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

APPEAL NO: ST/85442, 85444 to 85449/2018

[Arising out of Order-in-Appeal No: IM/CGST A-III/MUM/73-80/17-18 dated 10.10.2017 passed by the Commissioner of CGST and CX. (Appeals-III), Mumbai]

Globeop Financial Services India Pvt. Ltd. ***Appellant***

versus

Commissioner of C.G.ST.-Mumbai West ***Respondent***

Appearance:

Shri Abhijit Saha, Advocate (PWC) for appellant

Shri Dilip Sirde, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing: 03/07/2018
Date of decision: 14/01/2019

ORDER NO: A/85083-85089/2019

Per: S.K.Mohanty

These appeals are directed against the impugned order dated 10.10.2017 passed by the Commissioner, CGST and CX. (Appeals-III), Mumbai.

2. Brief facts of the case are that the appellant herein is engaged in providing the taxable services, under the category of "Business Support Service" and "Information & Technology Service", defined under the Finance Act, 1994. The appellant exports the entire output

service to outside India. The appellant avails Cenvat credit of service tax paid on the input services. Being an exporter of the output service, the appellant was not in a position to utilize the Cenvat credit available in its books of accounts. Accordingly, for the disputed period, the appellant had filed the refund application before the jurisdictional service tax authorities, claiming refund of accumulated Cenvat credit, in terms of Rule 5 of the Cenvat Credit Rules, 2004 read with the notifications issued there under. The refund applications filed by the applicant were partly allowed by the refund sanctioning authority. The remaining part of the refund claimed amount was rejected on the ground that the input services have not gone for consumption and have no nexus with the output service; that invoices are greater than one year old; that address was not matching as per ST 2 returns; that invoices were not submitted and Cenvat credit availed on the basis of credit notes. Feeling aggrieved with the adjudication orders in rejecting the refund claims, the appellant had filed appeals before the Ld. Commissioner (Appeals), which were disposed of by the impugned order dated 10.10.2017. In the impugned order, the Ld. Commissioner (Appeals) has allowed the refund benefit in respect of some of the services and denied such benefit in respect of the other services, holding that those services have no nexus with the output services provided by the appellant. With regard to invoice greater than one year old, he has held that date of let export order or the date of shipment will only be considered as relevant date for computation of the limitation period. The Ld. Commissioner (Appeals) also upheld the original orders, to the extent, the refund applications were denied on the ground of non-submission of invoices and availment of Cenvat credit on the basis of credit notes.

3. The Ld. Advocate appearing for the appellant filed the written note, in substantiating the nexus between the disputed input services and the output service exported by the appellant. By referring to the activities undertaken by the appellant, as stated in the written note, the Ld. Advocate submitted that the disputed input services have nexus with the output service and thus, service tax paid on such services should merit consideration for refund in terms of Rule 5 of the rules. With regard to the issue of rejection of refund application on the ground that the invoices are greater than one year old, the Ld. Advocate submitted that in case of export of service, the date of realization of foreign exchange in India should be considered as relevant date and since, the refund applications were filed within the stipulated time from the date of receipt of foreign exchange, such claim of refund should not be denied on the ground of limitation. To support such stand, the Ld. Advocate has relied on the decision of this Tribunal in the case of Bechtel India Pvt. Ltd. Vs Commissioner of Central Excise, Delhi, reported in 2014 (34) S.T.R

437(Tri.-Del.). As regards rejection of refund application on the ground that availment of Cenvat Credit on the basis of credit note is not proper, the Ld. Advocate submitted that the Cenvat Credit taken by the appellant had already been reversed and as such, the appellant is not contesting rejection of refund benefit on such grounds. With regard to non-submission of invoices, the Learned Advocate submitted that the relevant invoices are available with the appellant and can be produced before the adjudicating authority, in case the matter is remanded to him.

