CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 41599 and 41600 of 2016

(Arising out of Order-in-Appeal No. 14/2016 dated 30.05.2016 passed by Commissioner of Service Tax & Central Excise (Appeals-I), No. 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar (W) Extn., Chennai – 600 101)

M/s. Mobis India Limited **...Appellant**
Plot No. G-1, SIPCOT Industrial Park,
Irrungatukotai,
Kancheepuram – 602 105.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai LTU Commissionerate,
No. 1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai – 600 101.

APPEARANCE:

For the Appellant : Mr. Senguttuvan, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40827 & 40828 / 2025

DATE OF HEARING : 04.04.2025
DATE OF DECISION : 14.08.2025

Per Mr. VASA SESHAGIRI RAO

M/s. Mobis India Ltd., Sriperumbudur, Kancheepuram (the appellant herein) have filed present appeals Nos. ST/41599 & 41600/2016 assailing the Order-in-Appeal No. 14/2016 dated 30.05.2016 passed by the Commissioner of Central Excise and Service Tax (Appeals), LTU, Chennai for allowing the appeals in favour of the Department against sanctioning two rebate claims by the Original Authority.

2. The following table gives the details of rebate claims filed, the orders of the Original Authority, the impugned orders and the amount involved, period of dispute, *etc*.: -

S.No.	Appeal No.	Impugned Order	Order-in-Original	Period of dispute	Rebate claimed (in Rs.)	Rebate sanctioned (in Rs.)	Amount Rejected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	ST/41599/2016	O-I-A No. 14 dated 30.05.2016	O-I-O No. LTUC /407& 408/2013 DC (ST-Rebate) dated 31.10.2013	July 2012 to Dec 2012and Apr 2013 to June 2013	Rs.1,03,98,910/-	Rs.1,03,98,910/-	NIL
2	ST/41600/2016	O-I-A No. 14 dated 30.05.2016	O-I-O No. LTUC /407& 408/2013 DC (ST-Rebate) dated 31.10.2013	Jan 2013 to March 2013	Rs.35,16,388/-	Rs.35,16,388/-	NIL

3.1 Briefly stated, the facts of the case are that, the Appellant, in terms of Notification No. 39/2012 ST dated 20.06.2012 filed two rebate claims on 20.05.2013 and 24.07.2013 for rebate / refund of service tax paid on various input services utilized by them in export of services. The claims were verified and found that: -

i. The Appellant converted their existing service tax Registration into a centralized one and had included R & D centre, Hyderabad with effect from 08.03.2013 and that the claims included input service invoices received during the period prior to inclusion of R & D premises under the centralized Registration;

ii. The R & D centre at Hyderabad was functioning as M/s Mobis India Research & Development (P) Ltd., till its merger with the Appellant and the input Service invoices included a few in the name of R & D centre; and

iii. The Appellant did not file declaration specifying the services intended to be exported with description, quantity, value, rate of duty and amount of duty payable on the inputs and description, value and amount of service tax and cess payable on the input services actually required to be used in providing the service to be exported, with the Jurisdictional AC/DC as prescribed under the said Notification No. 39/2012-ST dated 20.06.2012.

Consequently, two Show Cause Notices came to be issued to the Appellant as to why the rebate claims should not be rejected on the above grounds i.e., for non-filing declaration and its verification, CENVAT credit pertaining to their R & D unit at Hyderabad prior to the amalgamation and input Services received prior to Registration.

3.2 After the due process of law, the Adjudicating Authority *vide* Order-in-Original Nos. LTUC/407&408/2013 DC (ST-Rebate) dated 31.10.2013 have sanctioned the rebate claims.

3.3 Being aggrieved by the order, the Department has filed an Appeal before the Commissioner of Central Excise (Appeals), LTU, Chennai who *vide* Order-in-Appeal No. 14/2016 dated 30.05.2016 allowed the Appeal holding as follows: -

i. Sanctioning of rebate claims without filing of declarations by the Assessee as mandated by Notification No. 39/2012 ST dated 20.06.2012 is set aside as Department's appeal carry merit.

ii. Relevant date of amalgamation as per records of the Department is 08 03 2013 is not accepted and the date adopted by the Adjudicating Authority as 01.04.2012 which is the appointed date is upheld.

iii. Rebate of service tax paid on input services used prior to inclusion in the Centralized registration has been held as eligible and the order of Adjudicating Authority is sustained.

