CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 87747 of 2016

[Arising out of Order-in-Appeal No: PUN-SVTAX-000-APP-202 to 208-16-17 dated 2nd September 2016 passed by the Commissioner of Service Tax (Appeals), Pune.]

AGS Customer Services (India) Pvt Ltd … ***Appellant***
Office No. 103, 1st Floor, P3 Pentagon, Magarpatta City,
Hadapsar, Pune – 411 013

versus

Commissioner of Service Tax – I ***…Respondent***
Pune
F-Wing, 3rd Floor, ICE House, 41/A, Sasson Road,
Pune - 411 001

WITH

Service Tax Appeal No: 87753 of 2016

[Arising out of Order-in-Appeal No: PUN-SVTAX-000-APP-202 to 208-16-17 dated 2nd September 2016 passed by the Commissioner of Service Tax (Appeals), Pune.]

AGS Customer Services (India) Pvt Ltd … ***Appellant***
Office No. 103, 1st Floor, P3 Pentagon, Magarpatta City,
Hadapsar, Pune – 411 013

versus

Commissioner of Service Tax – I ***…Respondent***
Pune
F-Wing, 3rd Floor, ICE House, 41/A, Sasson Road,
Pune - 411 001

AND

Service Tax Appeal No: 87774 of 2016

[Arising out of Order-in-Appeal No: PUN-SVTAX-000-APP-202 to 208-16-17 dated 2nd September 2016 passed by the Commissioner of Service Tax (Appeals), Pune.]

AGS Customer Services (India) Pvt Ltd … ***Appellant***
Office No. 103, 1st Floor, P3 Pentagon, Magarpatta City,
Hadapsar, Pune – 411 013

versus

Commissioner of Service Tax – I ***…Respondent***
Pune
F-Wing, 3rd Floor, ICE House, 41/A, Sasson Road,
Pune - 411 001

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri Onil Shivdikar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87498-87500 / 2019

DATE OF HEARING: 03/06/2019
DATE OF DECISION: 29/11/2019

PER: C J MATHEW

The dispute that requires determination in this appeal of M/s AGS Customer Care Services (India) Pvt Ltd against order-in-appeal no. PUN-SVTAX-000-APP-202 to 208-16-17 dated 2nd September 2016 of Commissioner of Service Tax (Appeals), Pune is the denial of refund under rule 5 of CENVAT Credit Rules, 2004 for non-compliance with conditions that have been read into the provisions therein in conjunction with notification no. 5/2006-CE (NT) dated 14th March 2006, as amended by notification no. 27/2012-CE (NT) dated

18th June 2012, issued in accordance with the said rule empowering the framing of procedure, safeguards conditions and limitations. Of specific relevance are the aspects of nexus and limitation.

2. The appellant had filed claims for seven quarters covering the period from October 2011 to March 2014 and, while four of these for third-quarter of 2011, first and second quarters of 2012 and first quarter of 2014 for an amount of ₹ 20,11,155 were disallowed in full for being barred by limitation, three were allowed to the limited extent of ₹1,69,696 out of total of ₹ 4,59,045. The latter, upon appeal before the first appellate authority, was modified by sanction of further amount of ₹ 2,17,559. Thus, before us are the claims rejected for being barred by limitation besides claim of ₹ 5,500 for the third quarter of 2012 and ₹66,290 for the fourth quarter of 2012 disallowing eligibility for credit.

3. Learned Counsel for the appellant contends that the lower authorities had misread the ‘relevant date’ for computation of the period within which claims were to be filed and that the denial of credit availed on premium paid for group insurance was erroneous. According to him, the decision of the Hon’ble High Court of Madras in *Ganesan Builders Ltd v. Commissioner of Service Tax, Chennai [2019 (20) GSTL 39 (Mad)]* stands squarely decided in favour of eligibility to credit of tax paid on group insurance policies. It is further submitted that the decision of the Tribunal in *Commissioner of Central Excise & Service Tax, Benguluru Service Tax-I v. Span Infotech India Pvt Ltd [2018-*

TIOL-516-CESTAT-BANG-LB] has specified the 'relevant date' for determination of the deadline within which refund claims should be filed.

4. Learned Authorised Representative took us through the reasons for confirmation of the disallowance of the claims by the first appellate authority and drew our attention to the decision of the Tribunal in *Commissioner of Service Tax, Goa v. Ratio Pharma India Pvt Ltd [2015 (39) STR 31 (Tri-LB)]*.

5. The issue of eligibility of CENVAT credit of tax paid on premium collected by providers of 'insurance service' of the disputed variety has been settled by the decision of the Hon'ble High Court of Madras in *re Ganesan Builders Ltd*. Furthermore, notwithstanding the observations in *re Ratio Pharma India Pvt Ltd,* which is on the issue of the competence of a single member bench to seek reference to Larger Bench, the Tribunal in *re Span Infotech India Pvt Ltd,* by laying down that

> *'11. The definition of relevant date in Section 11B does not specifically cover the case of export of services. Hence, it is necessary to interpret the provisions constructively so as to give its meaning such that the objective of the provisions; i.e. to grant refund of unutilized Cenvat credit, is facilitated. By reference to the Service Tax Rules, 1994 as well as the successor provisions i.e. the Export of Services Rules, 2005, we note that export of services is completed only with receipt of the consideration in foreign exchange. Consequently, the date*

> *of Foreign Inward Remittance Certificate (FIRC) is definitely relevant. The Hon'ble Andhra Pradesh High Court has held that the date of receipt of consideration may be taken as relevant date in the case of Hyundai Motors [2015 (39) STR 984 (A.P.)].*
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> *12. The related question for consideration is whether the time limit is to be restricted to the date of FIRC or can be considered from the end of the quarter. The Tribunal in the case of Sitel India Ltd. (supra), has observed that the relevant date can be taken as the end of the quarter in which FIRC is received since the refund claim is filed for the quarter.'*

has settled the issue.

6. The refund applications have been partially rejected without considering the settled law as enumerated *supra*. The claims need to be subjected to scrutiny for this. Accordingly, we remand the dispute arising from the impugned order to the original authority for reconsideration of the refund claims in accordance with settled law. Needless to say, the remand is restricted only to the extent of claims denied by the first appellate authority.

(Order pronounced in the open court on 29/11/2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

**/as20022002*