

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 51047/2021

[Arising out of Order-in-Appeal No. 19/ST/DLH/2020 dated 04.03.2020
passed by the Commissioner (Appeals I), Central GST, Delhi]

**Ms FORCEPOINT SOFTWARE
CONSULTING INDIA PVT LTD.**

The Great Eastern Centre, Navneet Developers,
Ground Floor 70, Nehru Place,
New Delhi 110019.

APPELLANT

Vs.

**COMMISSIONER, CGST, CENTRAL
EXCISE & CUSTOMS - DELHI EAST**

CR Building, I P Estate,
New Delhi-110002.

RESPONDENT

WITH

SERVICE TAX APPEAL NO. 50067/2022

[Arising out of Order-in-Appeal No. 19/ST/DLH/2020 dated 04.03.2020
passed by the Commissioner (Appeals I), Central GST, Delhi]

**COMMISSIONER, CGST,
DELHI EAST**

CR Building, I P Estate,
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APPELLANT

Vs.

**Ms FORCEPOINT SOFTWARE
CONSULTING INDIA PVT LTD**

The Great Eastern Centre, Navneet Developers,
Ground Floor 70, Nehru Place,
New Delhi 110019.

RESPONDENT

APPEARANCE:

Shri Rakesh Nanda, Chartered Accountant for the Appellant-Assessee
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: February 14, 2022

FINAL ORDER No. 50241-50242 / 2022

PER RACHNA GUPTA

Present order disposes off two cross appeals arising out of same Order-in-Appeal bearing No. 19/2020 dated 4.03.2020. The facts in brief relevant for the purpose are as follows:

That the appellant M/s Forcepoint Software Consulting India Pvt Ltd. (which was earlier known as M/s. Websense Software Service Pvt Ltd. has been engaged in providing Business Auxiliary Service, Business Support service and information technology software service as 100% export unit. The appellant filed the Service Tax refund claim of Rs. 46,58,994/- for the period April 2016 to June 2016 on 3.04.2017 seeking the refund of unutilised Cenvat Credit lying in their account on the ground that they have used various input services on which the Service tax has been paid for providing major output service of business support which are exported out of India. However, certain deficiency were noticed in the said refund claim and a Memo vide letter No. 672 dated 30.1.2019 was served upon the appellant. Pursuant thereto that the Original Adjudicating Authority vide Order-in-Original No. 69/2019 dated 13.08.2019 has observed that the service provider and the service receiver are not an establishment of a distinct person in terms of explanation (2b) of clause 44 of section 65B of the Finance Act, 1944. It was also observed that the invoices

have been issued in the wrong name and wrong addresses. The authorities also observed that the invoices to have no co-relation with the output service, accordingly refund claim for an amount of Rs.27,77,864/- and Rs.3,77,541/- respectively was rejected. It was only an amount of Rs.15,03,589/- which was sanctioned. Being aggrieved by the said rejection that the appeal was preferred before the Commissioner (Appeals) who vide the order under challenge has held the appellant eligible for the refund of claim of Rs. 27,77,864/- holding that the merely for the reason that premises were not registered, benefit cannot be denied, but subject to verification of details of the appellant on the invoices. However, the refund claim of Rs. 3,77,541/- has still been rejected. Still being aggrieved the appellant has preferred this appeal. Simultaneously the Department has also preferred the appeal being aggrieved of the sanction of refund of Rs.27,77,864/-.

2. I have heard Shri Rakesh Nanda, learned Chartered Accountant for the Appellant-Assessee and Shri Mahesh Bhardwaj, learned Authorised Representative for the Department.

3. After hearing the rival contentions and perusing the record, the findings are as follows:

To adjudicate both these appeals following appears to be the two issues in controversy:

1. Whether Commissioner (Appeals) has rightly sanctioned the refund of Rs.27,77,864/- holding that the unregistered premises cannot be the ground to deny the benefit of refund.
2. Whether the refund claim of Rs. 3,77,541/- has wrongly been rejected on the ground that there was no co-relation between the input service and the output service.