3.4 As the rebate claims sanctioned by the Adjudicating Authority are set aside, the Appellant came before this forum.

4. The Ld. Advocate Shri K. Senguttuvan representing the appellant has argued for the Appellant and his contentions are summarized as follows: -

i. Rejection of rebate on account of mere procedural infraction (Non filing of declaration) is contrary to the settled proposition of "Procedural Infraction cannot deny substantive justice".

ii. 'Filing of Declaration' is classified under the heading 'Procedure' under Notification No. 39/2012 and therefore non filing of such declaration does not amount to non-compliance of substantive condition.

iii. The Conditions and Limitations prescribed in the Para-2 of Notification No. 39/2012 are fulfilled and therefore denial of rebate on grounds alien to conditions stated in Para-2 is illegal and unsustainable.

iv. The decisions cited by the Ld. Commissioner (Appeals) are not relevant to the instant case and are substantially distinguishable from the Appellant's case.

v. *Prima Facie*, the Ld. Commissioner (Appeals) has failed to answer while the declaration itself is under the heading of "Procedure" and while plethora of cases from the Apex court holding that substantial benefit cannot be denied for the procedural infraction, why the submissions of the Appellants were squarely rejected.

vi. The appellant rely on the following case laws to substantiate that in case of beneficiary schemes for exporters, the benefit cannot be denied on procedural lapses.

vii. In the case of *Tricon Enterprises Pvt. Ltd. [2015 (320) ELT 667],* the Government of India held the export rebate cannot be denied merely on non-submission of export documents like invoices, so long as there is no dispute on duty paid nature of goods exported. The Government of India had given a finding that technical interpretation of procedures should be avoided in export-oriented schemes if substantive fact of export is evidenced. The Government of India relied upon the Hon'ble Bombay High Court decision in *[2013 (293) ELT 641] UM Cables Ltd vs. Union of India*. In this judgment the Court have categorically held that nonproduction of documents ipso facto cannot invalidate the rebate claim of the exporter if the exporter could demonstrate by cogent evidence that goods were exported.

viii. The Hon'ble Supreme Court of India in the case of *Suksha International vs. Government of India [1989 (39) ELT 503]* held that interpretation unduly restricting the scope of beneficial provision is to be avoided so that it does not take away on one hand what the policy gives with the other hand. In other words Rule 5 of Cenvat Credit Rules is a beneficial rule meant for exporters. What the rule gives with one hand cannot be taken away by other hand restricting the scope of the rule.

ix. Lastly in the case of *Union of India vs. A.V. Narasimhalu [1983 (13) ELT 1534 (SC)]* it has been observed that the administrative authority should instead of relying on the technicalities should act in manner consistent with a broader concept of justice.

x. In all the decisions cited above it has been clearly held that procedural infractions of notifications, circulars are to be condoned if exports have really taken place and law is settled that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement.

xi. The core aspect or fundamental requirement for rebate is manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.

xii. The issue is settled in the Appellant's own case by CESTAT Chennai Bench *vide* Final Order Nos. 41026-41030/2024 dated 02.08.2024, wherein the identical matter was dealt with and appeals were allowed.

5. *Per Contra*, the Ld. Authorized Representative Ms. Anandalakshmi Ganeshram, representing the Department affirmed the findings in the impugned order and submitted that the rebate claim is sanctionable strictly in terms of provisions of the Notification No. 39/2012-ST dated 20.06.2012 which was issued under Rule 6A of Service Tax Rules, 1994. It is mandatory on the part of the rebate sanctioning authority to verify the correctness of the declaration filed prior to export of service by calling for relevant documents and only after such verification where he is satisfied that there is no likelihood of evasion of duty, he may accept the declaration. Whereas, in these cases, that kind of verification has not been conducted. The requirement of filing the declaration and verification as envisaged in the Notification is a substantive condition and cannot be treated as a mere procedural requirement that can be done away with as these are meant to prevent the misuse of the facility.

Non-observance of the procedure prescribed in the Notification would obviously disentitle the appellant from sanction of rebate and therefore the rejection of rebate claims on these grounds would sustain and prayed for rejection of the appeals.

Finally, she submitted that the Commissioner (Appeals) has rightly allowed the Appeal filed by the Department in rejecting the Refund claims filed, and that the impugned order requires no interference.

6. We have carefully considered the arguments advanced on behalf of Appellant and the Respondent. We have also perused the relevant Grounds of Appeal urged before us, facts on record and the relevant case Laws placed before us.

