CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service tax Appeal No. 89567 of 2018

(Arising out of Order-in-Appeal No. NA-GST/A-III/MUM/665-670/17-18 dated 02.08.18 passed by the Commissioner of GST & CX (Appeals-III), Mumbai)

M/s. TPG Capital India Pvt. Ltd. **.....Appellant**
1004, The Capital, Plot no. C-70,
G-Block, BKC, Bandra (E)

VERSUS

Commissioner of CGST, Mumbai East **.....Respondent**
9th Floor, Lotus Parel, Lotus Infocentre,
Parel East, Mumbai

WITH

(i) Service tax Appeal No. 89568 of 2018 (M/s. TPG Capital India Pvt. Ltd.) (ii) Service tax Appeal No. 89580 of 2018 (M/s. TPG Capital India Pvt. Ltd.) (iii) Service tax Appeal No. 89581 of 2018 (M/s. TPG Capital India Pvt. Ltd.) (iv) Service tax Appeal No. 89583 of 2018 (M/s. TPG Capital India Pvt. Ltd.)

APPEARANCE:

Shri Arun Jain, Advocate for the appellant
Shri Dharmendra Singh, Supdt.(AR) for the respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86651-86655/2019

DATE OF HEARING : 20.09.2019
DATE OF DECISION : 20.09.2019

The appellant is engaged in export of service and was availing the benefit of CENVAT credit of duty and service tax paid on various inputs and input services. The said availment of credit was being reflected by the appellant in their statutory records as also in the returns. The accumulated credit is required to be refunded to the appellant in terms of provisions of Rule 5 of CENVAT Credit Rules, 2004 inasmuch as the same stands not utilised by the appellant for export of services.

2. In terms of the said rule, the appellant filed refund claims, which stands rejected by the lower authorities. As all the appeals arise out of the same impugned order of the Commissioner (Appeals), all the appeals are being disposed of by a common order.

3. The total denial of refund in all the appeals is to the extent of ₹16,81,468/-. The lower authorities have rejected the claims on the ground that the input services has no nexus with the output services or the credit stands availed on the basis of the irrelevant invoices etc.

4. However, it is seen that no objection was raised by the revenue at the time of availing of credit. Rule 5 allows refund of accumulated credit and at the time of grant of refund, the Revenue is not permitted to examine the availability of the CENVAT credit. Such an exercise was required to be adopted by the Revenue at the time of availment of credit, by way of

initiation of separate proceedings. Having not done that, it is not permissible to raise the objection at the time of grant of refund in terms of the said rule.

The reliance by the Learned Advocate to the Circular no. 120/01/2010-ST dated 19.01.2010 clarifying the issue that by observing that there cannot be different yardstick for establishing nexus for taking of credit and for refund of credit, is appropriate. Otherwise also, we find the issue stands decided by the many decisions of the Tribunal. One such reference can be made to the Tribunal decision in the case of *Barclay Global Service Centre Pvt. Ltd.& Ors. V. Commissioner of Central Excise & Service tax, Noida [2019-TIOL-1714-CESTAT-ALL].* It stands held in the said decision that as no objection was raised by the Revenue at the time of availing the credit, such objection cannot be raised at the time of deciding the refund claim in terms of provision of Rule 5.

5. In view of the foregoing, I find no merits in the stand of the Revenue. Accordingly, all the appeals filed by the appellants are allowed with consequential relief to the appellants.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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