IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.2

APPEAL No.ST/85965 to 85983/2018

(Arising out of Order-in-Appeal No.IM/CGST A-III/137 to 155/17-18 dated 10/10/2017 – 07/12/2017 passed by the Commissioner (Appeals-III). CGST, Mumbai)

K Line Ship Management I*ndia Pvt.Ltd.* : **Appellant**

VS

C.C.G.S.T., Mumbai West : **Respondent**

<u>Appearance</u>

Shri.S. Thirumalai, Advocate for Appellant
Shri.M.K. Sarangi, Jt. Comm. (A.R) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing : 26/09/2018
Date of decision : 26/09/2018

ORDER NO. A/88016-88034/2018

1. Brief fact of the case are that the appellant is engaged in the business of providing ship management service, which is classified as a taxable service defined under Section 105 (zzzt) of the Finance Act, 1994. For providing such service, the appellant is registered with service tax department. The appellant avails Cenvat Credit of service tax paid on the input services used/utilized for providing such output service. During the disputed period, the appellant had entered into agreement with M/s.K-Line Ship Management Co. Ltd. (KLSM), Tokyo, Japan, to undertake ship management services including recruitment, training and placing of sea farers on board for the vessels managed by

KLSM, Japan. Since the appellant exported the entire output service to Japan in favour of the said principal, there was no scope for utilization of Cenvat Credit for payment of service tax on the output service. Thus, the appellant had filed refund applications, claiming refund of service tax paid on the input services used for exportation of the output service. The refund applications were filed under Rule 5 of the Cenvat Credit Rules, 2004. The refund issue was adjudicated by the original authority. In some cases, the refund benefit was allowed in favour of the appellant and in some other cases, the refund benefit was denied on the ground that the input services are neither confirming to the definition of input service or have any nexus with the output service exported by the appellant. Further, in some cases refund benefit was also denied on the ground that the services provided by the appellant cannot be considered as export of service. Against the adjudication orders, the appellant had filed appeals before the learned Commissioner (Appeals), which were disposed of vide the common impugned order dated 10/10/2017. As per the impugned order, the period of dispute and the reason for denial of refund benefit are summarized herein below:

Sl. No	**Period of dispute**	**Reason for denial of refund benefit**
1	Oct. 2014 to Dec. 2014	Management training and coaching service – no nexus with the output service
2	Oct. 2012 to Dec. 2012	Input service not consumed for provision of output service
3	April 2015 to June 2015	Input service not consumed for provision of output service
4	April 2016 to June 2016	Input service not consumed for provision of output service
5	April 2012 to June 2012	Input service not consumed for provision of output service
6	January 2016 to March 2016	Input service not consumed for provision of output service
7	Oct. 2015 to December 2015	Input service not consumed for provision of output service

8	April 2014 to June 2014	Input service not consumed for provision of output service
9	April 2013 to June 2013	Input service not consumed for provision of output service
10	July 2012 to Sep. 2012	Input service not consumed for provision of output service
11	Jan. 2012 to March 2012	Input service not consumed for provision of output service
12	Oct. 2011 to Dec. 2011	Input service not consumed for provision of output service
13	July 2013 to Sep. 2013	Input service not consumed for provision of output service
14	Jan. 2015 to March2015	Management training and coaching services – POPS 2012
15	Jan. 2013 to March 2013	Input service not consumed for provision of output service
16	July 2014 to Sep. 2014	Input service not consumed for provision of output service/ Service Tax not paid on RIPS (1.62 lacs)
17	Jan. 2014 to March 2014	Input service not consumed for provision of output service/ Service Tax not paid on RIPS (Rs.54013)
18	Oct. 2013 to Dec. 2013	Input service not consumed for provision of output service/ Service Tax not paid on RIPS (Rs. 1,10,594)
19	July 2015 to Sep. 2015	Input service not consumed for provision of output service/ Service Tax not paid on RIPS (Rs. 1,62,078)

2. Ld. Advocate appearing for the appellant submits that the department has accepted the fact that the services were exported by the appellant to M/s.KLSM, Japan. However, the refund benefit has been denied on the ground that management and coaching services cannot be considered as input service for the purpose of providing the output service under the category of ship management service. In this context, the learned Advocate submits that since the disputed input services were used/utilized entirely for providing the taxable service, which was exported by the appellant, the benefit of refund as provided under Rule 5 of the rules should be available. He has relied on various decisions rendered by different judicial forum to support claim of the refund benefit.

