CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal Nos.41464-41471 of 2015

(Arising out of Order-in-Appeal Nos.77,78,79,80,81,82,83 & 84/2015 (STA-I) dated 30.03.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, No.2054, I Block, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040)

M/s.BNY Mellon Technology Pvt. Ltd. **.... Appellant**
10th Floor, TIDEL Park,
4, Canal Bank Road,
Taramani,
Chennai 600 113.

VERSUS

The Commissioner of CGST & Central Excise **... Respondent**
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Shri Ramani, N.V.S., Consultant, for the Appellant
Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos.40398-40405/2024

DATE OF HEARING : 08.04.2024
DATE OF DECISION : 08.04.2024

Per: Ms. Sulekha Beevi. C.S

As these appeals arise out of common impugned order, they were heard together and are disposed of by this common order.

<u>Appeal Nos. ST/41464/2015 to ST/41469/2015</u>

2. Brief facts are that the appellant is 100% EOU and registered with service tax department for providing Online Information and Data services, Business Support Service, Business Auxiliary Service, Maintenance or Repair Service, Information Technology Software service, Commercial training or coaching and manpower Recruitment Agency service etc. They filed refund claims under Rule 5 of the Cenvat Credit Rules, 2004 for refund of the unutilized cenvat credit pertaining to different periods. After due process of law, the original authority sanctioned part of the refund claim and rejected some amounts of which details are given in table below :

S.No.	Appeal No.	OIO No./Date	Period Involved	Refund claimed Rs.	Refund rejected Rs.	Remarks
1.	15/2012 (MST) dt. 06.01.12	116/2011 (R) dt. 10.10.11	May'08 to Aug'08	99,48,868	41,45,062	Prior to 1.4.2011
2.	142/2012 (MST) dt. 08.03.12	143/2011 (R) dt. 30.11.11	April'10 to June'10	77,01,594	17,53,125	
3.	442/2012 (MST) dt. 20.07.12	41/2012 (R) dt. 18.04.12	Sep'08 to Dec'08	1,22,99,940	52,39,623	
4.	511/2012 (MST) dt. 22.08.12	62/2012 (R) dt. 22.06.12	Jan'09 to March'09	79,67,028	15,71,543	
5.	20/2013 (MST) dt. 17.01.13	75/2012 (R) dt.30.10.12	Jan'11 to Mar'11	1,02,51,527	19,04,548	
6.	281/2013 (MST) dt.13.09.13	10/2013 (R) dt. 04.07.13	Jul'09 to Sep'09	58,56,559	12,86,722	

7.	303/2013 (MST) 14.10.13	14/2013 (R) dt.31.07.13	Apr'11 to Jun'11	74,14,104	16,93,564	Post-1.4.2011
8.	38/2014 (MST) dt. 20.03.14	01/2014 (R) dt. 02.01.14	Jul'11 to Sep'11	1,14,50,793	4,40,448	Post-1.4.2011

3. On appeal, the Commissioner (Appeals) upheld the rejection of refund. Aggrieved by the rejection of refund claims, the appellant is now before the Tribunal.

4. The Ld. Consultant Shri N.V.S. Ramani appeared and argued for the appellant. It is submitted that in Appeals ST/41464/2015 to ST/41469/2015 the period involved is prior to 1.4.2011. The original authority has denied the refund alleging that the appellant has not established the nexus of input services with the output services provided by them. The definition of "input services" during the relevant period prior to 1.4.2011 was wide enough to include the words "*activities relating to business*". The credit availed on input services by the appellant therefore ought to have been allowed as refund.

5. The second ground for rejection of refund is that there was mismatch of the figures of the refund claims and the cenvat credit as disclosed in the relevant ST-3 returns. The adjudicating authority did not consider their plea that the difference in figures was due to clerical error while computing the total credit in ST-3 returns which was subsequently rectified. After computing the amount of refund involved, they have shown the correct details in the revised claim. The original authority restricted the refund amount based on the ST-3 returns. The adjudicating authority ought to have considered the

amounts mentioned in the revised claim and should not have rejected this higher amount as claimed by them. Some amount of refund has been rejected for the reason that premises was unregistered. It is submitted that this issue stands covered by various decisions.

6. Fourth ground of appeal is that the adjudicating authority though sanctioned part of the refund has not allowed interest for the delayed refund. There was much delay in sanctioning the refund and therefore the appellant ought to have given interest on the delayed refund as per the Hon'ble Supreme Court judgment in the case of *Ranbaxy Laboratories Ltd. Vs Union of India* - 2012 (27) S.T.R 193 (SC). The Ld. Consultant prayed that the appeals may be allowed.

7. Ld. A.R Shri M. Selvakumar appeared and argued for the Department. It is submitted that the Commissioner (Appeals) has discussed in para 7.2 of the impugned order that the appellants have not been able to establish that the input services were used directly for providing output service. Hence the refund has been rejected for the reason of absence of nexus with the output service provided by appellant. This finding being legal does not require interference. Further, the appellant has claimed higher amounts in the refund claim than the amount disclosed in their ST-3 returns. Appellant ought to have disclosed correct amount of credit availed by them in the ST-3 returns. The amount mentioned in the refund claim did not match with the amount of credit disclosed in the ST-3 returns and therefore the adjudicating authority has sanctioned part of the refund claim as per the ST-3 returns only. The appellant cannot claim higher amount than that declared in the ST-3 return.

