

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

**Appeal No. ST/86321/18**

(Arising out of Order-in- Appeal No. PK/347/ML/2017  
dated 20.12.2017 passed by the Commissioner of  
GST & Central Excise(Appeals-II), Mumbai)

KKR India Advisors Pvt. Ltd.

Appellant

Vs.

CCGST, Mumbai East

Respondent

Appearance:

Shri Tirumalai, Advocate for the appellant  
Shri MP. Damle, AC (AR) for the respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 15.06.2018

Date of decision : 12.12.2018

**O R D E R No: A/88097/2018**

Rejection of refund claims made against cenvat credit availed on input services by appellant company engaged solely in export of investment advisory services on the ground of inadmissible credit concerning rent a cab service, membership of club or association service, real estate agency service (visa), management, maintenance repair services by the Commissioner (Appeals) is challenged in this appeal.

2. Factual backdrop of the case is that appellant is investment banking forum having tie up with KKR group had entered into consulting service agreement with a Mauritius unit and it had been providing advisory service in connection with potential investment members in India and the said services qualifies as export of service as per Rule 4 of the export of Service 2005. All services provided by the appellant were recorded as export for which appellant did not utilise the cenvat credit available to it on its input services. Therefore, it had a preferred refund claim in terms of Rule 5 of the Cenvat Credit Rules for the period July 2009 to December 2010. Out of total refund claim amounting to ₹80,31,446/-, ₹45,17,788/- was rejected by the Asst. Commissioner of Service tax-I, Mumbai on input services as provided to associated companies prior to 28.02.2010. The rejection was challenged by the appellant before the Commissioner (Appeals) who vide his Order-in-Appeal dated 20.12.2017 had sanctioned ₹40,74,185/- towards export of service and ₹4176 towards input services by holding as eligible credit and rejected refund of ₹439,427 after holding those as above referred services as inadmissible. Appellant assailed the order concerning inadmissible part in this forum.

3. In the memo of appeal and during the course of hearing of appeal, in filing additional submissions and

judicial decisions of the Tribunal including the one passed by CESTAT, Mumbai vide order no. A/86146-86147/18 dated 24.04.2018 in respect of appellant's own case concerning the period post 01.04.2011 in which appellant's claim in relation to Real estate agency service, club or association services are held to have relationship with the output service provided by the appellant. Ld. Counsel for the appellant argued that in respect of repair & maintenance services, cleaning services, club and association services in Rituja India case tribunal at Hyderabad vide A/30315/2016 dated 13.05.16 also had held that those services are activities relating to business and allowed the credit where the appellant EOU was engaged in IP software services. Further, with reference to case laws reported in Xilinx India Technology Services Pvt. Ltd. Order no. A/30091 to 30093/2016 dated 01.02.2016, Virtusa India Pvt. Ltd. Order no. A/30065/2016 dated 21.01.2016, KLA Tencor Software India P. Ltd. 2016 (45) STR 242 (Tri-Chennai), Excellence Data Research Pvt. Ltd. 2017-TIOL-3133-CESTAT, KLA Tencor Software India P. Ltd. 2016 (45) STR 242 (Tri-Chennai) and CBEC Circular no. 943/4/2011-CX dated 29.04.2011 the Id. Counsel for the appellant submitted that both membership of club services and rent a cab service were held to have nexus between input and output service since are used in connection with output service and while

conceding that instead of Visa, wrong entry has been made in the accounts book as Real Estate Service. The Id. Counsel for the appellant, in reference to Tribunal's decision in the case of KLA Tencor and Excellent Data Research Pvt. Ltd., Vistura India Pvt. Ltd., justified the nexus between other two services namely real estate service and Management, Maintenance and Repair Service for which he claimed those services were used in direct relation to the output services and hence admissible credits for which he prayed for setting aside the order of the Commissioner (Appeals).

