CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Appeal No. 88731 of 2018
(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai
Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

WITH

Service Tax Appeal No. 88733 of 2018
(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai
Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

WITH

Service Tax Appeal No. 88734 of 2018
(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai

Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

WITH

Service Tax Appeal No. 88739 of 2018

(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai
Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

WITH

Service Tax Appeal No. 88740 of 2018

(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai
Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

WITH

Service Tax Appeal No. 88741 of 2018

(Arising out of Order-in-Appeal No. PVNS/75-80/APPEAL THANE/ME/2018-19/3638 dated 28.05.2018 passed by the Commissioner (Appeals-thane) GST & Central Excise, Mumbai)

M/s BNP Paribas India Solution Pvt Ltd ....Appellant
Infinity Building No. 4 Unit No. 601
6th Floor Off Film City Road
Malad West Mumbai
Maharashtra-400097

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel, Lotus Infocentre,
Near Parel Station, Parel East, Mumbai
Maharashtra-400012

APPERANCE:

Mr. Prakash Shah, Advocate for the Appellant
Mr. S.K. Hattangadi, Assistant Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87307-87312/2021

Date of Hearing: 25.08.2021
Date of Decision: 16.12.2021

PER: AJAY SHARMA

These appeals have been filed impugning the order dated 28/05/2018 passed by the Commissioner (Appeals-Thane), GST & Central Excise, Mumbai in Order-in-Original No. PVNS/75-80/APPEAL THANE/ME/2018-19/3698.

2. Since the issue involved in these Appeals are identical i.e. denial of refund of accumulated/unutilised Cenvat Credit of Service Tax under Rule 5 of Cenvat Credit Rules, therefore I am deciding all these Appeals together by way of this common order.

3. The Appellant, a Captive Business Process Outsourcing Company of BNP Paribas SA, is engaged in providing support services to its group companies located globally. They are primarily exporting its output services and receiving consideration in convertible foreign exchange. The Appellant procured various input services which were utilized in the provision of services and duly claimed Cenvat Credit being eligible input services as per rule 2(l) of Cenvat Credit rules, 2004. According to the Appellant, no proceedings under Rule 14 of CCR were ever initiated by the Department for the services in issue in order to deny the Cenvat Credit to them. For various services being exported by the Appellant, they were unable to utilize the entire Cenvat Credit therefore they filed the refund claim under Rule 5, CCR 2004 r/w Notification No. 27/2012-CE (NT) dated 18/06/2012 for the period between April, 2013 to March, 2016 totally amounting to Rs.70,59,98,605/-. The Adjudicating Authority by way of various Orders-in-Original viz. Order-in-Original dated 13/03/2015 for the period April, 2013 to September, 2013; dated 08/05/2015 for the period October, 2013 to March, 2014; dated 22/07/2015 for the period April, 2014 to September 2014; dated 26/02/2016 for the period October, 2014 to March 2015; dated 25/07/2016 for the period April, 2015 to September, 2015 and dated 27/01/2017 for the period October, 2015 to March, 2016 granted/sanctioned refund to the tune of Rs.68,90,23,173/- and rejected the refund claim of Rs.1,69,75,431/-. Being aggrieved, the Appellant filed

various Appeals before the Commissioner (Appeals) and the learned Commissioner (Appeals-Thane) GST & Central Excise, Mumbai *vide* impugned order dated 28/05/2018 partly allowed the Appeals by granting refund to the tune of Rs.4,19,061/- and rejected the refund claim of Rs.1,65,56,370/- mainly on the ground that the Appellant failed to produce any evidence with regard to nexus of the services in issue with their output services. A table showing total summary of refund claims filed by the Appellant for the period April, 2013 to March, 2016 which are in issue in the instant Appeals is as under:

Sr. No.	**Particulars**	**April 2013 to September 2013**	**October 2013 to March 2014**	**April 2014 to September 2014**	**October 2014 to March 2015**	**April 2015 to September 2015**	**October 2015 to March 2016**	**Total**
A	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**
1	Appeal No.	ST/88731/18	ST/88734/18	SR/88741/18	ST88733/18	ST/88739/18	ST/88740/18	
2	Refund Claim filed on	28-03-2014	30-09-2014	30-03-2015	30-09-2015	31-03-2016	30-09-2016	
3	Order-In-Original dated	13-03-2015	08-05-2015	22-07-2015	26-02-2016	25-07-2016	27-01-2017	
4	Total refund claim amount	6,34,40,269	8,25,45,449	9,18,51,868	12,10,66,961	17,90,86,446	16,80,07,612	70,59,98,605
5	Total refund claim sanctioned	6,09,39,233	8,01,76,459	8,91,31,307	11,71,64,320	17,53,57,342	16,62,54,514	68,90,23,175
6	Total refund claim rejected	25,01,036	23,68,991	27,20,561	39,02,641	37,29,104	17,53,098	1,69,75,431
7	Total refund allowed in OiA	29,521	2,66,223	36,406	22,227	16,841	47,843	4,19,061
8	Total refund claim rejected in OiA	24,71,515	21,02,768	26,84,155	38,80,414	37,12,263	17,05,255	1,65,56,370

