CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 85100 of 2019

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/357/18-19 dated 31.08.2018 passed by the Commissioner of Central Tax (Appeals-I), Mumbai.)

M/s. Quantum Advisors Pvt. Ltd. ....Appellant
Hoechst House, 6th Floor,
Nariman Point, Mumbai – 400 021

VERSUS

Commissioner of CGST, Mumbai South ....Respondent
13th Floor, Air India Building,
Nariman Point, Mumbai – 400 021

APPERANCE:

Shri Thirumalal Sampath, Advocate 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/85011 / 2022

Date of Hearing: 09.11.2021
Date of Decision: 07.01.2022

PER: BENCH

Rejection of refund claim to the tune of Rs. 5,61,150/- out of Rs. 6,34,080/-, on the ground that services were not exported, no nexus between services availed vis a vis services rendered as well as missing/ ineligible invoices, by the Commissioner (Appeals) is assailed in this appeal except rejection of an amount of Rs. 72,930/- that was held to be time barred.

2. Factual backdrop of the case, in a nutshell, is that appellant has a company incorporated in India and it has been engaged in the business of Portfolio Management and Investment Advisory Services, Advising Foreign Portfolio Investors (FPI) and Managing Portfolios of Indian Individual Investors. In respect of services offered to foreign institutions FPI, refund claim on input services against CENVAT credit of Service Tax paid for export of services between 01.01.20210 and 27.02.2010 to the tune of Rs.5,12,396/- against renting of premises was rejected by the learned Commissioner (Appeals) along with input services pertaining to General Insurance to the tune of Rs.46,772/- and missing invoices in respect of Tele-communication services for Rs.1359/- as well as business support services provided by Sodexo for Rs.623/-, by the adjudicating authority without notice to the Appellant. Missing invoices were produced before the Commissioner (Appeals) before whom appellant preferred an appeal challenging the legality of above order of rejection of refunds but he also denied the same on the ground of "no nexus". Appellant challenged the legality of the order of Commissioner (Appeals) before this forum.

3. Learned Counsel for the appellant Mr. Thirumalal Sampath, with reference to an additional submissions of 187 pages, argued at length about the legality of the order passed by the Commissioner (Appeals) primarily on the ground that clarificatory Circular No. 141/10/2011-TRU dated 13.05.2011 and place of provisions of service of Rules, 2012, which were issued much after the claim

period up to 27.02.2011 were relied upon by the Commissioner (Appeals) in rejecting the refund claims in respect of place of provision of service, besides the fact that he had also not followed the settled principle of law and the settled clarificatory Circular No. 120/01/2010-ST dated 19.01.2010, wherein it was clearly directed that the nexus between the input and output service for export of services is not to be looked into while granting refunds. Learned Counsel for the appellant raised a point of law to justify that the findings in para 11 and 12 of the learned Commissioner (Appeals) including an observation that appellant is a passive holding Company of the Foreign Institutional Investors (FIIs) which has no existence of its own was an observation made without any material on record and without any argument laid in that behalf by either of the parties for which the order is liable to be set aside as palpably erroneous.

4. In response to such submissions learned Authorised Representative for the respondent-department Shri Saikrishna Hatangadi with reference to the clarificatory Circular dated 13.05.2011 including Notification No. 09/2005 dated 03.03.2005 etc. argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and submitted that Circular of 2011 had clarified about the application of export of services and its related Circular that was existing prior to 27.02.2011 for which Circular No. 2011 can be said to have retrospective effect and

therefore the order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

5. I have heard the submissions from both the sides as well as perused the relevant Circular No. 141/10/2011-TRU dated 13.05.2011 on which learned Commissioner (Appeals) had placed heavy reliance but a comparison at his order at page 11 & 12 *vis-a-vis* the content of para 3 & 4 of the said Circular dated 13.05.2011 would clearly indicate that he had applied the provisions partly without thoroughly examining the clarification made in that Circular in its entirety. It is needless to mention here that appellant's claim is to be supposed to be determined in terms of Circular No. 111/05/2009 dated 24.02.2009 the relevant para 3 of which reads:-

> *"3. ... For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India. In all the illustrations mentioned in the opening paragraph, what is accruing outside India is the benefit in terms of promotion of business of a foreign company. Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well."*

Basing on which this Tribunal has passed several orders including in the case of the *Commissioner of Service Tax-VII, Mumbai Vs. M/s Abbott Healthcare Pvt. Ltd.* reported in *2019 (12) TMI 232 (CESTAT-*

Mumbai) and *M/s. Blackstone Advisors India Pvt. Ltd. Vs. Commissioner of CGST, Mumbai South in Service Tax Appeal No. 85281 of 2019 order dated 22.11.2019*. Moreover, as could be noticed during hearing of the appeal and subsequent filing of proof on 29.10.2011 by way of additional evidence, appellant had filed an application for rectification of mistake in the order passed by the Commissioner (Appeals) in forming an opinion that appellant is a subsidiary of Foreign Institutional Investors (FIIs) without having any existence of its own, besides other grounds and it was not dealt with by the Commissioner (Appeals). Going by para 4 of the said Circular dated 13.05.2011, it can be said that such an opinion of holding the appellant as passive holding/subsidiary company or associated enterprise has a bearing on determination of its eligibility as an export service provider and without hearing the appellant on this score, no opinion should have been formed by the Commissioner (Appeals). Further, **the example of** "effective use and enjoyment of service" i.e. found reflected in para 3 of the said clarificatory Circular dated 13.05.2011 has not been considered by the Commissioner (Appeals) while passing the order rejecting appellant's refund claim. I, therefore, find it is a fit case which is required to be remanded back to the Commissioner (Appeals) to re-examine the appellant's eligibility to get refunds in respect of those 4 items after re-examination of the Circular dated 13.05.2011 and its applicability in the case of appellant disregarding the place of provision of service

Rule, 2012 that came into force after the claim period. Hence the order.

ORDER

7. The appeal is allowed by way of remand for re-hearing in terms of the above observation and the order passed by the Commissioner of Central Tax (Appeals-I), Mumbai vide Order-in-Appeal No. IM/CGST A-I/MUM/357/18-19 dated 31.08.2018 is here by set aside.

(Order pronounced in the open court on 07.01.2022)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad