

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

WEST ZONAL BENCH, MUMBAI  
**Service Tax Appeal No. 89890 of 2018**

(Arising out of Order-in-Appeal No. CD/TR(Appeals)/ME/47/2018-19 dated 27.08.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Thane Rural.)

**M/s Blue River Capital India** .....Appellant  
**Advisory Services LLP**  
97, 3<sup>rd</sup> North Avenue,  
Market Maxity, Bandra Kurla Complex,  
Nariman Point, Mumbai – 400 021

*VERSUS*

**Commissioner of CGST &** .....Respondent  
**Central Excise, Mumbai East**  
9<sup>th</sup> Floor, Lotus Parel, Lotus Infocentre  
Near Parel Station, Parel (East),  
Mumbai-400 012

**WITH**

**Service Tax Appeal No. 89857 of 2018**

(Arising out of Order-in-Appeal No. CD/TR(Appeals)/ME/41/2018-19 dated 17.08.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Thane Rural.)

**M/s Blue River Capital India** .....Appellant  
**Advisory Services LLP**  
97, 3<sup>rd</sup> North Avenue,  
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9<sup>th</sup> Floor, Lotus Parel, Lotus Infocentre  
Near Parel Station, Parel (East),  
Mumbai-400 012

**APPEARANCE:**

Shri Vasant K. Bhat, Chartered Accountant for the Appellant  
Shri Saikrishna Hatangadi, Assistant Commissioner, Authorised  
Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/87046-87047/2021**

Date of Hearing: 03.09.2021

Date of Decision: 03.11.2021

These two appeals, which were heard on 3<sup>rd</sup> September, 2021, is taken up for passing of common order.

2. Both the appeals pertain to rejection of refund claim to the appellant service provider. For the period from September, 2008 to March, 2009, appellant's claims for refund of Rs. 16,43,339/- and claim for Rs. 8,21,432/- for the period from April, 2009 to September, 2009, which were rejected by the adjudicating authority and Commissioner (Appeals) are challenged in this Tribunal in appeal No. ST/89857/2018 and its rejection claim for Rs. 7,39,219/- for the period from October, 2009 to March, 2010 and April 2010 to September, 2010 that was rejected through Order-in-Original and Order-in-Appeal is assailed here though appeal No. ST/89890/2010. The grounds on which both the refund claims were rejected are summarised below. In appeal No. ST/89857/2018, the grounds of rejection were

(i) Refund claim filed more than 3 months in a single claim application.

(ii) Appellant did not avail registration with department.

(iii) For the claim period no ST-3 return was filed.

In appeal No. ST/89890/2010, the grounds of rejections are summarised below.

(i) Refund claim filed more than 3 months in a single claim application.

(ii) Services allegedly exported by the appellant were not used outside India.

(iii) Claim being partially time bared.

(iv) Credit on rent-a-cab and club or association services are inadmissible.

(v) Some Input tax credit invoices continued to be issued at old registered address of the appellant.

3. Submission of refund claim for more than 3 months in a single claim application being primary issue in both the cases is taken up for discussion at the first instance. Learned Counsel for the appellant Shri Vasant K. Bhat, Chartered Accountant with reference to judicial decisions reported in *Manubhai & Co. Vs. CST Ahmedabad [2011 (21) STR 65 (Tri.-Ahmd.)]*, submitted that substantial benefit could not be denied due to procedural lapse. On the other hand, learned Authorised Representative Shri Saikrishna Hatangadi submitted that filing of refund from September, 2008 to March, 2009 for 7 months in one application contravened the procedure laid down in Notification No. 5/2006-C.E. (NT) dated 14.03.2006 and Rule 5 of CENVAT Credit Rules, 2004 is subjected to safeguards, conditions

and limitations set out in the appendix of the Notification. Para 2 of the Appendix clearly stipulates that the claim for such refund are to be submitted not more than once for any quarter in a calendar year and therefore refund claim is not admissible, as has been rightly held in the Order-in-Original and Order-in-Appeal. However, on a close reading of the said provision, it would clearly reveal that more than one claim application cannot be filed in a quarter but such claim is not restricted to be filed only for a quarter i.e. for 3 months in one application. Since, refund can be claimed within a period of one year and Notification No. 5/2006-C.E. (NT) dated 14.05.2006 has only provided additional benefit to the Export Oriented Units and units having more than 50% export turnover to file such refund claim in each calendar month, the use of word 'may' in the said notification has made it discretionary to the claimant to choose filing refund every month as a privilege granted to the exporter but the same cannot be treated as a mandatory requirement for filing in one month or three months without which refund claim should be refused. Issue no. 1, in both the appeals is therefore answered in the affirmative and in favour of the appellant.

4. In respect of the second ground of rejection noted in the Order-in-Appeal of appeal No. ST/89857/2018 that appellant did not avail registration with the department for the period during which invoices were raised has been contested by both the parties. Learned Counsel for the appellant, with reference to the leading case *mPortal India Wireless Solutions Pvt. Ltd. Vs. CST, Bangalore [2012*