3. With regard to the observations of the learned Commissioner (Appeals) that the input services were not consumed for provision of output service, the learned Advocate contended that the appellant being a 100% subsidiary of M/s.KLSM, Japan, the output service in entirety was provided to such parent company and in absence of any service being provided to the service recipient within the country, the service tax paid on the input services should be available as refund. With regard to payment of service tax on renting of immovable property service, the learned Advocate concedes that the appellant is not contesting denial of refund benefit on such service.

4. On the other hand, the learned DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since the disputed services are not confirming to the definition of input service contained in Rule 2(l) of the rules, the service provider is not entitled for refund as per the provisions of Rule 5 of the rules. Thus, he submits that denial of refund benefit in the impugned order is proper and justified.

5. Heard both sides and perused the records.

6. On the basis of agreement entered into between the appellant with its parent company M/s.KLSM, Japan, the appellant had exported the services. Considering the refund applications filed for different period, the department has taken the view that the services were in fact exported by the appellant. However, in the present cases, the

department has taken a stand that the services provided by the appellant are not conforming to export of service for the purpose of claiming of refund. It is difficult to accept such findings of the department inasmuch as the services all along were provided by the appellant pursuant to the contract to its parent company located in Japan. The situation being same for entire period, denial of refund for a part period is not legally sustainable, without substantiating the fact that the appellant also provided services to the parties within the country. I find that in the case of American Express (I) Pvt. Ltd., Vs. Commissioner of Service Tax, reported in 2917-TIOL-445-CESTAT-Del., this Tribunal has observed that on the similar set of facts, when the department had sanctioned refund claims for the earlier period in accepting the fact that the assessee had provided taxable services to foreign clients, such stand cannot be altered at a subsequent stage for denial of the benefit on the ground that the service is not conforming to export of service. In this case, since the appellant is a subsidiary of foreign company and provides the output service in entirety to such parent company, there was no scope or occasion on the part of the appellant to utilize input service for providing output service to any service receiver, other than the parent company. Thus, in view of the fact that input services were used for providing the output service, which was exported, the appellant should statutorily be entitled for refund of service tax paid on input services, which were lying un-utilised in the Cenvat account for a considerable period of time. It is a settled position of law that the authorities while adjudicating the refund application under Rule 5 of the rules, should not look into the aspect of consideration of the requirement of Rule 2 (l) of the rules inasmuch as other provisions exist in the statute for consideration of such dispute. I also find that the Tax Research Unit (TRU) of CBEC vide letter dated 16/03/2012 has clarified that the amended Rule 5 of the rules does not require the co-relation between the exports and input services and thus, establishment of nexus should not be insisted upon. Further, I also find that considering the requirement of Rule 5 and clarification furnished by the TRU, this Tribunal in the case of MSCI Services Pvt. Ltd., Vs. Commissioner of CGST, Mumbai East [2018-VIL-576-CESTAT-MUM-ST] has held that once the input services were used for providing output service, which were exported, refund benefit should be available to the assessee. The relevant paragraph in the said decision is extracted herein below:

> "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/utilized 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."*

7. In view of the foregoing discussion and analysis, I do not find any merits in the impugned order, so far as it denied refund benefits to the appellant, other than the service tax paid on immovable property service. Accordingly, after setting aside the impugned order, I allow the appeals in favour of the appellant with consequential benefits of refund, excepting on immovable property service.

(Pronounced and dictated in court)

(S K Mohanty)
Member (Judicial)

PJ