CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 85958 of 2019

(Arising out of Order-in-Appeal No. PK/1008/ME/2018 dated 03.01.2019 passed by Commissioner (Appeals-II) Central Tax, CGST MUMBAI)

PMI Organisation Centre Pvt. Ltd. **.....Appellant**
Unit No.302 to 305 3rd Floor BKC Plot No. C-3
E Block Bandra East,
Mumbai.

VERSUS

Commissioner of Central Goods And Service Tax, Mumbai East **.....Respondent**
9th Floor, Lotus, Parel East,
Mumbai – 400 012.

Appearance:

Shri Mehul Jivani ,C. A. for the Appellant
Shri Dilip Shinde , Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85105/2022

Date of Hearing: 07.02.2022
Date of Decision:07.02.2022

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in providing 'Business Auxiliary Service' to various parties located mostly outside the Country. For providing such taxable service, the appellant got itself registered with the service tax department. The appellant avails Cenvat Credit in respect of the service tax paid on various taxable services used/utilized for providing the output service. During the disputed period, since the appellant had exported the output taxable services to the overseas entities, they were not in a position to utilize the Cenvat Credit available in the books of accounts. Thus, the appellant had filed the refund application under Rule 5 of the Cenvat Credit Rules, 2004 claiming refund of service tax paid on the input services. While adjudicating the refund application, the original authority had sanctioned the benefit of refund in respect of some of the input services and denied the benefit in respect of some other services on the ground that those services had no nexus wth the output service exported by the appellant. The adjudication order dated 06.06.2017 was appealed against by the appellant before the learned Commissioner (Appeals), Mumbai, which was disposed of vide order dated 03.01.2019 by way of rejection and upholding the adjudication order passed by the original authority. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Shri Mehul Jivani, learned Chartered Accountant appearing for the appellant submitted that the Cenvat Credit taken on the disputed services was in conformity with the statutory provisions inasmuch as no show cause notice was issued by the department under Rule 14 *ibid*, seeking denial of Cenvat Credit availed by the appellant. Thus, he submitted that while adjudicating the refund application filed under Rule 5 *ibid*, the action on the part of the department in rejecting the refund application on the ground of non-establishment of nexus between the input services and the output service cannot be questioned. To substantiate the stand that refund benefit cannot be denied in the circumstances of the case, the learned Chartered Accountant has relied upon the decision of this Tribunal in the case of *Warburg Pincus India Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai* - 2018 (364) E.L.T. 159 (Tri.-Mumbai).

3. On the other hand, Shri Dilip Shinde, learned AR appearing for the respondent-department submitted that the proceedings were correctly invoked by the department in denying the cenvat benefit inasmuch as the disputed services have no nexus with the output service exported by the appellant. He further submitted that since

taking of cenvat credit itself is not permissible under the statute, claiming the refund benefit of service tax paid on the input services cannot be considered for grant of refund by the department. Further he also stated that show cause proceedings have also been initiated by the department, seeking denial of the refund benefit to the appellant on the ground of non-establishment of nexus between the disputed service with the output service exported by them. He has relied upon the following judgments delivered by the judicial forum to strengthen the case of Revenue:

(i) *Commissioner of C.Ex., Nagpur Vs. Manikgarh Cement*
2010 (20) S.T.R. 456 (Bom.)

(ii) *Commissioner of S.T., Mumbai Vs. DBOI Global Services P. Ltd.*
2019 (20) G.S.T.L.351 (Bom.)

(iii) *Capgemini India Pvt. Ltd. Vs. Commissioner of Service Tax-VII, Mumbai*
2021 (44) G.S.T.L. 275 (Tri.-Mumbai)

(iv) *Wipro Ltd. Vs. Commissioner of Central Excise, Bangalore-III*
2018 (363) E.L.T. 1111 (Tri.-LB)

(v) *Commissioner of C. Ex. Ahmedabad-II Vs. Cadila Healthcare Ltd.*
2013 (30) S.T.R. 3 (Guj.).

4. Heard both sides and perused the records.

5. Sub-rule(1) of Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer or service provider to take cenvat credit of various duties and taxes itemized therein. Similarly, sub-rule (4) of Rule 3 *ibid* permits a manufacturer or service provider to utilize the cenvat credit so availed, for payment towards various activities including payment of duty on excisable final product and service tax on the output service. Where the credit availed or utilized in a wrongful manner, it has been mandated in Rule 14 *ibid* for recovery of the credit so availed/utilized from the manufacturer or service provider as the case may be. It has further been mandated that for effecting recovery of irregularly availed or utilized cenvat credit, the provisions of Section11A of the Central Excise Act, 1994 or Section 73 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis*. The provisions for grant of refund of cenvat credit in case of exportation of goods or services are

contained in Rule 5 *ibid*. Sanction of refund under the said statutory provision is subject to adherence of the procedures, conditions and limitations as may be specified by the CBEC by way of notification in the Official Gazette. The said rule nowhere specified that while adjudicating the refund application, the department should examine the nexus theory as provided under Rule 3 read with Rule 14 *ibid*. In other words, since Rule 5 *ibid* itself is a self contained provision, designed with the sole objective of consideration of the refund application for the limited purpose of exportation of goods/services, the department is only confined to look into the aspect, whether the formula prescribed there under has been duly complied with by the claimant or not.

6. On careful examination of the above statutory provisions, it transpires that the reasons assigned by the authorities below in this case for denial of the refund benefit to the applicant shall not stand for judicial scrutiny inasmuch as other than the allegation of non-establishment of nexus, the department had never questioned nor pointed out any discrepancy, alleging that the ingredients mentioned in Rule 5 *ibid* have not been complied with by the appellant. Hence, I am of the considered view that refund benefit shall not be denied to the appellant. I find that entirely on the identical set of facts, this Tribunal in the case of *Warburg Pincus India Pvt. Ltd.(Supra)* has allowed the refund benefit to the exporter of service. The relevant paragraph in the said order is extracted herein below:

> "***4.*** *On careful consideration of the submissions made by both the sides and on perusal of records, I find that firstly, the adjudicating authority in the refund application filed by the appellant, rejected part of the refund on the ground that certain services in respect of which the refund claim was sought for are not admissible services. The act of the adjudicating authority is totally illegal and arbitrary for the reason that the appellant has availed the Cenvat credit and in respect of which they filed the refund claim. If at all the adjudicating authority is of the view that certain input service is not admissible for the purpose of Cenvat credit, he should have issued a separate show cause notice and after carrying out the process of adjudication, order should have been passed holding that whether the said input services are admissible*

> *input services or not. Thereafter a decision on refund should have been taken. However, without carrying out the process of adjudication, he straightaway rejected the refund claim, which is not legal and proper. Further, on going through the nature of the service, I find that all these services in question are directly used by the service provider i.e. the appellant. In various judgments cited by the Learned Counsel, this Tribunal and various High Courts consistently held that all these services are input service for providing the output service. Hence the Cenvat credit is admissible."*

7. The judgments relied upon by the learned AR for Revenue are distinguishable from the facts of the present case inasmuch as the issue dealt with in those decided cases was in context with eligibility of cenvat credit to various disputed services and not in relation to export of the output service and resultant claim of the refund benefit on the service tax paid thereon.

8. In view of the foregoing discussions, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

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