7. The issue for determination in this appeal is in a short compass: -

> Whether the rebate claims filed are sanctionable and whether there is substantial compliance in the absence of filing of declarations by the Appellant as mandated in terms of Notification No. 39/2012-ST dated 20.06.2012 for exporting Consulting Engineer Services.

8.1 The appellant has utilized various input services for export of Consulting Engineering Service under Notification No. 39/2012-ST dated 20.06.2012. A perusal of the procedure specified in the above Notification reveals the following conditions to be satisfied: -

i. The service should have been exported in terms of Rule 6A of the Service Tax Rules, 1994.
ii. The duty on the inputs and service tax on the input services should have been paid by the claimant.
iii. The total amount of rebate of duty, service tax and cess admissible should not be less than one thousand rupees and,
iv. CENVAT credit should not have been availed on the inputs and input services on which rebate is claimed.

9. A perusal of the rebate sanctioning order of the Original Authority indicates that the appellant has furnished copies of invoices and has also furnished copies of Certificate of Foreign Inward Remittance. The appellant has filed the invoices issued by the service providers as evidence of payment of service tax and cess on the services utilised by them towards providing the above service exported and they have also declared that they have not availed CENVAT credit of the service tax claimed as rebate and it is specifically

recorded by the rebate sanctioning authority that the appellant has fulfilled the conditions imposed by the Notification. It was also recorded in the OIO that that the appellant has not filed the declaration before export of service intimating the service intended to be exported with the description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported and the description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported. However, the rebate claims were accompanied by invoices of input services issued under Service Tax Rules, 1994 and that it is condonable placing reliance upon a case Law decided by the Supreme Court. Whereas the Commissioner (Appeals) in Par 5.9 of his impugned order has held that Non-filing of the requisite declaration as mandated in the Notification is a substantive violation and hence cannot be construed and to be condoned as a mere procedural infraction for sanctioning of Rebate. We find that Documentary evidence of receipt of payment against service exported along with input invoices evidencing payment of service tax have been submitted. The Lower Appellate Authority has however found the appellant not being eligible for the rebate holding a view that the rebate sanctioning authority has to verify the correctness of the declaration filed prior to export of service and by foregoing such verification by the Original Authority before processing the rebate claim is held to be not in accordance with the law.

10. The procedure prescribed as extracted below, of the Notification No. 39/2012-ST dated 20.06.2012 and its compliance by the appellant is the core of the dispute in these appeals.

> *"3. Procedure.*
> *3.1 Filing of Declaration.- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-*
> *(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;*
> *(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.*
> *3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the*

case may be, service tax and cess, he may accept the declaration."

11. The Ld. Advocate has mainly contended that Rebate is a substantial benefit towards export of service and exporters contribute to the nation in many ways which includes generation of the Foreign Exchange and substantial benefit cannot be denied citing procedural lapses. He has argued that the 'procedure' is not mandatory and in all these rebate claims, they are eligible for the sanction of rebate. We have considered the appellant's reliance on the ratio of the decision in the case of *Wipro Ltd. v. Union of India [2013 (29) S.T.R. 545 (Del.)]* wherein it was held that the condition imposed by Notification must be capable of being complied with and if it is impossible of compliance, then there is no purpose behind it, which reads as under: -

> *"12. The services rendered by the appellant in its call centre or BPO centre are considered exported, as the services are rendered to persons outside the country. Thus every phone call is an export of taxable service. But the bills and invoices in respect of the input-services described in the preceding paragraph would in the normal course be received by the appellant only at regular intervals, say once in a month or fifteen days etc., depending upon the arrangement which it has with those service-providers. Now we have to appreciate that in a call centre where there are hundreds of employees attending to calls from abroad at any given point of time, it is next to impossible to anticipate the date of export and with precision*

