IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

ST/88029/2017

KKR India Advisors Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, Mumbai Central **Respondent**

AND

ST/Stay/85082/2018
ST/85149/2018

Commissioner of CGST, Mumbai Central **Appellant**

Vs.

KKR India Advisors Pvt. Ltd. **Respondent**

(Arising out of Order-in-Appeal No. PK/89/ML/2017 dated 4.9.2017 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

Appearance:

Shri S. Thirumalai, Advocate, for assessee
Shri Vivek Dwivedi, Assistant Commissioner (AR), for Revenue

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 24.4.2018
Date of Decision: 24.4.2018

ORDER No. **A/86146-86147/2018**

The issue involved in the present case is that –

(i) What should be the relevant date for filing the refund under Rule 5 / Notification 27/2012-CE(NT) dated 18.6.2012.

(ii) Whether the input services viz. general insurance services, real estate agent's services, stock broker services, online information and data access or retrieved services, club or association services and sponsorship services, are input services for the purpose of refund under Rule 5 and whether these services have nexus with the export of services.

2. Shri S. Thirumalai, learned counsel appearing on behalf of the appellant in appeal No.ST/88029/2017, submits that all the input services on which refund was rejected are essential services which are used in or in relation to providing output services. He explained the use of each service. He also submits that in respect of almost all the services which were disputed by the Commissioner (Appeals), this Tribunal and court have taken consistent view that all these services are admissible input services. Therefore, the refund should be allowed. He also submits that there is no show cause notice issued for disallowance of the cenvat credit in terms of Rule 14 of the Cenvat Credit Rules, 2004. While processing the refund claim, the Revenue cannot hold that some services are not covered under the

definition of input service. In this regard, he placed reliance on the following judgments:-

(i) *Hydus Technologies India Pvt. Ltd. vs. CCE, Hyderabad – 2017-TIOL-1189-CESTAT-HYD*;

(ii) *LG Electronics India Pvt. Ltd. vs. CCE&ST, Noida – 2016 (44) STR 97 (Tri.-All.)*;

(iii) *Willis Processing Services (India) Pvt. Ltd. vs. CST, Mumbai-II (Order No.A/85189-85205/16/SMB dated 1.1.2016)* as affirmed by the Hon'ble High Court in *2017 (7) GSTL 12 (Bom.)*;

(iv) *D.E. Shaw India Pvt. Ltd. vs. CCE, Hyderabad – Final Order No.A/30716/2016 dated 1.7.2016*;

(v) *Steria India Ltd. vs. CC&CEx., Noida – 2013-VIL-21-CESTAT-DEL-ST*;

(vi) *Xilinx India Technology Services Pvt. Ltd. vs. CCE&ST, Hyderabad-IV – Final Order No.A/30309/2016 dated 7.4.2016*.

3. As regards the Revenue's appeal, the refund claim was filed well within one year from the end of the quarter. Therefore, as per the Larger Bench decision of the Tribunal in the case of *CCE& SST, Bengaluru ST-I vs. Span Infotech (India) Pvt. Ltd. – 2018-VIL-107-*

CESTAT-MUM-ST-LB, the refund stands filed within one year from the end of the quarter, which is the relevant date in terms of Section 11B of the Central Excise Act, 1944, as made applicable by Notification No.27/2012-CE(NT). Therefore, the refund was filed within time. The Commissioner (Appeals) has rightly allowed the refund holding that it is within the prescribed time.

4. Shri Vivek Dwivedi, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the finding of the impugned order as regards the issue involved in appeal No. ST/88029/2017. As regards the Revenue's appeal No. ST/85149/2018, he reiterates the grounds of appeal.

5. I have carefully considered the submissions made by both the sides and perused the records. As regards the Revenue's appeal, the issue involved is the period of one year from the relevant date for filing refund under Rule 5. As per the Larger Bench decision in the case of *Span Infotech (India) Pvt. Ltd.* (supra), it was held that in case of refund under Rule 5, the relevant date is the end of the quarter wherein the FIRC is received. In the facts of the present case, the refund for the period October 2012 to December 2012, the refund was submitted on 30.9.2013, which shows that the refund was filed within one year from the end of the quarter. Therefore, it is

well within the prescribed time as provided under Section 11B of the Central Excise Act. Therefore, there is no substance in the Revenue's appeal. Hence the Revenue's appeal is dismissed.

6. As regards the assessee's appeal, I find that the issue is whether the services such as general insurance services, real estate agent's services, stock broker services, online information and data access or retrieved services, club or association services and sponsorship services are admissible input services and have nexus with the services exported in term of Rule 2(l) of the Cenvat Credit Rules, 2004. As explained by the learned counsel, which is based on the invoices submitted, I find that general insurance is for the purpose of insurance policy for the entire premises, including fire, asset of the premises, a small part of the inputs, mediclaim for the employees. In this fact, I find that for a business entity, comprehensive insurance for the entire premises along with its employees is must. Therefore, it is indeed used for providing output service. This Tribunal in the case of *Hydus Technologies India Pvt. Ltd.* (supra) allowed the credit on general insurance. As regards real estate agent's service, it is towards the payment of brokerage to the broker for arranging accommodation for their CEO and this expenditure of

the brokerage was borne by the company. It is obligatory on the part of the assessee company to arrange accommodation for their senior staff. Therefore, I am of the view that real estate agent's service provided for accommodation for the CEO is an input service. This issue is also covered by the Tribunal in the case of *LG Electronics India Pvt. Ltd.* (supra). As regards stock broker services, on perusal of the invoices I find that it is a service related to valuation of the shares of the company. This valuation of the shares is for the purpose of assessing the overall work of the company which is required for the purpose of business of investment banking. This issue is covered by the judgment of the Tribunal in the case of *D.E. Shaw India Pvt. Ltd.* (supra) and *Willis Processing Services (India) Pvt. Ltd.* (supra). Therefore, this service is directly used in providing the output service. As regards the online information and data access or retrieved services, from the invoice it is observed that this service is for subscription of website which is used for conducting their business. Therefore, it is directly used for providing the output service, hence the credit is admissible. As regards club or association services, the invoice shows that the membership is of business association. It is common that every membership is for business association which helps the assessee to promote their business by meeting the various members of the association who are into similar business. Therefore, the membership of a business association is an input service for providing the output service. This issue is covered by the Tribunal's judgment in the case of *Steria India Ltd.* (supra) and *Xilinx India Technology Services Pvt. Ltd.* (supra). The assessee has availed sponsorship services. On perusal of invoice of the sponsorship service, I find that this sponsorship is for U.S. Chamber of Commerce for the benefit of U.S. India Business Council. This service is also used directly in relation to business of the assessee. Therefore, there is no doubt that this service was under the definition of input service provided under Rule 2(l) of the Cenvat Credit Rules, 2004.

7. As per the above discussion, I am of the considered view that all the services disputed by the Commissioner (Appeals) are admissible input services, hence the credit is available. I also observe that the adjudicating authority, without issuance of show cause notice as regards the admissibility of the input service, rejected the refund which is not permissible, but the Revenue is of the view that the credit is not admissible. The first step is to a show cause notice invoking Rule 14 of the Cenvat Credit Rules, 2004 for denial of the cenvat

credit. Then only the refund can be rejected which was not done. Obviously the refund cannot be rejected by disputing the admissibility of the input services as held by this Tribunal in the case of *Warburg Pincus India Pvt. Ltd. vs. CST-I, Mumbai – 2018-TIOL-1229-CESTAT-MUM*.

8. As per my above observation, Revenue's appeal is dismissed. Assessee's appeal is allowed. Stay application of Revenue stands disposed of.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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