

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

Service Tax Appeal No. 85591 of 2019

(Arising out of Order-in-Appeal No. PK/940 to 943/ME/2018 dated 29.10.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s. BNP Paribas India Solutions P. Ltd. Appellant

Infinity Building No.4, Unit No.601,
6th floor, Off Film City Road,
Malad (W), Mumbai 400 097.

Vs.

Commissioner of CGST, Mumbai East Respondent

9th floor, Lotus, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai 400 012.

WITH

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Vs.

Commissioner of CGST, Mumbai East Respondent

9th floor, Lotus, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai 400 012.

WITH

Service Tax Appeal No. 85603 of 2019

(Arising out of Order-in-Appeal No. PK/940 to 943/ME/2018 dated 29.10.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s. BNP Paribas India Solutions P. Ltd. Appellant

Infinity Building No.4, Unit No.601,
6th floor, Off Film City Road,
Malad (W), Mumbai 400 097.

Vs.

Commissioner of CGST, Mumbai East Respondent

9th floor, Lotus, Lotus Infocentre,

Near Parel Station, Parel (E),
Mumbai 400 012.

AND

Service Tax Appeal No. 85608 of 2019

(Arising out of Order-in-Appeal No. PK/940 to 943/ME/2018 dated 29.10.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s. BNP Paribas India Solutions P. Ltd. Appellant

Infinity Building No.4, Unit No.601,
6th floor, Off Film City Road,
Malad (W), Mumbai 400 097.

Vs.

Commissioner of CGST, Mumbai East Respondent

9th floor, Lotus, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai 400 012.

Appearance:

Shri Prasad Paranjape and Shri Mohit Raval, Advocates, for the Appellant
Shri S.B. Mane, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/**85060-85063/2020**

Date of Hearing: 22.01.2020

Date of Decision: 22.01.2020

The issue involved in all these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Briefly stated, the facts of the case are that the appellant is a 100% EOU, engaged in providing information & technology software services, defined as taxable service under the Finance Act, 1994. During the disputed period, the appellant had filed refund applications under Rule 5 of the Cenvat Credit Rules, 2004 on the ground that the entire output services were exported by the appellant and there was no scope for utilisation of the cenvat credit

taken by the appellant for providing such services within the country on payment of service tax. The refund applications filed by the appellant were considered favourably by the original authority as well as the learned Commissioner (Appeals) partially and denied the benefit of refund in case of some of the input services on the ground that there were no nexus between such disputed input services and the output service exported by the appellant and that the disputed services are not conforming to the definition of the 'input service' as per Rule 2(l) of the Cenvat Credit Rules, 2004. The learned Commissioner (Appeals) also denied the refund benefit of Rs.12,80,667/- on the ground that the appellant had claimed the refund twice in respect of the same invoices.

3. The learned Advocate appearing for the appellant submits that, by utilizing the disputed services, the appellant had exported the entire output service to overseas entities and as per the provisions of Rule 5 *ibid*, unutilized cenvat credit available in the books of accounts should be eligible for refund benefit. He further submits that neither the original authority nor the Commissioner (Appeals) has raised any objection with regard to establishing the nexus of the input as well as output service at the time of availing of such credit. Thus, he submits that since availment of credit has not been questioned by the department in terms of Rule 14 *ibid*, the refund benefit cannot be denied on the ground of non-establishment of nexus between the input and the output services. In this context, he has relied upon the decisions of this Tribunal in the case of *Maersk Global Services Centres (India) Pvt. Ltd. vs. CCGST, Navi Mumbai – 2019 (10) TMI 959 –CESTAT MUMBAI*, *Accelya Kale Solutions Ltd. vs. CCGST & CE, Mumbai – 2018 (8) TMI 19 –CESTAT MUMBAI* and *CC&ST, Bangalore vs. GE Medical System Pvt. Ltd. – 2015 (40) STR 697 (Tri.-Bang.)*. With regard to claiming of refund twice in respect of the same invoice, he

submits that the appellant had not claimed the refund benefit twice and to such extent, he submits that the appellant has adequate records to demonstrate that on the basis of the invoices, the refund benefit has been claimed only once and not twice.

4. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order and further submits that since the disputed services have not been used for the intended purpose or conforming to the definition of 'input service', the benefit of refund provided under Rule 5 *ibid* should not be available to the appellant.

5. Heard both sides and perused the records.

6. Rule 5 of the Cenvat Credit Rules was substituted by Notification No.18/2012-C.E.(N.T.), dated 17.03.2012 (w.e.f. 01.04.2012). Under the said substituted rule, it has been provided that the manufacturer or the service provider has to claim the refund as per the formula prescribed therein. Considering such amendment of Rule 5, the Tax Research Unit of Department of Revenue vide circular dated 16/03/2012 has clarified that the new scheme under Rule 5 does not require the kind of correlation that is needed at present between exports and input services used in such exports. Since the amended rule w.e.f. 01.04.2012 does not provide for establishment of nexus between the input and the output services and the benefit of refund is to be extended only on compliance of the formula prescribed therein, I am of the view that denial of refund benefit on the ground of non-establishment of nexus cannot be sustained. I find that this Tribunal in the case of *Maersk Global Services Centres (I) Pvt. Ltd.* (supra) has extended the refund benefit on the ground that establishment of nexus between the input and the output services cannot be insisted upon. The

relevant paragraphs in the said decision is extracted herein below:

“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(I) 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 Appeal No. ST/88190,88215, 88216 & 88217/2018 4 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."

7. In view of above, the impugned order, insofar as it has denied the refund benefit on the ground of non-establishment of nexus between the input and output services, is set aside and the appeal is allowed in favour of the appellant.

8. With regard to the other ground assigned for rejection of refund benefit i.e., taking of credit twice on the same invoice, I am of the view that such aspect cannot be verified at this juncture, for the reason that the original records are not available. Since, correlation between the relevant invoices and the refund application is required to be scrutinized in a proper manner, I am of the view that the matter should be remanded to the original authority for verification of the relevant invoices and other documents for a proper fact finding whether, the refund benefit has been claimed once or twice. Therefore, the matter is remanded for a limited purpose of verification of the relevant invoices with regard to the allegation of avilment of double credit by the appellant. Needless to say that the appellant should be granted opportunity to participate in the de-novo adjudication proceedings.

9. The appeals are disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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