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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88266 of 2018

(Arising out of Order-in-Appeal No. PK/370 to 373/MC/2018 dated 26.04.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

M/s Siemens Technology and Services Pvt. Ltd. **.....Appellant**
130, Pandurang Budhkar Marg,
Worli, Mumbai-400018
(Communication address: Sector-2, Near Kharghar, Raiway Station, Kharghar Node, Navi Mumbai-410210)

VERSUS

Commissioner of C.G.ST, Mumbai Central **.....Respondent**
4th Floor, C.Ex. Building,
Churchgate,
Mumbai-400020

WITH

(i) Service Tax Appeal No. 88284/2018 (M/s Siemens Technology and Services Pvt. Ltd.) (ii) Service Tax Appeal No. 88288/2018 (M/s Siemens Technology and Services Pvt. Ltd.) (iii) Service Tax Appeal No. 89159/2018 (M/s Siemens Technology and Services Pvt. Ltd.)

(Arising out of Order-in-Appeal No. PK/370 to 373/MC/2018 dated 26.04.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai)

<u>Appearance:</u>

Ms. Anjali Hirawat, Advocate for the Appellant
Shri Sudhir B. Mane, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87465-87468 / 2019

Date of Hearing: 30.08.2019
Date of Decision: 30.08.2019

Per: S.K. MOHANTY

These appeals are directed against the impugned order dated 26.04.2018 passed by the learned Commissioner of GST & Central Excise (Appeals-II), Mumbai.

2. Brief facts of the case are that the appellant is *inter alia,* engaged in export of Information Technology Services to its clients located outside India. For the purpose of rendering the said services, the appellant procures various services from the vendors located both outside and inside India. Wherever, the services were procured from the domestic vendors, the appellant availed Cenvat credit of service tax paid by them. Since, the output services were exported by the appellant, there was no scope or occasion to utilize the Cenvat credit available in the books of accounts and thus, the appellant claims refund benefit provided under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification No. 27/2012 – CX. (N.T.), dated 18.05.2012. During the disputed period, the appellant had filed the refund applications before the jurisdictional service tax authorities. The refund applications filed by the appellant were partly allowed at the original stage and at the first appellate stage, learned Commissioner (Appeals) has allowed the refund benefit in some cases and denied the benefit in respect of certain services namely, renting of car parking, cafeteria, travel and medical, hotel services. The refund applications were not favourably considered by the department on the ground that the appellant did not produce the evidence, establishing the nexus/co-relation between the services received by it and the exportation of output services. The benefit of refund was also denied on the ground that the invoices were issued beyond the prescribed period of six months.

3.1 The learned Advocate appearing for the appellant submitted that the rationale adopted in the impugned order is directly contrary to the statutory provisions. She submitted that there is no requirement under the statute that the claimant of refund should establish the direct nexus between the input and the output services. In this context, the learned Advocate has relied upon the following judgments delivered by the judicial forums:-

1. *3D PLM Software Solutions Ltd. Vs CST - 2018 (13) GSTL 325 (Tri.-Mumbai)*

2. *MSCI Services Pvt. Ltd. Vs. Commr. of CGST - 2018-VIL-576-CESTAT-MUM-ST*

3. *Deloitte Support Services India Pvt. Ltd. Vs. CCE 2017 (5) GSTL 393 (Tri.-Bang.)*

4. *KPMG Vs CCE – 2014 (33) STR 96 (Tri.-Del.)*

5. *CST Vs. WNS Global Services 2016 (44) STR 454 (Tri.-Mumbai)*

3.2 The learned Advocate also referred to the letter no. 334/1/2012 – TRU dated 16.03.2012 issued by CBEC to state that under the amended provisions of Rule 5 *ibid* (effective from 01.04.2012), co-relation between the input and export of output services cannot be insisted upon and based on the formula prescribed in the Rule, the benefit of refund should be granted by the department.

3.3 With regard to availment of Cenvat credit on the basis of invoices issued beyond the period of six months, the learned Advocate submitted that the period of 'six months' was substituted by 'one year' vide Notification No. 6/2015 – CE (N.T.), dated 01.03.2015 and that since the credit was availed within the amended period of one year, such availment of credit is in conformity with the Cenvat statute.

4. On the other hand, the learned AR appearing for Revenue reiterated the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. In the case in hand, the department has not disputed the fact regarding exportation of the output service by the appellant. Since, the input services were used in or in relation to provision of output service exported by the appellant, the benefit of refund provided under Rule 5 *ibid* should be available to it. It is not the case of Revenue that the appellant did not follow the procedures laid down under Rule 5 read with the notification issued there under. The said Rule does not provide any stipulation or embargo that one-to-one co-relation or nexus has to be established between the input and exported output services. Considering the statutory provisions, the CBEC vide circular dated 16.03.2012, has also endorsed the above views. Further, the Tribunal in the relied upon cases has also extended the refund benefit, holding that there is no requirement for an assessee to prove a directed nexus between the input and output services for the purpose of claiming the benefit of refund under Rule 5 *ibid.*

6.1 The period of dispute in the present case is from October 2014 to September 2015. Insofar as the period of availment of Cenval credit of service tax paid on the input services, the fifth proviso appended to sub-rule (7) of Rule 4 *ibid* mandated that the credit shall not be allowed after six months of the date of issue of the documents specified in sub-rule (1) of Rule 9 *ibid.* The period of 'six months' was substituted for 'one year' vide Notification No. 6/2015 – C.E. (N.T.), dated 01.03.2015. The effect of substitution is that if the credit has been taken within one year from the date of the issuance of the invoice, then such credit cannot be denied to the assessee. Under the amended provisions of Rule 4 *ibid*, denial of the benefit of the Cenvat credit for the entire period of dispute is not proper and justified. I am of the view that the matter should be examined at the original stage for ascertaining the period, within which the credit was availed by the appellant in respect of the disputed invoices. If the credit has been availed within a period of one year, the Cenvat benefit should be extended to the appellant.

7. In view of above, the impugned order is set aside and the appeals are allowed in favour of the appellant, insofar as it has denied the benefit of refund on the ground of non establishment of nexus between the input and output services. With regard to the refund claim in respect of the invoices issued beyond the prescribed period, the appeal is allowed by way of remand to the original authority for a decision on merit on the above lines.

8. The appeals are disposed of in above terms.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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