CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

SERVICE TAX APPEAL NO: 85584 of 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM/216/18-19 dated 27/08/2019 passed by the Commissioner of GST &Central Excise (Appeals), Mumbai – III.]

Partners Group (India) Pvt Ltd
Suite 3103 Four Seasons Hotel, Plot No.1/136,
Dr E Moses Road, Worli, Mumbai – 400 018 ...***Appellant***

versus

Commissioner of GST &Central Excise
9th Floor, Lotus Info Center, Near Parel Station
Parel (E), Mumbai – 400 012 ***...Respondent***

APPEARANCE:

Shri Prakash Shah, Advocate for the appellant

Shri Nitin Ranjan,Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87391 / 2019

DATE OF HEARING: 13/12/2019
DATE OF DECISION: 13/12/2019

The appellant is in appeal against the impugned order wherein part of the refund claim filed under Rule 5 of the CENVAT Credit Rules, 2004 has been rejected as time-barred or no nexus with the service received and service exported.

Further, it was also observed that the payment has not been received from the service recipient.

2. The facts of the case are that the appellant is providing service to their clients located outside India and availing certain services for providing these services. As there was balance in their CENVAT credit account remaining unutilized the appellant filed three refund claims, half-yearly, for the period October 2014 to September 2015. As per Notification No. 27/2012 the appellant was required to file refund claims quarterly. Therefore, the adjudicating authority bifurcated the refund claim in four quarters. For the period October, 2014 to June, 2015 the refund claims were rejected as time-barred as the refund claims were filed by the appellant on11/03/2016. The adjudicating authority held that the appellant has filed these refund claims beyond one year period prescribed under Section 11B of the Central Excise Act, 1944 from the date of receipt of FIRCs. Refund claim for ₹ 5,55,616/- was rejected on the ground that the said CENVAT credit pertains to the period prior to July, 2015. It was also observed by the adjudicating authority that the services for 'general insurance service' and 'tour operator service' have no nexus with the service exported by the appellant and, therefore, the appellant is not entitled to refund of this amount. It was also observed by the adjudicating authority that the appellant has not received remittance from the service recipient. Therefore, refund claims are not maintainable.

3. Learned Counsel appearing on behalf of the appellant submits that the issue from which date the time-period of one year has to be counted in terms of Section 11B of the Central Excise Act, 1994 has been settled by the Larger bench of this Tribunal in the case of *Commissioner of Central Excise, Customs & Service Tax, Bangaluru v. Span Infotech (India) Pvt Ltd [2018 (12) GSTL 200 (Tri.-LB)]* wherein the Tribunal held that for the purpose of deciding the time-limit of one year for refund claims, the period has to be counted from the last date of the quarter. Admittedly, the refund claims pertaining to the period January, 2015 to July, 2015 are within the period of one year from the end of the quarter. Therefore, refund claim cannot be rejected as time-barred. He further submits that the CENVAT credit of ₹5,55,616/- pertains to the period January, 2015 to June, 2015 and the appellant is entitled to refund claims. With regard to nexus of input serviceand output service, the Learned Counsel contended that they are not pressing for the refund claims on account of 'tour operator service' of ₹ 3,549/-. For the service of 'general insurance service' it is his contention that at the time of availment of CENVAT credit it was not questioned and the same cannot be objected to at the time of claiming refund. He further submitted that there is no provision in the service tax that the remittance should be received from the service recipient otherwise refund claim is not maintainable. In these circumstances the refund claims are to be allowed by setting aside the impugned order.

4. On the other hand, the Learned Authorised Representative reiterated the findings of impugned order.

5. Heard the parties and considered the submissions.

6. After hearing the parties, I find that the following issues arise for consideration.

(a) whether the refund claimsare time-barred;

(b) whether the amount of refund claim of ₹ 5,55,616/- can be rejected on the ground that the same pertains to earlier period;

(c) whether the refund claim can be rejected on the ground that there was no nexus with input service and the service exported at the time of entertaining refund claims; and

(d) whether it is mandatory that the service recipient itself is required to make payment for the service received and then only refund can be entertained.

