IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

S.T.Appeal No.75672/2018

Arising out of O/A No.372/S.Tax I/Kol/2017 dated 12.12.2017 passed by Commr. of CGST & Central Excise (Appeals I), Kolkata

M/s Lexmark International (India) Pvt. Ltd.
...APPELLANT(S)

VERSUS

Commr. of CGST & Central Excise, Kolkata North
RESPONDENT (S)

APPEARANCE

Shri Pinki Shaw, C.A. for the Appellant (s)
Shri S.S.Chattopadhyay, Supdt.(A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 10. 09. 2018

ORDER NO...

Per Shri P. K. Choudhary :

The present appeal has been filed by the appellant against the Order-in-Appeal No.372/S.Tax I/Kol/2017 dated 12.12.2017 passed by Commr. of CGST & Central Excise (Appeals I), Kolkata.

2. Briefly stated the facts of the case are that the appellants are engaged in exporting taxable output service namely, 'Information Technology Software Service'. For providing the service, exported outside the country, the appellant availed various input services, defined under Rule 2(l) of the Cenvat Credit Rules, 2004 (hereafter referred to as the 'Cenvat Rules', in short). The services provided by them being qualified as 'Export of Service', as defined under Rule 6A of the Service Tax Rules, 1994 (hereafter referred to as the 'Rules', in

short), the appellant filed Refund Claim in terms of Rule 5 of the Cenvat Rules read with the provisions of Notification No. 27/2012-CE(NT) dated 18-06-2012 during the period from **April, 2014 to June, 2014.**

3. The grounds for disallowance of credit in respect of all the three adjudication Orders as well as Orders-in-Appeal are summarized in the following Table:-

Sl. No.	Name of the Service Provider	Nature of Service	Inadmissible CENVAT Credit	Reason for Inadmissible	Remarks
1.	Deloitte Touche Tohmatsu India Pvt. Ltd	Management Consultants	48,822.00	Does not have Relation or nexus to export of service	Refer 2014 (33) STR 96 (Tri.-del.)- KPMG Vs. CCE, New Delhi, 2018-TIOL- 2451-CESTAT-MUM Accelya Kale Sol Lt Commr. Of CGST, TIOL-2443-CESTAT-M Visteon Technical Services Center Pvt Vs. Commr. Of CGST
2.	Burman Bohra & Associates	Practising Chartered Accountant Service	4,450.00	Does not have relation or nexus to export of service	Refer 2014 (33) STR 96 (Tri.-del.)- KPMG Vs. CCE, New Delhi, 2018-TIOL- 2451-CESTAT-MUM Accelya Kale Sol Ltd. Vs. Commr. Of CGST, 2018-TIOL-2443-CESTAT-MUM-Visteon Technical and Services Center Pvt. Ltd, Vs. Commr. Of CGST
3.	Cloud That Technologies Pvt. Ltd.	Commercial Training & Coaching	42,642.00	Unknown nature of training including reimbursement of travel, fooding etc.	The training is included in the definition of “input service” under Rule 2(1) of Cenvat Rules.
4.	AT & T Global Network Services India Pvt. Ltd.	Internet telecommunication Service	2,84,664	Service receiver’s address in input invoice does not	The invoices are in the name of appellant themselves and the receipt of services

				match	has not been challenged so the same credit may be allowed Refer Case law of DHL Logistics Vs. Commr. Of Central Excise. (CESTAT.- Mumbai)
5.	Kochhar & Co	Legal Consultancy Service	15,061.60	Does Not have relation or nexus to export of service	Refer 2014 (33) STR 96 (Tri.-del.)- KPMG Vs. CCE, New Delhi, 2018-TIOL- 2451-CESTAT-MUM Accelya Kale Sol Ltd. Vs. Commr. Of CGST, 2018-TIOL-2443-CESTAT-MUM-Visteon Technical and Services Center Pvt. Ltd, Vs. Commr. Of CGST
6.	Deloitte Haskins & Sells	Chartered Accountant Service	9,270.00	Does not have relation or nexus to export of service	Refer 2014 (33) STR 96 (Tri.-del.)- KPMG Vs. CCE, New Delhi, 2018-TIOL- 2451-CESTAT-MUM Accelya Kale Sol Ltd. Vs. Commr. Of CGST, 2018-TIOL-2443-CESTAT-MUM-Visteon Technical and Services Center Pvt. Ltd, Vs. Commr. Of CGST.

4. The ld.C.A. appearing on behalf of the appellant submitted that as per the series of decisions once credit towards input service has been allowed to be taken without any objection from the side of the Department, it is not permissible to hold the credit as inadmissible or ineligible, while granting the refund of the same credit. It is wrong to refuse refund of credit lawfully taken on the ground of inadmissibility. In support of his contention, she has relied upon the decision of the Tribunal in the case of Accelya Kale Solutions Ltd. Vs. Commissioner of

Central Goods Service Tax, Thane reported in 2018-TIOL-2451-CESTAT-MUM.

5. The ld.D.R. appearing on behalf of the Revenue, has reiterated the findings of the lower authorities.

6. Heard both sides and perused the appeal records.

7. I find that the transaction undertaken by the appellants qualified to be "export of service", as defined under Rule 6A of the Service Tax Rules, 1994. Since they were not in a position to utilize the accumulated Cenvat Credit, refund claim has been filed in terms of Rule 5 of Cenvat Credit Rules, 2004 read with the provisions of Notification No.27/2012 CE (NT) dated 18.06.2012. The present dispute is on disallowance of such refund claim under various heads on the ground of lack of nexus/co-relation between the input service and the out-put service. I find that in the present case, some of the input services do not qualify the definition of input services in terms of Rule 2 (e) of the Cenvat Credit Rules, 2004. I find that the Tribunal in various decisions has consistently held that there cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate. Whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible, there is provision for grant of refund or rebate. Without questioning the credit taken, the eligibility to rebate cannot be questioned. I find that in some cases, the Cenvat Credit has been disallowed on the ground that the invoices are un-signed, but it is not in dispute that the payments have been made through Bank Account

and this fact is subject to verification. In my considered view, the Adjudicating authority should provide a reasonable opportunity of hearing by observing the principle of natural justice after considering the submissions of the assessee. Both sides are at liberty to produce evidences in their support.

8. In view of the above discussions, the Appeals filed by the appellants are allowed by way of remand.

(Dictated and pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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