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

APPEAL Nos. ST/86707-86714,86731/2018

(Arising out of Order-in-Appeal No. PK/04 to 12/ME/2018 dated 10.1.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

MSCI Services Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, Mumbai East **Respondent**

Appearance:

Shri Prasad Paranjape, Advocate, for appellant
Shri M.K. Sarangi, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing: 1.8.2018
Date of Decision: 1.8.2018

ORDER No. A/**87022-87030/2018**

The learned Commissioner (Appeals), Central Excise, Mumbai vide the impugned order dated 10.1.2018, has disposed of nine appeals filed by the appellant. Since the issue involved in all the appeals is identical i.e. denial of refund benefit provided under Rule 5 of the Cenvat Credit Rules, 2004, the same are taken up for hearing together and a common order is being passed.

2. The appellant is engaged *inter alia*, in providing outsourced services, which are in the nature of transaction processing services and other related support provided to the overseas clients. The services provided by the appellant are categorized as taxable service under the head “business support service”. The appellant also registered with the Software Technology Parks of India (STPI) as a 100% export-oriented unit. The appellant avails cenvat credit of service tax paid on the input services used/utilized for providing the output services exported by it. During the period April 2012 to September 2014, the appellant had filed refund applications under Rule 5 of the rules, claiming refund of service tax paid on the input services used for exportation of the output service. The refund applications filed by the appellant were adjudicated by the department wherein, in respect of some of the taxable input services, the refund benefit was extended and in some other cases, the benefit were denied. On appeal, learned Commissioner (Appeals) vide the impugned order dated 10.1.2018, has upheld the adjudication orders, to the extent the refund benefit was denied on the taxable services viz., renting of immovable property, cleaning, works contract, real estate, management, maintenance or repair, courier, catering, event management, business support, convention,

business auxiliary, technical testing and analysis, supply of tangible goods services etc. The refund benefit was denied by the authorities below on the ground that those disputed services are neither conforming to the requirement of the definition of Rule 2(l) of the rules for consideration of input service and that those services have no nexus with the output service provided by the appellant. Further, the refund benefit has also been denied on some of the services, on the ground of non-submission of invoices, non-payment of value of service to the vendors, non-submission of proof regarding payment of service tax on import of services, out of pocket expenses etc.

3. Learned Advocate appearing for the appellant, at the outset, submits that the appellant is not contesting denial of refund benefit in respect of the disputed services viz., catering, event management, business support, convention, business auxiliary, technical testing and analysis, supply of tangible goods and out of pocket expenses paid by it. The learned Advocate concedes that since the amount involved in those services is very meager, the appellant is not contesting for the refund benefit. With regard to the issue regarding establishment of nexus between the input services viz., renting of immovable property, cleaning,

works contract, real estate, management, maintenance or repair and courier service, the learned Advocate submits that the appellant is a 100% export-oriented unit and the output service provided by it is entirely exported out of the territorial waters of India. Thus, he submits that none of the disputed services have been used by the appellant for providing the output services, for consumption within the country. Accordingly, he contended that since the disputed input services were used and utilized in entirety for exportation of the output service, the nexus between the services have been established and the refund benefit cannot be denied on that ground. He further submits that under the amended provisions of Rule 5 (with effect from 1st April 2012), the service provider is not required to establish the nexus between the input and the output services and the refund has to be granted on the basis of formula prescribed under the amended Rule 5 of the rules read with the notification issued thereunder. In this context, the learned Advocate has referred to the letter F.No. 334/1/2012-TRU, dated 16.3.2012 issued by the Tax Research Unit (TRU) of CBEC, clarifying that the field formations cannot insist for establishing the nexus and refund should be granted on the basis of the prescribed formula. As regards non-submission of the invoices before the refund sanctioning authority, he submits that the same were available with the appellant, which can be produced before the original authority, if the matter is remanded back. As regards non-payment of the amount of value of service to the overseas vendors and import of services to the vendors and on payment of service tax on import of service, the learned Advocate submits that upon payment of the value of service, the appellant had taken the cenvat credit and necessary documentary evidences are available with the appellant. He further submits that while adjudicating the refund application for the subsequent period, the original authority has sanctioned the refund benefit in respect of service tax paid on renting of immovable property and cleaning services.

4. On the other hand, learned DR appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that the disputed services are not conforming to the definition of amended input service with effect from 1.4.2011 inasmuch as the phrase “activities relating to business” appearing in the unamended rules, has specifically been deleted in the present definition of input service. Thus, he contended that the appellant should not be eligible for the refund

benefit in respect of service tax paid on the disputed services.

5. Heard both sides and perused the records.

6. Since the appellant concedes that it is not contesting disallowance of refund benefit in respect of the taxable services viz., catering, event management, business support, convention, business auxiliary, technical testing and analysis, supply of tangible goods, I hold that the refund benefit denied by the Commissioner cannot be interfered with at this juncture. Thus, the impugned order, so far as it rejected the refund claim in respect of those services, sustains.

7. With regard to the allegation that there is no nexus between the input services viz., renting of immovable property, cleaning service, works contract service, real estate service, management, maintenance or repair service, courier service, the said services are no doubt used/utilised by the appellant for providing the output service, which were exported. For claiming the refund benefit of service tax paid on the input service, Rule 5 of the rules provides for refund, subject to observance of the procedures laid down therein. The said rule provides the formula, which has to be

complied with by the assessee for claiming the refund benefit. The authorities below have not disputed the fact that the appellant had not complied with the requirement of the said rules for claiming the refund benefit. However, the benefit of refund on those services had been denied on the sole ground that there was no nexus between such services with the output service provided by the appellant. With regard to establishing the nexus between the input and output services, the Tax Research Unit of CBEC vide letter dated 16.3.2012, has clarified that the new scheme introduced by substituting Rule 5 does not require the kind of correlation between exports and input services, which were hitherto provided under the unamended rules. It has been further clarified that service tax paid on the input services will be entitled for refund, on the basis of the ratio of the export turnover to total turnover. Since the TRU has clarified the legislative intent behind the amendment of Rule 5 of the Rules, explaining that no nexus need to be established, denial of refund benefit on sole ground of non-establishment of nexus cannot be sustained for judicial scrutiny. Accordingly, I am of the view that the refund benefit denied to the appellant in respect of those disputed services is not proper and justified and the appellant should be entitled for the benefit of refund of service tax paid thereon. Held accordingly.

8. With regard to the issues in dispute namely, non-submission of invoices, non-payment of value of services to the overseas vendors and non-submission of document, showing payment of service tax on the import of services, I find that the relevant documents are presently available with the appellant, which have also been produced by the learned Advocate during the course of hearing. However, since those documents are required to be verified by the refund sanctioning authority for consideration of the benefit of refund, I am of the view that the matter should go back to the original authority for the purpose of verification of those documents/records for extending the refund benefit to the appellant. Therefore, the matter is remanded to the original authority for passing of fresh adjudication order with regard to the documents, which were not produced at the time of original proceedings.

9. The appeals are disposed of in above terms.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

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