(27) *STR 134 (Kar.)*] along with others, tried to justify that registration with department is not a pre-requisite to claim refund. Learned Authorised Representative for the Respondent-Department submitted that the said judgment had not taken note of Circular No. 120/01/2010-ST and Notification No. 5/2006-C.E. (NT) dated 14.03.2006 for which it cannot be said that ratio on this issue has been set by that decision of the Hon'ble Karnataka High Court. Be that as it may, in the Appendix under para no. 3(b) it has been mentioned that application in Form A seeking refund is to be filed before the Deputy/Assistant Commissioner of Central Excise in which jurisdiction the registered premises of the service provider, from which output service were exported is situated, along with a copy of the invoices and a certificate from the bank certifying realisation of export proceeds. A bare reading of the said provision clearly indicates that registered premises is to be situated within the territorial jurisdiction of the Deputy/Assistant Commissioner before whom Form A application was to be filed. In the case of the applicant, as reveals from case record and admitted by both the parties, appellant got registered with retrospective effect from 11.08.2009 and the first refund application was filed on 30.08.2009 i.e. after the registration was completed. It is, therefore, immaterial to examine the date of invoices if raised before the registration date as there is no such stipulation or conditionality in Notification No. 5/2006-C.E. (NT) or to say Circular No. 120/01/2010-ST. Further in para 7 of the said judgment of *mPortal India Wireless Solutions Pvt.*

*Ltd. (supra)* it has been clearly held that registration is not a requirement for filing refund claim.

5. In respect of ground 3 of rejection or the third issue i.e. required to be discussed here concerning filing of ST-3 returns periodically appellant has placed its reliance on the case laws in the case of *3DPLM Software Solutions Vs. Commissioner - Final order No. A/87226/2018* and *Jagdamba Polymers Ltd. Vs. CCE, Ahmedabad – [2010 (253) ELT 656 (Tri.-Ahmd.)]* to argue that there was no stipulation/provisions contained in Rule 5 for claiming such refund with ST-3 returns. On the other hand, learned Authorised Representative for the Respondent-Department submitted that Rule 9(9) of CENVAT Credit Rules, 2004 has specified that every service provider shall submit half-yearly return in the Form specified by notification by the end of the month following the particular quarter or half-year, for which it cannot be said that the order passed by the Commissioner (Appeals) is erroneous. Admittedly, this is a procedural laps since provider of output service availing CENVAT credit shall submit half-yearly returns in the form specified in the notification but there is no express provisions that in the event of non-filing of such returns, refund will be rejected except for violation of safeguards, conditions and limitations set out in the Appendix of Notification issued under Rule 9 for exporters. This being the facts on record and legal position, to my considered view, refund cannot be disallowed on the grounds set out in appeal No. ST/89857/2018

that arises out of Order-in-Appeal No. CD/TR(Appeals)/ME/41/2018-19 dated 17.08.2018.

6. In respect of the other appeal No. ST/89890/2018 additional grounds of rejection as enumerated in the order is that services exported by the appellant was not used outside India and some of the input services like rent-a-cab and club or association services were not having any nexus to export and some invoices raised in the old address and some were time barred. Viewpoints of both the parties are noted in their written submissions in respect of the issue concerning services expected were not used in outside India. It can be said that during the relevant period, as per Export Service Rule, 2005 if service recipient is situated outside India and the consideration has been receipt in convertible foreign exchange it would satisfy the definition of export of services. This fact had been fortified by the decisions relied upon by the appellant namely *FIL Capital Advisors (I) P Ltd. Vs. CST [2015 (40) STR 543 (Tri.-Mumbai)]*, *AMP Capital Advisors India Pvt. Ltd. Vs. CST [2015 (40) STR 577 (Tri.-Mumbai)]* and *CST Vs. Greater Pacific Capital Pvt. Ltd. [2015 (38) STR 656 (Tri.-Mumbai)]* etc. In respect of nexus between input and output services like rent-a-cab and club or association services etc., since it was a period prior to 2012 i.e. before commencement of negative resign, in view of series of decisions namely *CCE Vs. Ultratech Cements Ltd. [2010-TIOL-745-HC-MUM-ST]*, *CCE Vs. Stanzen Toyotetsu India (P) Ltd. [2011 (23) STR 444 (Kar.)]* and *Paramount Communication Ltd. Vs. CCE [2013*

(287) *ELT 70 (Tri.-Del.)*] and Board Clarificatory Circular that in such cases, one to one nexus between input and output is not required to be examined, I am of the considered view that those credits were valid credits which were required to be refunded. Further, address mentioned in the invoice is immaterial when the same is raised in the appellant's name when the other address is appellant's own old premises concerning which no withdrawal of registration of that premises is available on record, except that a new registration is taken by the appellant for another location. However, I would prefer to concur with the findings of the learned Commissioner (Appeals) that time barred refund claims cannot be entertained as admissible. Therefore, partially time barred refund claim for the period October, 2009 to March, 2010 which has been rejected by the Assistant Commissioner in his order dated 09.07.2012 and confirmed by the Commissioner (Appeals) needs no interference by this Tribunal. Hence the order.

#### ORDER

7. Appeal No. ST/89857/2018 is allowed and the order passed by the learned Commissioner of CGST & Central Excise (Appeals), Thane Rural vide Order-in-Appeal No. CD/TR(Appeals)/ME/47/2018-19 dated 27.08.2018 rejecting the appellant's claim for refund is hereby set aside. Appeal No. ST/89890/2018 is allowed-in-part and the order passed by the Commissioner of CGST & Central Excise (Appeals), Thane Rural vide Order-in-Appeal No. CD/TR(Appeals)/ME/41/2018-19 dated 17.08.2018 is set aside concerning rejection of

appellant's refund application except the part of refund which is held as time barred. The appellant is entitled to get the refunds accordingly and respondent-department is directed to pay the same along with applicable interest within a period of three months from communication of this order.

(Order pronounced in the open court on 03.11.2021)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**

*Prasad*