The issue wise findings are as follows:

Issue No. 1

4. Learned Counsel for the appellant has mentioned that the Commissioner (Appeals) has rightly sanctioned the refund of Rs.27,77,864/- after relying upon the appropriate and relevant case laws while confirming the opinion that the unregistered premises cannot be the reason for denial of substantial benefit. The decision of **Deutsche CIB Centre P Ltd. vs. CST Mumbai** reported as **[2019 (8) TMI 261 CESTAT Mumbai]** has been relied upon by the learned Counsel for the appellant. It has also been mentioned that otherwise also present is not the case of wrong address but is the case of typographical error to have been occurred while mentioning the name of registered premises of the appellants on the invoices. It is emphasised that in case of name "Forcepoint Consulting India Pvt. Ltd. it is just the word "software" is missing. Similarly in the name of Websense Software Service, the word 'India Pvt Ltd.' has been skipped. Similarly in the case of name of Websense International, the word International wrongly has been mentioned instead of software service. Accordingly the present case is impressed upon to be on the same footings where specific benefit should not have been denied. Decision in the case of **DBOI Global Services Pvt Ltd. vs CST, Mumbai** reported as **[2016 (11) TMI 521- CESTAT Mumbai]** has also been relied upon.

5. Learned Counsel further has mentioned that the notification No. 27/2012 dated 18.6.2012 as has been the main basis taken by the Original Adjudicating Authority is also not applicable to the given facts and circumstances. It is mentioned that the decision in the case **Amnet Systems Pvt. Ltd.** reported as **[2017 (7) TMI 28 Madras High Court]** as was relied upon, no more stands as

good law it being set aside by the decision of Hon'ble High Court of Madras in the case titled as **CST Chennai vs. M/s. Scioinspire Consulting Services India Pvt Ltd.** reported in **[2017 4 TMI 943 Madras High Court]** but the refund for Rs.3,77,541/- has wrongly been rejected.

6. To rebut these submissions learned Departmental Representative has mentioned that the findings in para 7, 8, 9 of the order under challenge are absolutely contrary to the settled legal position of settled law till date. The basic requirement of seeking the refund of unutilised CENVAT Credit is that the premises of the claimant should be the registered one as is mentioned in Notification No. 27/2012 dated 18.6.2012. It is submitted that to avail the benefit of Notification all its conditions strictly have to be complied with. Since admittedly the invoices mentions incorrect /incomplete address, same cannot be considered as registered premises of the appellant. The refund of Rs.27,77,864/- is wrongly been sanctioned and the refund for Rs.3,77,541/- has rightly been rejected.

7. After hearing the rival contentions on this issue, my considered opinion is as follows:

The appellant herein had filed the refund claim of unutilised CENVAT Credit on export of service under Rule 5 of CENVAT Credit Rules. The refund claim admittedly was filed within a period of limitation as prescribed for. Apparently and admittedly the registered premises of appellants otherwise mentioned in the invoices are

1. Forcepoint Software Consulting India Pvt Ltd.
Olympia Platina 33-B, South Phase, 6th Floor, Guindy,
Chennai;

2. Forcepoint Consulting India Pvt Ltd.
Level-2, Kalpataru, Santacruz-E, Mumbai.
3. Forcepoint Software Consulting India Pvt. Ltd.
The Great Eastern Centre
70, Nehru place, New Delhi.
4. Websense Software Services
8th floor, Phase II, TVH
Beliciaa Tower, Block No. 94,
MRC Nagar, R A Puram
Chennai 600028, Tamilnadu.
5. Websense International
TVH Beliciaa Towers, Phase II,
8th floor, Block No. 94,
MRC Nagar, Chennai, Palem.
6. Websense Software Services India Pvt. Ltd.
33-B, South Phase, 67th Floor, Olympia Platina
Guindy, Chennai.

