

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Service Tax Appeal No. 88170 of 2019

(Arising out of Order-in-Appeal No. PVNS/108/Appeals Thane/108/BW/2019-20 dated 20.08.2019 passed by the Commissioner of GST & Central Excise (Appeals), Thane)

M/s. Worley Parsons India Pvt. Ltd.

Appellant

5th floor, B Wing, I-think Techno Campus,
Off Pokhran Road No.2,
Thane (W) 400 067.

Vs.

Commissioner of CGST & CE, Bhiwandi

Respondent

12th floor, Lotus, Near Parel Station,
Parel (E), Mumbai 400 012.

Appearance:

Shri Sanjeev Nair, Advocate with Shri Rashin Gala, C.A., for the Appellant

Shri S.P.B. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 23.08.2022

Date of Decision: 23.08.2022

FINAL ORDER NO. A/85937/2022

This appeal is directed against Order-in-Appeal No. PVNS/108/Appeals Thane/108/BW/2019-20 dated 20.08.2019 passed by the Commissioner of GST & Central Excise (Appeals), Thane. By the impugned order, the Commissioner (Appeals) has upheld the order-in-original of the Deputy Commissioner, Division-I, Bhiwandi Commissionerate. By the order-in-original the adjudicating authority has held as follows:-

"ORDER

i) I hereby sanction refund claim amounting to Rs. 3,26,57,736/- (Rupees Three Crore Twenty Six Lakh Fifty Seven Thousand Seven Hundred Thirty Six only) to M/s. Worley Parsons India Pvt. Ltd. 5th Floor, B Wing. -Think Techno Campus, Off Pokhran Road No. 2 Reliable Tech Park,

Thane(West)-400607 for the April 2017 to June 2017 as per provisions of Rule 5 of CENVAT Credit Rules, 2004 read with Notification No. 27/2012-CE (NT) dated 18.06.2012 as amended.

ii) I hereby reject refund claim amounting to Rs. 49,41,793/- (Rupees Forty Nine Lakh Forty One Thousand Seven Hundred Ninety Three only) for the reasons mentioned in Para No. 21 to 26 above."

2.1 Appellant is engaged in providing support services to its group companies located outside India and they also provide services to domestic clients in India. Appellant filed refund applications under Rule 5 of the Cenvat Credit Rules read with Notification No. 05/06-CE(NT) dated 14.03.2006 for the period October 2009 to March 2010 and April 2010 to September 2010.

2.2 These refund claims were rejected in part. Against the part rejection of the refund claims appellant preferred appeal to the Commissioner (Appeals). The Commissioner (Appeals) by the impugned order has upheld the part rejection of the refund claims and hence this appeal.

3.1 Heard Shri Sanjeev Nair, Advocate, with Shri Rashin Gala, Chartered Accountant and Shri S.P.B. Sinha, Superintendent, Authorised Representative.

3.2 Arguing for the appellant, learned counsel submits:-

- ❖ The refund claim has been sought to be modified on the ground that certain amount of CENVAT credit against which the refund application was made was not eligible to the appellant
- ❖ This issue is now settled in the favour of appellants that without a proceeding made under Rule 14 for denial of the ineligible credit under Rule 14 of the CENVAT Credit Rules 2004, the refund claimed under Rule 5 cannot be modified. In the present case no such proceedings have been initiated during the material period to deny any amount of cenvat credit. For this purpose reliance is placed on the following:-

- Circular No.120/01/2010-ST, dated 19.01.2020
- Morgan Stanley Advantage Services Ltd. [2015 (37) STR 639 (Tri.-Mum)]
- Convergys India Pvt. Ltd. [2009 (16) STR 198 (Tri.-Del.)]
- Cross Tab Marketing Services Pvt. Ltd. [2021 (55) GSTL 29 (Tri.-Mum)]
- BNP Paribas India Solution Pvt. Ltd. [2022 (58) GSTL 539 (Tri.-Mum)]
- BNP Paribas India Solutions Pvt. Ltd. [2020 (2) TMI 224-CESTAT-Mumbai.

Accordingly modification of refund claim on this ground cannot be sustained.

3.3 Learned Authorised Representative reiterates the findings recorded in the impugned order. After making the submissions he sought time to make written submissions in the matter. Acceding to the request made time of two weeks was allowed to Authorized Representative for making the written submissions. However even after lapse of nearly six weeks no written submissions have been filed.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 I find that the only ground for modification of refund claims is that certain credits which have been taken for computation of the refund in terms of Rule 5 of the Cenvat Credit Rules are ineligible credits. Gist of the para 21 to 26 of the order in original highlighting the inadmissible credits is reproduced in table below:

S No	Reason for Inadmissibility of Credit	Amount in Rs
1	Input invoices missing	92,081
2	Input services not consumed in providing the services exported.	3,11,088
3	Input services which cannot be associated with the quality and efficiency of the service exported	15,52,366
4	Input service invoices against which the credit has been wrongly claimed.	27,26,602

5	Credit claimed against single invoice for the multiple services received,	1,70,002
6	Credit claimed against rent a cab services	89,654
	Total Ineligible CENVAT Credit	49,41,793

However, admittedly no proceedings have been initiated against the appellant for denial of these credit in terms of Rule 14 of the Cenvat Credit Rules. In absence of such proceedings, the lower authorities cannot be justified in modifying the refund claims for this reason. This view which has been expressed by the Tribunal in BNP Paribas India Solution Pvt. Ltd. [2022 (58) GSTL 539 (Tri.-Mum)]. The relevant para is reproduced below:-

"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*

"XXXX XXXX XXXX

"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

3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No. 18/2012-C.E. (N.T.), dated 17-3-2012, with effect from 1-4-2012. 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 16-3-2012 has clarified as under :-

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.

