CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Service Tax Appeal No. 20222 of 2014
(Arising out of Order-in-Appeal No. 116/2013 (H-II) ST dt.23.09.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

ADP Pvt Ltd
6-3-1091/C/1, Fortune 9, Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082 **......Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad - II
11-5-423/1/A, Sitaram Prasad Towers,
Red Hills, Hyderabad – 500 004 **......Respondent**

with

Service Tax Appeal No. 21683 of 2014
(Arising out of Order-in-Appeal No. 04/2014 (H-II) S.Tax dt.21.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

ADP Pvt Ltd
6-3-1091/C/1, Fortune 9, Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082 **......Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – II
11-5-423/1/A, Sitaram Prasad Towers,
Red Hills, Hyderabad – 500 004 **......Respondent**

and

Service Tax Appeal No. 21946 of 2014
(Arising out of Order-in-Appeal No. 16/2014 (H-II) S.Tax dt.21.02.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

ADP Pvt Ltd
6-3-1091/C/1, Fortune 9, Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082 **......Appellant**

VERSUS

Commissioner of Central Tax
Hyderabad – II
11-5-423/1/A, Sitaram Prasad Towers,
Red Hills, Hyderabad – 500 004 **......Respondent**

Appearance
Shri Kevin Gogri, Advocate for the Appellant.
Shri Sandeep Kumar Payal, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30369-30371/2024

Date of Hearing: 29.08.2024
Date of Decision: 29.08.2024

[Order per: BENCH]

These Appeals have been filed by the Appellant on the ground that they have filed the refund claim in terms of Rule 5 of Cenvat Credit Rules, 2004 (CCR) since they were not able to utilize their Cenvat credit. The mechanism under this Rule provides for cash refund. In respect of Appeal ST/20222/2014, SCN was issued on the ground that there was no correlation between input services utilized and the output services and invoices did not contain the proper description and classification, because of which the nexus is not getting established. After due process, the Adjudicating Authority rejected the refund claim to the extent of Rs.71,52,797/-. In respect of Appeal ST/21946/2014, the Department issued discrepancy memo calling for certain additional documents. After adjudication, refund of Rs.55,59,165/- was disallowed. In respect of Appeal ST/21683/2014, no SCN/discrepancy memo was issued. After adjudication, refund of Rs.93,10,448/- was disallowed. Being aggrieved by non-granting of refunds, the Appellant is before the Tribunal.

2. Learned Counsel appearing on behalf of the Appellant submits that the only ground on which the refund was denied was on the ground that there was no nexus between the input services and output services and hence the Appellant is not eligible for Cenvat credit. He submits that in case the Department took the view that there is no nexus between the input services and output services and the eligibility of input services is under question, a separate SCN should have been issued in terms of Rule 14 of CCR, 2004, which was not done in this case. He submits that Revenue is precluded from raising this issue when refund claim under Rule 5 is filed by the Appellant. He submits that this issue is no more *res integra*. He cites case law of Qualcomm India Pvt Ltd Vs CC, CE & ST, Hyderabad-IV [2020 (43) GSTL 402 (Tri-Hyd)], which stands affirmed by the Hon'ble High Court of Telangana as reported in [2021-TIOL-2205-HC-TELANGANA-ST]. In view of his submissions, he prays that the Appeals may be allowed.

3. Learned AR reiterates the findings of the lower authorities and submits that since the Appellant was not in a position to establish the nexus between the input services and output services and also could not satisfy the queries put across towards the eligibility of Cenvat credit in respect of such services utilized, the lower authorities have rightly denied the refund claim.

4. Heard both sides and perused the Appeal papers and other documentary evidence placed before us.

5. We find that the Department has denied the refund claim solely on the ground that the Appellants were not eligible for taking Cenvat credit for the input services used by them and in some cases, there was no nexus between the input services and output services. In both the cases, the issue is that of taking of Cenvat credit on ineligible services. It is also an admitted fact that no SCN was issued in terms of Rule 14 to recover Cenvat credit on account of such ineligible services. The refund under Rule 5 is filed for the Cenvat credit already taken on record by the Appellant. Only when the refund claim under Rule 5 was filed while scrutinizing the refund claim, this point was raised and part of the refund claim was rejected solely on this ground.