8. The perusal of the above fact shows that the invoices based whereupon the refund was claimed for an amount of Rs.27,77,864/- mentioned the same address of the premises of the appellant as are the addresses for their registered premises as mentioned in their Certificate of Registration. It is only that there has been the following respective typographical errors:

- (i) The word 'software' is missing in the name of Forcepoint Consulting Pvt. Ltd.
- (ii) Word 'India Pvt Ltd.' is missing in the name of Websense Service
- (iii) Word 'software service' has wrongly been mentioned as 'International'

Thus the error in the present case is held to be a merely typographical error in the name of registered premises. There is no denial that the appellant has centralised registration under the Service Tax with Centralised office at New Delhi. The registered address of the appellant already stands updated in their ST 2 returns. I am of the opinion that the finding of the Commissioner

(Appeals) have a legal basis that merely for the reasons that the premises were not registered, benefit cannot be denied. Present is the case on better footing as all the premises mentioned in various invoices are the registered premises of one and same assessee i.e. Forcepoint Software Consulting India Pvt. Ltd. (formerly known as Websense Software Services India Pvt. Ltd.).

9. Hon'ble High Court of Karnataka Bangalore Bench in the case of **mPortal India Wireless Solutions (P) Ltd. vs CST** reported as **[2011 (9) TMI 450-Bangalore]** has held as follows:

“6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.

7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside.”

Further Hon'ble High Court of Allahabad also in the case of **CST vs. Atrenta India Pvt Ltd.** reported as **[2017 (2) ADJ 590]** has confirmed the similar view. Relevant portion is extracted as under:

12. Learned counsel for appellant has placed before us the rules made for refund of Cenvat credit vide Notification : 5/2006-C.E. (N.T.), dated

14-3-2006. The aforesaid rules have been framed in exercise of powers conferred by Rule 5 of Cenvat Credit Rules, 2004 and in supercession of earlier Notification. It provides that refund of Cenvat Credit shall be allowed in respect of :

(a) Input or input service used in the manufacture of final product which is cleared for export under bond or letter of undertaking :

(b) Input or input service used in providing output service which has been exported without payment of service tax.

13. Rules 2 & 3 state that claim for refund would be submitted not once for any quarter in a calendar year and by manufacturer or provider of output service by submitting an application in Form-A. The said rules are quoted as under :

“(2) The claims for such refund are submitted not more than once for any quarter in a calendar year

Provided that where, -

(a) The average export clearances of final products or the output services in value terms is fifty percent or more of the total clearances of final products or output services, as the case may be, in the preceding quarter; or

(b) The claim is filed by Export Oriented Unit, the claim for such refund may be submitted for each calendar month

(3) The manufacturer or provider of output service, as the case may be, submits an application in Form A annexed to this notification to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction.

(a) the factory from which the final products are exported is situated, along with the Shipping Bill or Bill of Export, duly certified by the officer of customs to the effect that goods have in fact been exported; or

(b) the registered premises of the service provider from which output services are exported is situated, along with a copy of the invoice and a certificate from the bank certifying realization of export proceeds.”

14. Rule 4 provides that refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit allowed under Rule 3 of said rules against goods exported during the quarter or month to which the claim relates.

15. We do not find anything in the aforesaid rules which require registration as a condition or eligibility to claim refund. Even Form-A nowhere suggests that any such condition must be observed.

20. The judgment of *Madras High Court* therefore, was clearly rendered in the facts of that case. Be that as it may, we are inclined to accept the view taken by *Karnataka High Court* considering the fact that in the rules of refund of Cenvat credit, we do not find any such requirement of registration as a condition precedent or eligibility condition for claiming refund.

10. These decisions are sufficient to hold that the issue No. 1 is no more res integra. The findings arrived at on this issue by Commissioner (Appeals) have very much taken into consideration the said settled law legal basis. Hence I do not find any infirmity in the order under challenge where the refund claim of Rs.27,77,864/- has been sanctioned.