4. Learned Counsel for the Appellant submits that their case is squarely covered by the order dated 22.01.2020 of this Tribunal in Appellant's own case *viz. M/s BNP Paribas India Solutions P. Ltd. vs. Commr. of CGST, Mumbai East;* reported in 2020 (2) TMI 224- CESTAT-MUMBAI, in which this Tribunal has allowed the refunds claimed by the Appellant on identical facts for the periods April to June 2012, July to September 2012, October 2012 to March, 2013 and April, 2016 to September, 2016 respectively. According to Learned Counsel the period involved in the instant appeal is from April, 2013 to March, 2016 i.e. the period which has been left out in the aforesaid appeals (supra). Learned Counsel also relied upon the decision of this Tribunal in the matter of *M/s Maersk Global Services Centre (I) Pvt. Ltd. V. Commissioner of CGST, Navi Mumbai; 2019 (10) TMI 959-Cestat Mumbai,* in support of his submission that in post-amendment period for deciding refund application the concerned authority has to only ensure that the formula prescribed in the said Rule has been complied with by the claimant and that the authority has no power to go into nexus issue in order to deny the refund to the claimant. Per Contra, Learned Authorised Representative appearing for Revenue submitted that the exclusion clause was inserted vide Notification No. 28/2012-CE(NT) dated 20/06/2012 w.e.f. 01/07/2012 under Rule 2(l) *ibid* which specifically excludes certain services, viz. club & association services and works contract services and therefore the Appellant is not entitled to get the Cenvat Credit on those

services. He further submits that the decision of this Tribunal in the matter of *Maersk Global Services Centres (I) Pvt. Ltd.(supra)* which has been relied upon by Learned Counsel is not applicable on the facts of the present case, as the said case was for the period prior to 01/07/2012 i.e. prior to the amendment in Rule 2(l) whereas the present case pertains to post amendment period.

5. I have heard Learned Counsel for the Appellant and Learned Authorised Representative for the Revenue and perused the case records including the written submission and the case laws filed by the respective sides. There is no doubt that Rule 5 *ibid* provides for refund of accumulated Cenvat Credit subject to compliance of the procedure/ guideline laid down under the notifications issued thereunder. The refund of Cenvat Credit on the services in issue was mainly denied to the Appellant on the ground of 'no nexus' between the input services and the export services. The issue which falls for consideration in these Appeals is whether the department can deny refund of Cenvat Credit under Rule 5 *ibid* alleging that there was no nexus between the output and input services. It is well settled legal position that denial of Cenvat Credit can be done only by issuing notice under Rule 14 *ibid*. Having allowed the Cenvat Credit or by not denying the same, the department cannot reject refund of Cenvat Credit under Rule 5. It is well settled principle that availment of Cenvat Credit, its utilisation and refund are different aspects dealt with under CCR, 2004. Rule 5 provides for any refund of Cenvat

Credit and nowhere in this Rule there is a provision to determine the correctness about the availment of Cenvat Credit. Its only Rule 14 *ibid* which provides for recovery of irregularly availed Cenvat Credit. I find force in the submission of learned Counsel 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 input and the output services. This Tribunal in Appellant's own case on an identical issue, for the period April, 2012 to March, 2013 and April, 2016 to September, 2016 in the matter of *M/s BNP Paribas India Solutions Pvt Ltd Vs. Commissioner of CGST, Mumbai East reported in 2020 (2) TMI 224—CESTAT Mumbai,* set aside the denial of refund by the department to the Appellant on the ground of non-establishment of nexus between the input and output services, after discussing Rule 5 ibid in detail. The relevant extract of the said order is as under:

> "xxxx xxxx xxxx
>
> 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(l) 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 assesee. 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."
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> 8. 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."

There is no dispute that the aforesaid decision of this Tribunal in appellants' own case covered both pre and post amendment period and also the services which are in issue herein. So far as the decision in the matter of *Maersk Global (supra)* is concerned, I am afraid that the learned Authorised Representative is not correct in his submission that the said decision pertains to pre-amendment period. Similarly, while interpreting Rule 5 this Tribunal in the matter of *M/s Cross Tab Marketing Service Pvt Ltd. Vs. C.C.GST, Mumbai East;* reported in *2021-VIL-466-CESTAT-MUM-ST* vide order dated 17/09/2021 held that the amended Rule 5 ibid does not require establishment of any nexus between input and export services. The rule only provides that the admissible refund will be proportional to the ratio of export turnover of goods and services to the total turnover, during the period under consideration and the net Cenvat Credit taken during that period. Indisputably, in the refund proceedings under Rule 5 ibid as amended, any such attempt to deny or to vary the credit availed during the period under consideration is not permissible. If the quantum of the Cenvat Credit is to be varied or to be denied on the ground that certain services do not qualify as input services or on the ground of 'no nexus', then the same could have been done only by taking recourse to Rule 14 ibid.

6. In view of the discussions made hereinabove in the preceding paragraphs, in my opinion since the provisions of Rule

14 ibid have not been invoked, the refund of Cenvat Credit as claimed by the Appellant under Rule 5 *ibid* cannot be denied to them and the same is admissible. Therefore, the Appeals filed by the Appellant are allowed with consequential relief, if any.

(Order pronounced in the open Court on 16.12.2021)

(Ajay Sharma)
Member (Judicial)

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