8. In regard to the interest on delayed refund, the Ld.A.R submitted that the appellant has been issued deficiency memos directing them to produce further documents. Appellant has taken much time to furnish these documents and therefore there is no delay in sanctioning the refund. It is submitted that the claim for interest on delayed refund is without any basis. Ld. A.R prayed that the appeals may be dismissed.

9. Heard both sides.

10. The issue that arises for consideration is whether the appellant is eligible for refund and also whether they are eligible for the interest on delayed refund.

11. In Appeals ST/41464/2015 to ST/41469/2015, the period involved is prior to 1.4.2011. The adjudicating authority has allowed the refund in respect of certain input services and rejected the refund claim in respect of some services. The ground for rejection of refund in respect of certain services has been summarily discussed by the Commissioner (Appeals) in para 6 to 9 of the impugned order. The definition of 'input service' prior to 1.4.2011 had wide ambit as it included the words "*activities relating to business*". Further, in case of output services provider as per first limb of definition of 'input services as given in Rule 2(ℓ) of CCR 2004, it is merely sufficient to establish that input services were used for providing output services. The first limb of the definition does not use the words 'directly' and merely says 'inputs used for providing output services'. The finding of the Commissioner (Appeals) that the appellant has not established that

input services were directly used for providing output service is adding words into the definition of "input service" and therefore not acceptable. The appellant therefore is eligible for the refund of credit of input service prior to 1.4.2011. The finding of the adjudicating authority that the refund is not eligible for the reason that the input service did not have nexus with the output service is set aside.

12. The second issue is that there is a difference in the amount of the cenvat credit disclosed in the ST-3 returns and the refund of credit filed by the appellant for the relevant period. It is submitted by the Ld. Consultant that the refund claim filed by them is higher than the amount of credit disclosed in the ST-3 returns, and that there is difference of more than Rs.5 lakhs. On perusal of records, it is not forthcoming as to which of the services this difference in amount is spread over. For this reason, we are of the opinion that the matter requires to be remanded. In case the appellant is able to furnish that they have availed these input services of higher amount, the original authority is directed to consider as per law and as per findings rendered in this order.

13. The original authority has rejected some amount of refund on the ground that the premises is unregistered. The Hon'ble Karnataka High Court in the case of *mPortal India Wireless Solutions P. Ltd. Vs CST Bangalore* – 2012 (27) S.T.R. 134 (Kar.) has held that credit cannot be denied for the reason that the premises is not registered. Following the same, we are of the view that rejection of refund claim on this grounds is not justified.

14. However as we see that there is difference in amounts as reflected in the ST-3 returns as well as refund claim as discussed above, we are of the view that the entire matter requires to be remanded to the adjudicating authority to reconsider afresh, the claims which have been rejected.

15. The appellant has argued that they are eligible for interest on delayed refund. The date of refund claims and order of adjudicating authority are as under :

Appeal No.	Date of Refund Claim	Date of OIO
ST/41464/2015	09.02.2009	10.10.2011
ST/41465/2015	16.03.2009	30.11.2011
ST/41466/2015	17.12.2009	18.04.2012
ST/41467/2015	13.07.2010	22.06.2012
ST/41468/2015	31.03.2011	30.10.2012
ST/41469/2015	30.12.2011	04.07.2013

16. It is brought out that the appellant was issued several deficiency memos as they had not produced the necessary documents at the time of availing refund claim. So also, it is seen that there is difference in the amount of the refund claim and the amount of credit disclosed in the ST-3 returns. All these require much correlation and consideration by the adjudicating authority. For these reasons, we do not find any ground to grant interest as there is not much delay in sanctioning refund which is seen from the table above. The issue of interest on

delayed refund is held against the appellant and in favour of the Department,

17. From the discussions, the matter is remanded to the adjudicating authority for reconsideration in above terms within a period of three months from the date of receiving this order. The impugned orders are set aside. The appeals are allowed by way of remand to the adjudicating authority in above terms.

Appeal Nos. ST/41470/2015 & ST/41471/2015

18. The period involved in these appeals is April 2011 to September 2011. Ld. Consultant for appellant submitted that the credit availed are on services in the nature of Renting of Immovable Property Services (Parking Service), Air Travel Agency Service, Photography Service, Management Consultancy Service, Commercial or Coaching Service, Event Management Service, Supply of Tangible Goods service, Service tax on out of pocket expenses, Security agency services, Pandhal & Shamina Services. It is submitted that these services were availed for providing output services and therefore the refund could not have been rejected.

19. Ld. A.R Sri M. Selvakumar submitted that the services in the nature of out of pocket expenses, photography services do not have nexus with the output service provided by appellant and therefore cannot be allowed.

20. After considering the submissions made by both sides, we find that the services described in the table furnished by appellant do not

fall under the exclusion clause of definition of input services (post-1.4.2011). The department therefore cannot reject the refund alleging that the services do not have nexus with output services.

21. For this period post-1.4.2011 also, there is difference in the amount of refund claim as well as the amount of credit disclosed in the ST-3 returns. For these reasons, these appeals also require to be remanded to the adjudicating authority for reconsidering the issue of refund. In such consideration of the matter, the original authority is directed to verify the invoices as well as the services of the air travel agency service, photography services, as to whether these are used for personal consumption. If they are used for the activity of the company the appellant would be eligible for credit. We hold that the appellant is not eligible for refund of credit of out of pocket expenses. These two appeals also stand allowed by way of remand to the adjudicating authority with the above observations.

22. In the result, the impugned orders are set aside and all the seven appeals are allowed by way of remand to the adjudicating authority in above terms.

(Order dictated and pronounced in the open court)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

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