4. On the other hand, the Ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The chart enclosed to the written note filed by the appellant, explaining the nexus between the disputed input services and the output services exported by it is summarized herein below:

Sr No.	Category of service	Nexus / Justification
1.	Renting of Immovable Property	Business operations i.e. export of services are operated from premises obtained under lease rent. Renting of immovable property services serves as a pre-requisite service, without which Appellant will not be able to provide its output services.
2.	Real Estate Agency Services	The appellant had procured housekeeping/facility management services from CBRC South Asia Private Ltd. ('vendor'). However, inadvertently the vendor had mentioned the category of service on the invoice as 'real estate agent's services'. The invoice provided by the vendor mentioned the

		categories of management, maintenance and repair services, cleaning services as well as business auxiliary services, in addition to 'real estate services'. The said services were procured from the vendor under he category of 'cleaning service'. A copy of the certificate issued by the vendor in this regard has been submitted, which has been sanctioned in the impugned order. Thus, such services have a direct nexus with the output services exported and shall qualify as in input service as per Rule 2(l) of CENVAT Credit Rule, 2004.
3.	Rent a cab, Outdoor Catering, Food & Service	The Appellant submits that its business operations are in the nature of business process outsourcing/ call center facility. It had procured services in relation to rent-a-cab services, outdoor catering services and food and services for its business operations. The Appellant had claimed the refund on these services by placing reliance on the CBEC Circular No. 120/01/2010-ST issued under F.No. 354/268/2009 dated 19.01.2010.
4.	Air Travel Agent's Services	The Appellant provides services to customers located outside India. Therefore, many a times it is essential for employees of the Appellant to visit within India as well as outside India. In this respect, since, the air travel agent's services availed by Appellant are essential for carrying out the business operations, the refund of the CENVAT credit availed on such services shall be admissible.
5.	Group Medical Insurance	The Appellant is engaged in the business of BPO services, wherein employees are key assets. It has availed group medical insurance services to ensure health and safety of its key capital assets by way of making available medical insurance in the case of medical emergency.
6.	Bank charges / banking services and Foreign exchange services	The Appellant avails the services of bank. As the entire output services are exported and the remittance of such output services are received in foreign currency, banking channels are used to realize the same in Indian currency, also banking services are used for making various payments like payment to vendors for input services, salary to employees etc. These services are essential for conducting the business operations, and they would be severely hampered if banking and foreign exchange services were not engaged by the Appellant.

7.	Accommodation service and Services by hotels and guesthouse	The Appellant provides services to its client located outside India. Therefore, many a times it is essential for employees of the Appellant to travel outside India for business purposes. In this respect, the Appellant humbly submits that it has availed services for the accommodation arrangement of its employee when they travel outside India on business visits.
8.	General Insurance Services	The Appellant has availed insurance policy to secure its immovable and movable properties from fire and burglary. Further, international business travel policy has been taken for the employees who travel across the globe for rendering output services.
9.	Mandap Keeper's Service	The Appellant has availed the mandap keeper's services to conduct various official or business functions. Therefore, these services are covered under the 'activities relating to business' and qualify as 'input service' as defined under CENVAT Rules.
10.	Commercial training and coaching	The Appellant has availed these services for imparting knowledge to its employees and to keep them updated. These trainings inter alia include providing trainings on Microsoft office, banking regulations, US GAAP and IFRS etc. Further, coaching and training is included in the inclusive part of the definition of input services.
11.	Membership Fees	The Appellant has obtained membership of the National Association of Software and Services Companies (NASSCOM), for which is pays membership fees. This organization provides access to industry trends, networking opportunities and other activities, which is instrumental to the effective and efficient functioning of the business of the Company.
12.	Event management services and convention services	The Appellant has appointed event managers to manage its business events such as annual offsite to discuss company's performance, targets and future with its employees, along with cultural events. These services are actually procured in relation to the business which helps them in improving interpersonal skills, rejuvenate, increase efficiency and to improve their performance in the business.