Issue No. 2

11. Learned Counsel for the appellant has submitted that based upon Notification no. 27/2012 dated 18.6.2012 that the amount of Rs.3,77,541/- has been rejected on the ground that the some of the invoices have no correlation with the output service used for the export. It is mentioned that these findings have been arrived at on the fact that the appellant neither submitted any relevant documents to substantiate their submission in this regard nor has given any clarification thereof. The said finding have been rightly objected submitting that sufficient clarification and documentations were duly provided at the time of original appeal itself. Perusal whereof reveals clear cut nexus between inputs and as well as output service. It is submitted that the inputs credit of Rs.3,77,541/- is Rs 3,49,510/- pertaining to tradeshows and events and Rs.28,031/- towards group accident policy for employees. The said output services have been provided from the sponsorship as have been availed by the appellant as an input for the purpose. The cost of the said input service of tradeshow and events is mentioned to have been received by the appellant company along with mark up towards the export of service. Similarly the inputs credit of Rs.28,031/- is mentioned to have been taken on group accident policy as was obtained for the employees of the appellant. The said employees are engaged in the production of output service and the accidental policy taken for them being the input service, i.e. has sufficient nexus with the

impugned output service. It is mentioned that the findings have no factual basis. The legal position also do not support the findings of the Adjudicating Authority below to this issue. The rejection of the refund claim to the amount of Rs. 3,77,541/- is accordingly prayed to be set aside by learned Departmental Representative emphasising on the terms of para 6 of order under challenge and is accordingly prayed for appellant's appeal to be allowed and dismissal of appeal filed by the department.

Learned Departmental Representative has impressed upon the correctness of findings in Order in Appeal.

12. After hearing the rival contentions on this point, my considered opinion is as follows:

To test for the eligibility of credit is whether input service as used by the provider of taxable service should not be covered by the exclusion clause of the definition of 'input service' which is as under:

“(I) “input service” means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) specified in sub-clauses (p), (zn), (ztl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

- (B) specified in sub-clauses (o), and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or
- (BA) specified in sub-clauses(d) and (zo) of clause (105) of section 65 of the Finance Act, except when used by -
 - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or
 - (b) a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of an insurance company in respect of a motor vehicle insured or reinsured by such person; or
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee; "

13. Apparently the services related to trade shows and events are not covered under the exclusion clause with respect to insurance service. Otherwise also department has not produced any evidence proving that insurance services were obtained for personal consumption and use of the employers. Hence these cannot be considered as excluded in terms of definition of input services in Rule 2(e) of CENVAT Credit Rules, 2004. Hence the services are definitely the eligible input service of the appellant. Sufficient number of invoices have been provided to the Adjudicating Authority below. The tables as mentioned or Adjudicating Authority below, still the findings found in the order of Commissioner (Appeals) that there was lack of evidence are not sustainable. Though the Authorities have laid emphasis on the Notification No. 27 but the outcome of the said notification when read with Rule 5 of CCR,2004 it is clear that correlation between the inputs as well as output service is not at all required. Even the Department has given the clarification vide their letter dated 16.3.2012 after Union Budget 2012 under the head of "simplified scheme for refund". It reads as follows:-

" 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 turnover.

2. The notification prescribing the detailed manner and safeguards will be issued by the Policy wing shortly. ”

14. This Tribunal in the case of **Microsoft Research Lab India Pvt. Ltd. vs Commissioner of Central Tax, Bangalore North** reported as **[2021 98) TMI 806-CESTAT-BANGALORE]**. Rule 5 read with Notification No. 27 only requirement is that the service provider is providing the output services which is exported without payment of service tax, he shall be entitled to refund of CENVAT Credit. Even Tribunal Mumbai in the case of **DBOI Global Services Pvt. Ltd. vs Commissioner of Service Tax, Mumbai** reported as **[2016 (11) TMI 521-CESTAT Mumbai]** . has confirmed the same opinion which has been upheld by Hon'ble High Court of Mumbai in the appeal filed by department against the said order of the Tribunal. Keeping in view the same, it is hereby held that findings in paragraph 6 of the order under challenge based whereupon the refund of Rs. 3,77,541/- has been rejected are not correct, rather are held to be against the settled legal position on this issued. Insufficiency of evidence as observed by the Commissioner (Appeals) is also held to be wrong in view of the discussions above.

15. As a result of findings upon both these issues, the point of adjudication are decided in favour of the appellant and against the Department. Resulting thereto the appeal as filed by the appellant-assessee stands allowed, but that as filed by Department is hereby rejected.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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