CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Appeal No. 88834 of 2018

(Arising out of Order-in-Appeal No. PK/413 to 414/ME/2018 dated 29.05.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s. Fractal Analytics Pvt. Ltd. **Appellant**
701, 702, 7th floor,
Silver Metropolis,
Western Express Highway,
Goregaon (E), Mumbai 400 063.

Vs.

Commissioner of CGST, Mumbai East **Respondent**
9th floor, Lotus,
Lotus Infocentre,
Near Parel Station,
Parel (E), Mumbai 400 012.

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Service Tax Appeal No. 88835 of 2018

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M/s. Fractal Analytics Pvt. Ltd. **Appellant**
701, 702, 7th floor,
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Parel (E), Mumbai 400 012.

Appearance:

Shri Sriram Sridharan, Advocate for the Appellant
Shri Saikrishna Hatangadi, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/**86464-86465/2019**

Date of Hearing: 26.08.2019
Date of Decision: 26.08.2019

These appeals are directed against the impugned order dated 29.05.2019 passed by the learned Commissioner of CGST & Central Excise (Appeals), Mumbai.

2. Briefly stated, the facts of the case are that the appellant is engaged in providing advanced analytics services to its clients, mostly located outside the country. The services provided by the appellant is categorized as taxable service under the head "management consultancy service", defined under Section 65(66) of the Finance Act, 1994. The appellant avails cenvat credit of service tax paid on the input services. Since the appellant is engaged mostly in exportation of service, it was not in a position to utilize the cenvat credit taken on the input services. Thus, during the disputed period April 2016 to September 2016, the appellant had filed refund applications before the jurisdictional Service Tax authorities, claiming refund of service tax paid on the input services. However, the refund applications filed by the appellant were rejected by the original authority on the ground that there is no nexus between the input services and output service provided by the appellant. On appeal against the adjudication order, the learned Commissioner (Appeals) has upheld the views expressed by the original authority. Hence, feeling aggrieved by the impugned order, the appellant has preferred these appeals before the Tribunal.

3. The learned Advocate appearing for the appellant submits that taking of cenvat credit on the disputed services was not questioned by the department. Thus, he submits that since the appellant had complied with the requirements of Rule 5 of the Cenvat Credit Rules, 2004 in complying with the formula prescribed therein, the refund benefit should not be denied to it. He further submits that neither the original authority nor the first appellate authority have referred to the provisions of Rule 14 *ibid* to deny the cenvat credit to the appellant. Hence, it is contended that the nexus aspect cannot be questioned at this juncture, especially when the issue relates to grant of refund of the service tax paid on the input services. In this context, the learned Advocate has relied upon the judgments of the Tribunal in the case of *MSCI Services Pvt. Ltd. vs. CCGST, Mumbai East – 2018-VIL-576-CESTAT-MUM-ST, CST, Mumbai-II vs. WNS Global Services – 2016 (44) STR 454 (Tri.-Mumbai)* and *Walton Street India Real Estate vs. CCGST, Mumbai East – Final Order No.A/85877/2019 dated 10.05.2019*.

4. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. I find that the authorities below have denied the refund benefit to the appellant solely on the ground that there is no nexus between the input services and the output service exported by the appellant. So far as taking of irregular cenvat credit or non-

establishment of nexus between the input services and the output service is concerned, the benefit of cenvat credit can be denied by taking recourse to Rule 14 of the Cenvat Credit Rules, 2004. Admittedly, in the present case, the provisions of Rule 14 *ibid* have not been invoked by the department. Since the appellant has complied with the requirement of Rule 5 *ibid* inasmuch as by adopting the formula prescribed in the said rule, the refund claims were filed before the department, denial of the refund benefit on the sole ground of non-establishment of nexus cannot be considered as justifiable reason for such denial. I find that the case laws relied upon by the learned Advocate for the appellant squarely dealt with the issue in hand.

7. Therefore, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, by setting aside the same, the appeals are allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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