7. **<u>Issue (a): Whether the refund claims re time-barred:</u>**

I find that the issue of, the date from which the time-limit should be counted for filing refund claims has been decided by the Larger Bench of this Tribunal in the case of *Span Infotech (India) Pvt Ltd (supra)* where the Larger Bench of this Tribunal observed as under:

> *"13. ………..Keeping in view the observations of the Apex Court, we conclude that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis."*

As the issue has been settled by the Larger Bench of the Tribunal holding that the time-limit under Section 11B of the Act for filing refund claims of Rule 5 of the CENVAT Credit Rules, 2004 has to be counted one year from the last date of the quarter and not from the date of receipt of FIRCs. Admittedly, the refund claim for the quarter January, 2015 to March, 2015 and April, 2015 to June, 2015 are filed on 11/03/2016 which are well within the one year period. Therefore, I hold that the refund claims for January, 2015 to June, 2015 cannot be rejected as time-barred. Appellant has conceded refund claims for the period October, 2014 to December, 2014 during the course of argument. Therefore, refund claims of ₹ 1,35,319/- pertaining to the period October, 2014 to December, 2014 is rejected.

8. **Issue (b): whether the amount of refund claims of ₹5,55,616/- can be rejected on the ground that the same pertains to earlier period.**

I find that, as in the earlier paragraphs, it has been held that the refund claim has been filed in time.Therefore, refund of ₹5,55,616/- cannot be held to be time-barred. Therefore, the said refund claim is admissible to the appellant.

9. **<u>Issue (c): Whether the refund claim can be rejected on the ground that there was no nexus with input service and the service exported at the time of entertaining refund claims</u>**;

It is an admitted fact that, at the time of availment of CENVAT credit on input service on ‘general insurance’, it was not questioned to the appellant of this service having no nexus with the services exported by them. Therefore, the same cannot be questioned at the time of entertaining refund claim as held by this Tribunal in *Verisign Services India Pvt Ltd v. Commissioner of Service Tax, Bangalore – I [2018 (12) GSTL 161 (Tri.-Bang.)]* wherein this Tribunal has observed as under:

> *“7. Further, I observed that at the time of availment of these services, it was not questioned to the appellant that these are not ‘input services’ therefore they are not entitled to avail Cenvat credit. The issue has been raised at the time of filing of refund claim under Rule 5 of Cenvat Credit Rules, 2004 by the appellant. Availment of Cenvat credit cannot be disputed on the later stage. In that circumstances by relying on the decision Technip India Ltd. - 2017-TIOL-3708-CESTAT-MUM, I hold that refund claim cannot be denied merely on the premise that services in question on which Cenvat credit remained unutilized in Cenvat credit are not ‘Input Services’. In*

> *view of the above analysis, I hold that appellants are entitled for refund claim filed under Rule 5 of Cenvat Credit Rules, 2004. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any."*

Further, the said insurance has been availed by the appellant in insurance of various movable assets which has been used for providing output service. Further, whether CENVAT credit is admissible on the service has been decided by the Tribunal in the case of *Sarita Handa Exports (P) Ltd v. Commissioner of Central Excise, Gurgaon – II [2016 (44) STR 654 (Tri.-Chan.)]* wherein it has been held that the said service is having direct nexus with the output service provided by the appellant. Therefore, on merits also the appellant is entitled to avail CENVAT credit on 'general insurance'. Therefore, refund of the said CENVAT credit cannot be rejected.

10. **Issue (d): Whether it is mandatory that the service recipient itself is required to make payment for the service received and then only refund can be entertained**.

There is no provision in law that payment of service provided by the appellant has to be made by the service recipient for entertaining refund application. It is a fact on record that the appellant provided the service and received FIRCs against those service. Therefore, refund claim is admissible to the appellant.

11. In view of the above discussion I hold that the refund claims, except ₹ 1,35,319/- and ₹ 3,549/- on account of ‘tour operator service’, the appellant is entitled to claim refund.

12. Therefore, the impugned order is modified to that extent and appeal is disposed off in the above terms, with consequential relief.

(Dictated and Pronouncedin opencourt)

(Ashok Jindal)
Member (Judicial)

**/as*