6. We find that this issue is no more *res integra*. In the case of Qualcomm India Pvt Ltd (cited supra), this Tribunal has held as under:-

> *"6. Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer of excisable goods and the provider of output service to take Cenvat credit of the duties and taxes paid on the inputs and the input services, with the objective of utilisation of the same for payment of Excise duty on the products and service tax on the output services. In case of exportation of output service, there is no question of utilisation of Cenvat credit available in the books of accounts. Thus, Rule 5 ibid provides for refund of accumulated Cenvat credit, subject to compliance of the procedures/guidelines laid down under the notifications issued thereunder. We find that the refund benefit was denied to the assessee-appellant on the sole ground that there was no nexus between the input services and the output service exported by the appellant. Further, in Revenue's appeal, it has*

been contended that certain disputed services are not conforming to the definition of input service provided under Rule 2(l) ibid. Insofar as taking of irregular Cenvat credit is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilisation, such credit can be recovered from the assessee and for effecting the recoveries, the provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is an admitted fact on record that the department has not invoked the provisions of Rule 14 ibid for effecting recovery of the alleged irregular Cenvat credit availed by the assessee-appellant. Thus, under such circumstances, it can be said that taking of Cenvat credit on the disputed services by the appellant is in conformity with the Cenvat statute. Rule 5 ibid nowhere specifies that Cenvat credit can be denied on the ground of irregular availment or utilisation of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 ibid, in our considered opinion, cannot stand for judicial scrutiny. Since the department has not specifically alleged regarding actual exportation of services by the assessee-appellant and use/utilization of disputed services for such activities, benefit of refund should be available in terms of the unambiguous provisions contained in Rule 5 ibid, subject only to adherence of the formula laid down thereunder. The Learned Advocate appearing for the assessee-appellant submitted that it should be entitled for the benefit of interest for non-consideration of the refund application within the stipulated time-frame prescribed under the statute. However, on perusal of the case records, more specifically the grounds of appeal annexed to the appeal memorandum, we find that the assessee-appellant has not raised any plea on the issue of payment of interest therein. Since such issue is not arising out of the appeal proceedings before the Tribunal, it will not be appropriate to consider such plea at this juncture for a decision as emphasized by the Learned Advocate for the appellant."

7. On Appeal by the Revenue, Hon'ble High Court of Telangana, vide its Order dt.28.09.2021 has held as under:-

"15. It is not in dispute that Rule 14 of the Rules provides that in case of irregular availment of CENVAT credit or its utilization, the authorities under the Finance Act are empowered to recover the same from the assessee. It is also an admitted fact that the said provisions have not been invoked by the appellant/revenue against the respondent/ assessee.

16. As the availment of CENVAT credit by the appellant under Rule 3 of the Rules is not called in question, the denial to grant refund under Rule 5 of the Rules without there being any proceedings initiated under Rule 14 of the Rules by seeking to deny the refund on the ground of the respondent/assessee availed CENVAT credit on input services, which according to the appellant/revenue have no nexus with the output service, in our considered view, cannot be held to be justified.

17. Further, it is to be noted that these appeals relate to period prior to amendment made to Rule 5 of Rules w.e.f 01.04.2012 and also thereafter. In so far the claim for refund of CENVAT credit for the period prior to 01.04.2012 is concerned, as Rule at the relevant point of time did not contain any prescription as to the nexus between input services and output service, the denial of refund on the said ground cannot be held to be valid. For the period subsequent to the introduction of substituted Rule 5 of Rules, the only prescription for grant of refund in respect of export of output service is by applying the formula specified.

18. The Tribunal, while considering the above aspect, had observed as under:

> *'In so far as taking of irregular CENVAT is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilization, such credit can be recovered from the assessee and for effecting the recoveries, the provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is an admitted fact on record that the department has not invoked the provisions of Rule 14 ibid for effecting recovery of the alleged irregular CENVAT credit availed by the assessee-*

> *appellant. Thus, under such circumstances, it can be said that taking of CENVAT credit on the disputed services by the appellant is in conformity with CENVAT statute. Rule 5 ibid nowhere specifies that CENVAT credit can be denied on the ground of irregular availment or utilization of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 of ibid, in our considered opinion, cannot stand for judicial scrutiny.'*

19. The Tribunal by observing as above, held –

> *"Since the department has not specifically alleged regarding actual exportation of services by the assessee-appellant and use/utilization of disputed services for such activities, benefit of refund should be available in terms of the unambiguous provisions contained in Rule 5 ibid, subject only to adherence of the formula laid down thereunder."*

20. The above findings as recorded by the Tribunal, in our view, do not call for any interference, being a finding of fact."

8. The facts of the present case call for application of the ratio of the cited case law. Accordingly, we hold that the Appellant is eligible for refund claims made by them, which actually have been rejected by the lower authorities on the ground of ineligibility of Cenvat credit.

9. The Appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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