7.1 The learned Commissioner (Appeals) vide the impugned order has allowed refund benefit in respect of some of the input services, holding that those services were used in relation to the output service provided by the appellant and that the said services are confirming to the definition of 'input service', contained in Rule 2(l) of the Cenvat Credit Rules, 2004. However, he has denied the benefit in respect of the above disputed services on the ground that those services have no nexus with the output services, exported by the appellant. Rule 5 of the rules read with the notifications issued there under provide for refund of service tax paid on the input services, which were used in export of the output service. The said rule nowhere specifies that only input services directly used in output service should qualify for the refund benefit. Even indirect use will also meet the requirement of the said rule for refund benefit. This fact is evident from the phrase "used in" mentioned in the said statutory provision, meaning thereby that the nexus between the input service and the output service either directly or indirectly have to be established by the claimant. In other words, the nexus between both the services have to be interpreted in a harmonious manner, so that the basic purpose and intent behind the legislation is not defeated. In order to ascertain, whether a particular service has nexus with the output service, the test to be applied is that in absence of use/utilization of such service, what will be the effect on ultimate exportation of service. In absence of use of such input service, if it adversely impacts the quality and efficiency of the exported output service, then such input service should qualify for the benefit of refund envisaged under Rule 5 of the rules. In this case, the nature of use of the disputed services for the purpose of exportation of output service, as explained by the appellant, clearly shows that those services have nexus with the output service and that such services were in fact, required for smooth business transactions of exportation of service. In this context, the Tax Research Unit of CBEC vide Circular No. 120/01/2010-ST dated 19.01.2010 has clarified that renting of premises, right to use software, maintenance and repair of equipment, telecommunication facilities etc. are directly relatable to the export business undertaken by the BPO/Call centers. Further, it has also been clarified that since those offices run on 24x7 basis, it is the necessary pre-requisite that the employer should provide certain facilitates in the form of services to its employees to ensure that the output service is provided efficiently; and accordingly, it was clarified that the services like outdoor catering or rent-a-cab to pick-up and dropping of the employees, would be eligible for credit. Therefore, I do not find any substance in the impugned order, so far as it denied the refund benefit on the disputed services, holding that there is no nexus between those services and the output service exported by the appellant.

7.2 The refund applications filed by the appellant during the period June' 2007 to September' 2010 were rejected by the learned Commissioner (Appeals) on the ground that issuance of let export order/date of shipment should be considered as the relevant date for the purpose of computation of limitation period under Section 11B of the Central Excise Act, 1994 and not date of receipt of FIRC, as claimed by the appellant. The issue arising out of the present dispute is no more *res integra*, in view of the decision of this Tribunal in the case of Bechtel India Pvt. Ltd. - vs. - Commissioner of Central Excise, Delhi, 2014 (34) STR 437 (Tri.-Del.), wherein it has been held that in case of export of services, export is complete only when foreign exchange is received in India; and such date should be considered as relevant date for the purpose of computation of limitation period. In this case, though the export invoices were issued by the appellant on 30.06.2007, but the hard copy of FIRC was received on 18.07.2007 and thereafter, the refund claims were lodged on 30.06.2008. Since the refund applications were filed with one year from the date of receipt of FIRC, the same is within time and cannot be rejected on the ground of barred by limitation of time. Therefore, the impugned order rejecting the refund applications on time bar aspect is not sustainable and liable to be set aside.

7.3 With regard to availment of Cenvat credit on the basis of credit notes, the learned Advocate for the appellant has agreed that such credit is not permissible and the credit amount has already been reversed by the appellant from the Cenvat account. Since the appellant concedes that it is not entitled for such credit, I am not expressing any opinion on entitlement for such credit. Accordingly, the impugned order sustains, so far as it denied the Cenvat credit on such ground.

7.4 As regards rejection of refund benefit on the ground of non-submission of relevant invoices, the appellant stated that the relevant documents/invoices are available with it and can be produced before the original authority for necessary verification. Since the appellant concedes that the invoices are available with it, I am of the view that the matter can be remanded to the original authority for verification of the disputed invoices.

8. In view of the foregoing discussions, the appeals are disposed of in following terms:

(a) Nexus between the input services and output services were established and thus, the appellant should be entitled for refund of service tax paid on the disputed services;

(b) Refund claim is not barred by limitation of time;

(c) Refund benefit is not available on the Cenvat credit availed on the basis of credit notes;

(d) Matter is remanded to the original authority for verification of invoices, which were not submitted during the course of adjudication proceedings.

(Order pronounced in Court on 14/01/2019)

(S.K. Mohanty)
Member (Judicial)

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