CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

SERVICE TAX APPEAL NO: 85901 of 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM 147 to 149/18-19 dated 19/07/2018 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai – III.]

NBA India Basketball Pvt Ltd
C-1804, One BKC, G Block, Banda-Kurla Complex
Bandra East, Mumbai – 400 051 ... ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central
4th Floor, Central Excise Building, Churchgate,
Mumbai – 400 020 ***...Respondent***

WITH

SERVICE TAX APPEAL NO: 8632 of 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM 147 to 149/18-19 dated 19/07/2018 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai – III.]

NBA India Basketball Pvt Ltd
C-1804, One BKC, G Block, Banda-Kurla Complex
Bandra East, Mumbai – 400 051 ... ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central
4th Floor, Central Excise Building, Churchgate,
Mumbai – 400 020 ***...Respondent***

AND

SERVICE TAX APPEAL NO: 86754 of 2019

[Arising out of Order-in-Appeal No: NA/GST A-III/MUM 147 to 149/18-19 dated 19/07/2018 passed by the Commissioner of GST & Central Excise (Appeals), Mumbai – III.]

NBA India Basketball Pvt Ltd
C-1804, One BKC, G Block, Banda-Kurla Complex
Bandra East, Mumbai – 400 051 ... ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central
4th Floor, Central Excise Building, Churchgate,
Mumbai – 400 020 ***...Respondent***

APPEARANCE:

Shri Vinod Awtani, Chartered Accountant for the appellant

Shri Sudhir B Mane, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A/87297-87299/2019

DATE OF HEARING: 11/12/2019
DATE OF DECISION: 11/12/2019

Appellant is in appeal against the impugned orders wherein the refund claims have been rejected on the following grounds:

(a) that the appellant has failed to show the nexus of service availed and export thereof;

(b) appellant has failed to produce invoices of the services which they have received and the address mentioned in the invoice is not correct.

2. As the issue in all the appeals are common, therefore, all the appeals are disposed off by a common order.

3. The facts of the case are that the appellant is an exporter of service. During the course of export of service, the appellant availed certain services and took CENVAT credit thereof. Later on, the appellant filed periodical refund claims for CENVAT credit lying unutilized in their CENVAT credit account in terms of Rule 5 of CENVAT Credit Rules, 2004. The refund applications were rejected on the ground that the appellant failed to show nexus of the service availed with the service exported. Further, the appellant has failed to produce invoices in some of the refund and address in the invoices is not correct in some cases. Against these orders, the appellant is before me.

4. Learned Consultant appearing on behalf of the appellant submits that the appellant is not contesting the denial of refund on the ground of non-submission of invoices or the incorrect address in the invoices. Therefore, on that account the denial of refund in the impugned order is upheld.

5. The rejection of refund claim on account that the appellant has failed to show nexus of service received with the service exported, I find that, at the time of availment of CENVAT credit, it was not questioned to the appellant that on the services in question, CENVAT credit is not admissible, therefore, the same cannot be objected at the time of entertaining the refund claim.

The same view was taken by this Tribunal in the case of *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."

6. Therefore, following on the decision of the Tribunal in *Verisign Services India Pvt Ltd (supra),* I hold that, at the time of entertaining the refund claim, the admissibility of CENVAT credit cannot be questioned. Therefore, on this ground the refund claims cannot be rejected and are admissible.

7. Accordingly, the refund claims on account of denial of refund for nexus of input service with export service cannot be rejected. The refund claims on this account are allowed.

8. The refund claims, where the appellant failed to produce the invoices or address of the appellant was not correct in the invoices, the same are rejected.

9. The appeals are disposed off in the above terms.

(Dictated and Pronounced in open court)

(Ashok Jindal)
Member (Judicial)

**/as*