IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: ST/88086 & 88098/2017

[Arising out of Order-in-Appeal No: PK/87/MC/2017 dated 31/08/2017 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai.]

APPEAL NO: ST/88098/2017

Commissioner of Central GST
Mumbai Central ...***Applicant***

versus

Barclays Wealth Trustees India Pvt Ltd ***...Respondent***

APPEAL NO: ST/88086/2017

Barclays Wealth Trustees India Pvt Ltd ...***Applicant***

versus

Commissioner of Central GST
Mumbai Central ***...Respondent***

Appearance:

Shri Dilip Shinde, Asstt. Commissioner (AR) for Revenue

Shri Prasad Paranjape with Shri Mihir Mehta, Advocates for assessee

Date of hearing 22/03/2018
Date of pronouncement 22/03/2018

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Hon'ble Shri M V Ravindran, Member (Judicial)

ORDER NO: A/86123-86124/2018

These appeals are filed by the appellant-assessee as well as Revenue against Order-in-Appeal No: PK/87/MC/2017 dated 31/08/2017 passed by the Commissioner of CGST & Central Excise (Appeals), Mumbai.

2. Heard both the sides and perused the records.

3. Appellant-assessee is in appeal against the order on the ground that the first appellate authority has incorrectly rejected the refund claim filed by them in respect of the service tax credit paid on various input services, and the said services were used for rendering export of output service. While Revenue is in appeal against the impugned order on the ground that the first appellate authority has incorrectly held that the refund claims are filed within time. The issue as recorded by the first appellant authority fall for consideration are as under:

> (i) whether computation of refund is correct in terms of the provisions of Notification No. 27/2012-CE (NT) read with Rule 5 of the Cenvat Credit Rules, 2004?
>
> (ii) whether refund of input services viz. Air Travel agent services, accommodation services and cargo handling services has been denied correctly?
>
> (iii) Whether the refund of input services has been correctly denied on the ground that the invoices contained address, which was not mentioned in Service Tax Registration?

(iv) Whether the refund claim is time barred?

4. It was explained by the learned Counsel that as regards point No. (ii), (iii) and (iv) the issue is now settled by the various decision of the Tribunal more specifically *Reliance Industries Ltd v. Commissioner of Central Excise & Service Tax, LTU, Mumbai* 2016 (45) STR 383 (Tri.Mumbai), *Accenture Service Pvt Ltd v. Commissioner of Service Tax, Mumbai – II* 2015 (40) STR 719 (Tri.Mumbai); and for the refund claim rejected on the time bar is covered by the Larger Bench decision in the case of *Commissioner of Central Excise and Service Tax, Bengaluru – I v. Span Infotech Pvt Ltd* 2018-TIOL-516-CESTAT-BANG-LB. It is his submission that the Larger Bench has held that the refund claims filed under Rule 5 of the CENVAT Credit Rules, 2004 can be filed within one year from the end of the particular quarter and submits that in all these case the refund claims were filed within one year from the end of the particular quarter. Revenue's appeal is on the same ground that the first appellate authority has calculated the period of one year which should be on the date of invoice.

5. As regards the point No.(i) of the issue, as reproduced herein above, I find that this issue needs reconsideration by the first appellate authority as appellant had produced re-conciliation statement indicating the correct amount of refund which needs to be calculated but the first appellate authority in the impugned order has not passed

any observations or given any reasoning either to accept or to reject it. In view of this, without expressing any opinion on the merits of the issue on point no.1, the matter is remanded back to the first appellate authority to reconsider the same after following principles of natural justice.

6. As far as point No. (ii) as to eligibility to CENVAT credit on travel service, accommodation service, cargo handling service, it is the argument of the learned Departmental Representative that these services are not evidenced as has been used by the appellant for the final output services; and, as regards cargo handling service it is his submission that these services were used for transporting of personnel belonging to the new units who were employed by the appellant and hence all these expenses having incorrectly allowed as these being of personal use.

7. I find that from the records that the appellant has been taking a consistent stand that air travel, accommodation services were utilised for use of the employees at various locations to render output services which were exported. I find that these services are squarely covered as eligible by the judgement in the case of *Reliance Industries Ltd* and *Accenture Service Pvt Ltd* (supra)

8. As regards the submissions on Cargo Handling Services, I find that this issue is also settled by the judgment of the Tribunal in the sae

of *Reliance Industries Ltd* (supra). Accordingly, in respect of point, on merits that the appellant is eligible for the refund of the amount claimed by them subject to the calculation as mentioned at point No. (i).

9. As regards input services which has been denied on the ground that the invoices contained addresses which are not mentioned in the service tax registration, it is the claim of the Learned Counsel that the appellants were functioning from this premises earlier and due to which there was a change in the premises and the service invoices raised by the input service providers for the service rendered by them were issued at the old address. I find that these need to be evidenced by the appellant before the lower authority i.e. first appellate authority. In view of this, this point is also remitted back to the first appellate authority for reconsideration of the issue afresh.

10. As regards the point No. (iv) on the question of limitation, it is noticed that the Larger Bench of the Tribunal in the case of *Infotech Pvt Ltd* (supra) has now settled the law which is that a refund application for service tax credit availed on the input services can be filed within one year from the end of the quarter from which services are exported. In the case in hand, I find that the impugned order specifically express the period of the refund claim and the date of filing of the refund claim. It is noticed that the date of filing of the

refund claim is within one year of the end of the specific quarters. Accordingly, the issue raised at point No.(iv) is held in favour of the appellant-assessee following the Larger Bench decision.

11. In view of the foregoing the appeals are disposed of as indicated herein above.

(Dictated in Court)

(M V Ravindran)
***Member (Judicial*)**

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