4. In response to such submission, Id. AR for the respondent department fully supported the reasoning and legality of the order passed by the Commissioner (Appeals) and in respect of club membership services the expenses were held to be in the nature of recurring benefit extended to the employees and the appellant failed to prove that the said services were not used for the personal use of the employees. Referring to the order passed by the Commissioner (Appeals) that rent a cab vide circular 120/01 by 19.01.2010 qualify as input if rent a cab was pick up of employees, the same is also eligible for credit if the office runs for 24x7 basis. No such proof was established that appellant company was open round the clock. He noted that real estate agency service were rightly held by the

Commissioner to be inadmissible as no relevant invoice was submitted to establish evaluation of portfolio of commercial property for the company. Furthermore management, maintenance and repair service were held to be inadmissible as no nexus of it to the output services was established for which order passed by the Commissioner (Appeals) needs no interference by the appellate Tribunal.

5. Heard from both sides at length and perused the case records, its annexed documents and reported judicial decisions filed by way of additional submissions before this Tribunal. By placing summary of disallowance and detail of disputed input service, appellant had submitted that it had obtained club membership in subscribing international market assessment India Pvt. Ltd. which is a CEO forum comprising of members of executive whose purpose is to interact, understand and anticipate development in India, market and operating environment where as CEO forum which is entity of leaders across sector and location provided information and insight to wide range of common business clearance and sharing ideas. Likewise, its membership in Indian hotel co. Ltd. is for the purpose of having seminars for enhancement of credibility of organisation and sale promotion of business that would augment the brand value of the appellant. In respect of rent a cab service also, it has indicated its uses towards

providing transportation facilities for pick up drop to airport to employees attending seminars workshops training for its director and its guests. The appellant also submitted by way of filing a synopsis that those membership and cab operating facilities were availed by it in the name of the company and not in the name of any of the employees that would attract personal benefit/ consumption. In admitting that Visa services were put under wrong nomenclature as real estate service, it also has stated that the same ought to have been in the nature of management consultancy visa fees paid for professional services provided by Expardrite Legislative Service towards visa fees for visa extension of an employee of the company under expatriation. However, going by exhibit B containing reply to show-cause notice, it is observed that those grounds were not agitated in the reply to show-cause notice in nor even before the Commissioner (Appeals). On the other hand, appellant has mentioned that rent a cab service was taken since in the business, such facilities augments efficiency of the employee to provide output service. In respect of club or association service, it has also put the ground in the reply to show-cause that those expenses are meant for official purpose and use by employees of the appellant in their capacity as employees of the company and those are in the nature of benefits extended to employees by the appellant

to improve the efficiency of the employees and improve proficiency of the operation of the appellant for which those services are considered as taken for use in relation to business activities. This being the factual position, the order of the Commissioner (Appeals) would have been sustained if there not been a clarificatory circular issued on 19.01.2010 vide 120/01/2010-S.T. by the Department of Revenue. The circular clearly indicates that conjoint reading of the Cenvat Credit Rules is to be made with Notification no. 5/2006-CX(NT) to broaden the meaning of input service so as to cover its relationship to output service. The said circular also has attempted a liberal approach in stating that example of services like outdoor catering, rent a cab for pick up and drop of employees to office etc. are input services, without reference to if such pick up is from office or from airport. It also had indicated that correlation and scrutiny of documents to establish nexus is not required to be made if Chartered Accountant certificate or a self certification of the exporter is available to that effect and the department officers are only required to make basic scrutiny of the documents, which if found in order, sanction the refund within a month in order to given effect export to zero rate. The said circular was mainly issued for call centres and BPOs established to cover export of services but contained broad outlines of admissibility of

credits on export oriented units. In such a situation and in view of the decision of the Tribunal, one of which being passed by this CESTAT, Mumbai bench in respect of appellant's other appeal on related issues, and having regard to the judicial precedent made in the matter, I am of the considered view that appellant is eligible to avail cenvat credits to get refunds on those services namely club and association, rent a cab management, maintenance and visa service which were held to be inadmissible by the Commissioner (Appeals). Hence order

6. The appeal is allowed and the order passed by the Commissioner (Appeals) is modified to the extent of making the credit of ₹40,74,185/- availed against these services eligible for refund. Refund process shall commence two month after the appeal period is over.

(Pronounced in Court on 12.12.2018)

**Dr. Suvendu Kumar Pati**  
**Member (Judicial)**