demarcate the point of time prior to the export and also determine the point of time when the export may be said to have been completed. What can be the determining factor? Is each call to be considered as an independent export of taxable services? Is the total number of calls attended to on any particular day to be considered as the export of taxable services? Or is the appellant to reckon the calls on a monthly basis? It needs also to be remembered that there is no way of anticipating any call or the number of calls the call centre would be required to attend on a single day, so that the appellant can comply with the requirement of filing a declaration "prior" to the date of export of taxable service. The very bedrock of the business is the attending of calls and given that they are received on a continuous basis, we find it difficult to conceive of any possibility as to how the appellant could not only determine the date of export but also anticipate the call so that the declaration could be filed "prior" to the date of export. In addition to this practically impossible situation, the appellant is also required by the procedure laid out in paragraph 3 of the notification to describe value and specify the amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported. With the possible exception of the description, we are unable to appreciate how the service-exporter will be in a position to value and specify the amount of service tax/cess payable on the input services actually required to be used in providing the exported service. An estimate is ruled out by the use of the word "actually required"; and unless what was actually required is known, it is impossible to value and specify the amount of service tax or cess payable on the input services. That will be known only when the bill or invoice for the input-services is received by the appellant. The bill or invoice is received after the calls are attended to. Thus,

> *it seems to us that in the very nature of things, and considering the peculiar features of the appellant's business, it is difficult to comply with the requirement "prior" to the date of the export."*

12. Also, we refer to the decision of the Larger Bench of the Tribunal New Delhi in the case of *Commissioner of Service Tax v. Convergys India Private Ltd. [2009 (16) S.T.R. 198 (Tri.-Del)]* wherein it was held as follows: -

> *"8.3 The document based verification can be at a latter point of time. In this case, we are concerned only about rebate of credit on input services. The non-observance of a procedural condition in this case is of a technical nature and cannot be used to deny the substantive concession. Further, in respect of export, a liberal view requires to be taken. The non-fulfilment of the procedure cannot lead to denial of the benefit under the beneficial legislation providing for export benefits."*

13. The Appellant has relied upon the decision of Tribunal Chennai in their own case *viz., Mobis India Ltd. Versus Commissioner of GST and Central Excise, Chennai [(2024) 24 Centax 311 (Tri.-Mad)] wherein in Para 13*, it was held as follows: -

> *"13. In appreciation of the above decisions and also having regard to all the facts in these appeals, we are of the considered view that the Lower Appellate Authority's finding is erroneous in holding the view that non-verification by the rebate sanctioning authority of the*

declaration filed prior to the export of service would disentitle the appellant to claim rebate of the service taxes paid which were utilized in the export of service declared. There is substantial and full compliance with all the conditions of the Notification and if the Departmental authorities have not conducted any verification on the declaration filed that cannot be used against the appellant. The Government policy has been all along to promote exports. In all these cases, the appellant have not only exported the declared service i.e, Consulting Engineer Service and also clearly specified the nature of input services which are going to be used for such export of services. Even, in respect of ST/42325-42326/2016, non-sanction of rebate claim for the reason that the appellant failed to initially declare the correct amounts in respect of certain input services and that some invoices were dated prior to the date of filing declaration and certain services were not classified as a Consulting Engineer Service cannot be supported. Any valid objection can be raised only when input services have not been utilised in export of service declared. As such, we hold that the impugned orders passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Chennai dated 30.05.2016 dated 30.09.2016 cannot be sustained and ordered to be set aside."

14. In appreciation of the above decisions and also having regard to all the facts in these appeals, we are of the considered view that the Lower Appellate Authority's finding is erroneous in holding the view that non-verification by the rebate sanctioning authority of the declaration required to be filed prior to the export of service would disentitle the

appellant to claim rebate of the service taxes paid on input services which were utilized in the export of service declared. The Government's policy has been all along to promote exports and this issue has to be viewed in the larger interest of trade facilitation which is the avowed policy of the Government. And this issue should be looked at beyond the procedural infractions. In all these cases, there is no dispute as to whether the appellant have exported the Consulting Engineer Service. We find that any valid objection can be raised only when input services have not been utilised in export of service declared and that exports have not taken place. The FIRCs have been produced evidencing proof of export of the Services. As such, we hold that the impugned order 14/2016 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Chennai dated 30.05.2016 cannot be sustained and ordered to be set aside and restore the order passed by the Refund Sanctioning Authority in sanctioning the Rebate claims which is in order.

15. In view of the aforesaid discussions and appreciating the ratio of decisions in the cases of *Wipro Ltd. v. Union of India [2013 (29) S.T.R. 545 (Del.)] and Commissioner of Service Tax vs. Convergys India Private Ltd. [2009 (16) S.T.R. 198 (Tri. – Del.)], and MOBIS INDIA*

LTD. Versus COMMISSIONER OF GST AND CENTRAL EXCISE, CHENNAI [2024 24 Centax 311 (Tri.-Mad)], we hold that the appeals filed by the appellant are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 14.08.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK