CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88190 of 2018

(Arising out of Order-in-Appeal No. MKK/27-30/RGD APP/2018-19 dated 16.04.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh)

M/s Maersk Global Services Centres (India) Pvt. Ltd. .....**Appellant**
3rd, 4th and 5th Floor, Prudential Building, Central Avenue Road, Hiranandani Business Park, Powai, Mumbai-400076

VERSUS

Commissioner of C.G.ST- Navi Mumbai .....**Respondent**
16th Floor, Satra Plaza, Palm Beach Road, Sector 19, Vashi, Navi Mumbai-400705

WITH

(i) Service Tax Appeal No. 88215/2018(Maersk Gobal Services Centres (India) Pvt. Ltd.) (ii) Service Tax Appeal No. 88216/2018(Maersk Gobal Services Centres (India) Pvt. Ltd.) (iii) Service Tax Appeal No. 88217/2018(Maersk Gobal Services Centres (India) Pvt. Ltd.)

(Arising out of Order-in-Appeal No. MKK/27-30/RGD APP/2018-19 dated 16.04.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh)

Appearance:

Ms. Purva Juneja, Advocate for the Appellant
Shri Saikrishna Hatangadi, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86658-86661/2019

Date of Hearing: 30.07.2019
Date of Decision: 30.07.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. These appeals are directed against the impugned order dated 16.04.2018 passed by the Commissioner of Central Excise and Service Tax (Appeals), Mumbai.

3. Briefly stated, the facts of the case are that the appellant is engaged *inter alia,* in the activities of providing "business support services" to its overseas clients and for that purpose, is registered with the jurisdictional service tax authorities. The appellant exports the entire output services to the overseas clients and therefore, there was no scope or occasion for utilization of the Cenvat credit for payment of service tax on the output service. Accordingly, during the disputed period, the appellant had filed the refund applications in terms of Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012 dated 18.06.2004. The refund applications filed by the appellant were partly allowed by the original authority and against rejection of some portion of the refund amount, the appellant had preferred the appeals before the Learned Commissioner (Appeals), which was disposed of vide the impugned order dated 16.04.2018. The learned Commissioner (Appeals) has denied the refund benefit on the ground that there is no nexus between the input services and the output service exported by the appellant; that description of services mentioned in the invoice did not confirm to the definition of the input service contained in Rule 2(l) *ibid* and that some of the invoices were not submitted for ascertaining the issue, whether the benefit of refund should be granted to the appellant.

4. The learned Advocate appearing for the appellant submits that under the amended Rule 5 *ibid* w.e.f. 01.04.2012, the refund claim has to be considered only on the basis of the formula prescribed therein. She further submits that since the present Rule 5 in vogue does not contain any stipulation of establishing the nexus etc., the benefit of refund should not be

denied to the appellant. She has relied upon the decision of this Tribunal in the case of Accelya Kale Solutions Ltd. Vs. Commissioner of Central Goods Service Tax and Central Excise, Mumbai-2018-TIOL-2452-Cestat-Mum, to state that the refund benefit cannot be denied for non-establishment of the nexus between input services and the output service exported by the assessee.

5. On the other hand, the learned AR appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that since the appellant has not submitted the documents/records to prove the eligibility for refund of the disputed service tax amount, the impugned order has correctly been passed by the learned Commissioner (Appeals) in denying the refund benefit to the appellant.

6. Heard both sides and perused the records.

7. In this case, the department has not disputed the fact regarding export of output service by the appellant. The dispute raised in the present case were in context with non-establishment of nexus between the input and output services, service description provided in the invoices were not confirming to the input service definition provided under Rule 2(l) *ibid* and the invoices were not submitted by the appellant, establishing the fact that the refund benefit should be granted to it. So far as establishing the nexus between input and the output service is concerned, I find that this Tribunal in the case of Accelya Kale Solutions Ltd (supra) by relying upon the letter dated 16.03.2012 of TRU has held that under Rule 5 *ibid*, refund of input service credit is permissible on compliance of the formula prescribed therein and not otherwise. The relevant paragraphs in the said order are extracted herein below:

> *3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No. 18/2012-CE (NT) dated 17.03.2012, with effect from*

01.04.2012. The said substituted rule has prescribed the formula for claiming refund of service tax by the service provider. Under such amended rule in vogue, there is no requirement of satisfying the nexus between the input services and the output service provided by the service provider. Consequent upon substitution of the said Rule in the Union Budget – 2012, the Tax Research Unit (TRU) of CBEC vide letter dated 16.03.2012 has clarified as under:-

> *"F.1. Simplified scheme for refunds:*
>
> *1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of Cenvat Credit Rules, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.*
>
> *2. ....*

4. On perusal of the statutory provisions read with the clarifications furnished by the TRU, it transpires that under the substituted Rule 5 of the rules, there is no requirement of showing the nexus between the input service and the output service provided by the assessee. Since the refund under the said amended rule is governed on the basis of receipt of export turnover to the total turnover, establishing the nexus between the input and output service cannot be insisted upon for consideration of the refund application."

8. In view of the above settled position of law, I do not find any merits in the impugned order, in so far as it uphold the adjudication order on the ground of nexus between the input and the output services. Accordingly, the appeals to such extent is allowed in favour of the appellant.

9. The second issue considered for rejection of the refund application is that the description of service as per the invoice is not confirming to the category of services mentioned in Rule 2(l) *ibid*. It is an admitted fact on record that the authorities below have not proceeded against the appellant for denial of Cenvat benefit by taking recourse to Rule 14 *ibid,* which provides for recovery of Cenvat credit wrongly taken or utilised. Since, the

present issue pertains to refund claim under Rule 5 *ibid,* it has only to be ensured that the formula prescribed in the said rule has been complied with by the claimant. Thus, rejection of refund benefit on such ground is not justified. Accordingly, the impugned order denying the refund benefit on such ground is set aside and the appeal is allowed in favour of the appellant.

10. I also find that the refund application filed by the appellant was rejected on the ground that in certain cases, the appellant did not produce the invoices for scrutiny before the original authority. The onus lies with the claimant to prove that the input services were in fact used for exportation of the output service and thus, the documents were required to be examined at the original stage. At this juncture, since the learned Advocate for the appellant submits that all the relevant documents are available with the appellant, I am of the view that the matter should be remanded to the original authority for verification of the documents/records to be submitted by the appellant. Therefore, after setting aside the impugned order, the matter is remanded to the original authority for the limited purpose of verification of the invoices to be submitted by the appellant.

11. The appeals filed by the appellant are disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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