expressed by the Tribunal in respect of the various grounds of rejection as well as the issue with regard to the settlement made under the Sabka Vishwas Scheme.

18. In the result, the impugned orders are set aside. The matter is remanded to the Original Authority for re-processing the refund in terms of the directions given in this order.

19. The appeals are allowed by way of remand.

(Order pronounced in the open court on **24.08.2022**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)