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 assessee. 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.”*

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. v. C.C. GST, Mumbai East; reported in 2021-VIL-466-CESTAT-MUM-ST = 2021 (55) G.S.T.L. 29 (Tri. - Mumbai) vide order dated 17-9-2021 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."

4.3 In case of Qualcomm India Pvt Ltd [2020 (43) GSTL 402 (T-Hyd)] on the same issue the Hyderabad bench observed as follows:

"6.*Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer of excisable goods and the provider of output service to take Cenvat credit of the duties and taxes paid on the inputs and the input services, with the objective of utilisation of the same for payment of Excise duty on the products and service tax on the output services. In case of*

exportation of output service, there is no question of utilisation of Cenvat credit available in the books of accounts. Thus, Rule 5 ibid provides for refund of accumulated Cenvat credit, subject to compliance of the procedures/guidelines laid down under the notifications issued thereunder. We find that the refund benefit was denied to the assessee-appellant on the sole ground that there was no nexus between the input services and the output service exported by the appellant. Further, in Revenue's appeal, it has been contended that certain disputed services are not conforming to the definition of input service provided under Rule 2(l) ibid. Insofar as taking of irregular Cenvat credit is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilisation, such credit can be recovered from the assessee and for effecting the recoveries, the provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is an admitted fact on record that the department has not invoked the provisions of Rule 14 ibid for effecting recovery of the alleged irregular Cenvat credit availed by the assessee-appellant. Thus, under such circumstances, it can be said that taking of Cenvat credit on the disputed services by the appellant is in conformity with the Cenvat statute. Rule 5 ibid nowhere specifies that Cenvat credit can be denied on the ground of irregular availment or utilisation of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 ibid, in our considered opinion, cannot stand for judicial scrutiny. Since the department has not specifically alleged regarding actual exportation of services by the assessee-appellant and use/utilization of disputed services for such activities, benefit of refund should be available in terms of the unambiguous provisions contained in Rule 5 ibid, subject only to adherence of the formula laid down thereunder."

4.4 Rule 5 of the CENVAT Credit Rules, 2004 as substituted by the Notification No 18/2012-CE (NT) dated 17.03.2012 is reproduced below:

"5. Refund of CENVAT Credit. –

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

Refund Amount

$$= \frac{\text{Export turnover of goods} + \text{Export turnover of services}}{\text{Total turnover}} \times (\text{Net CENVAT credit})$$

Where,-

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;
- (C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
- (D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-
 Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period –advances received for export services for which the provision of service has not been completed during the relevant period;
- (E) "Total turnover" means sum total of the value of
 - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

- (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:”

4.5 Form A appended to Notification No 27/2012 dated 18.06.2012, prescribing the conditions limitations and safeguards in respect of refund claims filed under the Rule 5 is as follows:

S. No.	Description	Amount in Rs.
1.	Total value of the goods cleared for export and exported during the quarter.	
2.	Export turnover of the services determined in terms of Clause D of sub-rule (1) of rule 5.	
3.	Total CENVAT Credit taken on inputs and input services during the quarter.	
4.	Amount reversed in terms of sub-rule (5C) of rule 3	
5.	Net CENVAT Credit = (3) - (4)	
6.	Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export.	
7.	Export turnover of services and value of all other services, provided during the said quarter.	
8.	All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter.	
9.	Total Turnover = (6) + (7) + (8)	
10.	Refund amount as per the formula = (1) * (5)/(9), in respect of goods exported.	
11.	Refund amount as per the formula = (2) * (5)/(9), in respect of services exported.	
12.	Balance of CENVAT Credit available on the last day of quarter.	

13.	<i>Balance of CENVAT Credit available on the day of filing the refund claim.</i>	
14.	<i>Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services]</i>	
15.	<i>Amount debited from the CENVAT account [shall be equal to the Amount claimed as refund (14)]</i>	

4.6 On perusal of the above Form A at SI No 3, it is quite evident that for computation of the "Net CENVAT Credit" is done on the basis of total cenvat credit taken on inputs and input services. From the total CENVAT Credit taken deductions is made of the amounts reversed under Rule 5C of the CENVAT Credit Rules, 2004. The formula is very clear on this aspect that no deduction from the total cenvat credit taken will be made on any other account while computing the Net CENVAT Credit. The formula under Rule 5 determines the maximum eligible refund to the assessee (10, 11 of the Form A). Whatever taxes are paid utilizing the cenvat credit availed during the period will automatically get deducted because if an assessee has utilized certain portion of the credit, then that amount would not be available as a balance on the close of the month/quarter in which the refund is sought. This Balance of CENVAT Credit is stated at SI No 12 in the Form A. The Form A at 13 asks for the Balance Amount available in the CENVAT account of the claimant on the date of filing the refund claim and as per 14, claimant can claim the refund of the minimum of the amounts determined at SI No 11, 12 and 13. It is also very clear that that while filing the refund claim claimant has to debit the amount claimed by him as refund under Rule 5 from his CENVAT Account. Above prescriptions clearly show that the lower authorities have been in error while deducting the amount of the credit that would have been utilized for payment of the taxes/duties in respect of the domestic clearances from the total CENVAT Credit taken while determining the Net CENVAT Credit for application of formula as per Rule 5.

4.5 Accordingly I am not in position to sustain the impugned order.

5.1 The impugned order is set aside and the appeal allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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