CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 85001 of 2020

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.10.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

M/s Basell Polyolefins India Pvt. Ltd. **.....Appellant**
16th Floor, Satra Plaza, Palm Beach Road, Section 19D,
Vashi, Navi Mumbai-400705.

VERSUS

The Deputy Commissioner- Navi Mumbai **.....Respondent**
16th Floor, Satra Plaza, Palm Beach Road, Section 19D,
Vashi, Navi Mumbai-400705.

WITH

(i) Service Tax Appeal No. 85005 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.10.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(ii) Service Tax Appeal No. 85006 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.06.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(iii) Service Tax Appeal No. 85007 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.10.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(iv) Service Tax Appeal No. 85008 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.06.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(v) Service Tax Appeal No. 85009 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(vi) Service Tax Appeal No. 850010 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(vii) Service Tax Appeal No. 850011 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(viii) Service Tax Appeal No. 850012 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.10.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(ix) Service Tax Appeal No. 850013 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(x) Service Tax Appeal No. 850015 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(xi) Service Tax Appeal No. 850016 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(xii) Service Tax Appeal No. 850017 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.06.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(xiii) Service Tax Appeal No. 850018 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.10.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

(xiv) Service Tax Appeal No. 850019 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(xv) Service Tax Appeal No. 850020 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);
(xvi) Service Tax Appeal No. 850021 of 2020 (M/s Basell Polyolefins India Pvt. Ltd.);

(Arising out of Order-in-Appeal No. MKK/140-157/RGD APP/2019-20 dated 09.06.2019 passed by Commissioner (Appeals) of Central Tax, Central Excise and Service Tax, Raigarh)

Appearance:

Shri Kishore Choudhari , Chartered Accountant for the Appellant
Shri Vinod Kumar , Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85059-85075 / 2023

Date of Hearing: 11.01.2023
Date of Decision: 11.01.2023

PER : S.K. MOHANTY

The issues involved in all these appeals are identical and accordingly, the same are taken up for hearing together and common order is being passed.

2. Brief facts of the case involved in these appeals are that the appellants engaged in providing various taxable services, defined under the Finance Act, 1994. The appellants avail Cenvat Credit of service tax paid on input services as per the provisions of the Cenvat Credit Rules, 2004. During the disputed period, the appellants had exported the taxable output services to their group companies located abroad. In view of exportation of the services, there was no scope for utilization of Cenvat Credit availed by the appellants on the input services. Therefore, the appellants had filed the refund applications, claiming refund of service tax paid on the input services in terms of Rule 5 *ibid* read with the notifications issued thereunder. The refund applications were allowed in some cases by the original authority and in some other cases, the same were denied on various grounds. The original orders passed by the Department were appealed against by the appellants before the learned Commissioner (Appeals). The appeals filed by the appellants were disposed of vide order dated 30.12.2016, in remanding the matters back to the original authority for passing of fresh speaking adjudication orders. Pursuant to the remand direction of the learned Commissioner (Appeals) vide order dated 30.12.2016, the original authority took up *de nova* adjudication proceedings and passed the order dated 04.05.2018. In the said order, the original authority had again rejected the refund application on various grounds. Feeling aggrieved with the order dated 04.05.2018, the appellants had preferred appeals before the learned Commissioner (Appeals), which were disposed of vide order dated 09.06.2019 (for short, referred to as the "impugned order"), in partially allowing the appeals in favour of the appellants. Against rejection of the appeals by him, the appellant has

filed these appeals before the Tribunal. The grounds for rejection of the refund applications as summarized in the impugned order are furnished herein below in the form of chart.

Sr. No.	**Particulars**	**Amount involved**
A	Attained Finality	64,77,972
B	Refund claim time barred	53,05,593
C	Not addressed to the registered premises	9,25,505
D	Invoice not in the name of the assesse	12,40,276
E	Ineligible input services	46,44,603
F	Absence of Nexus	19,15,619
G	Reduction in proportionate refund	18,20,195
H	CA Certificate not produced	10,00,085
I	Not an export service	5,74,045
J	Relevant documents not produced	13,27,927
K	Mismatch of export proceeds	1,85,068
L	Others	1,95,503
	Total	**2,56,12,391**

3. Learned Chartered Accountant appearing for the appellants submitted that the grounds assigned for rejection of the refund claims are not sustainable under the law inasmuch as the entire output services were exported by the appellants and such aspect has not been denied by the authorities below. Thus, he contended that benefit of refund provided under the Service Tax statute should be available to the appellants. To strengthen such stand, the learned Chartered Accountant has relied upon the decisions of this Tribunal in the case of Commissioner of Service Tax, Mumbai-II Vs. M/s. Siten India Ltd.- 2016 (4) TMI 112- CESTAT-Mumbai and Merrill Technology Services India Pvt. Ltd. Vs. Commissioner of Service Tax-2016 (6) TMI 473-CESTAT-Chennai.

4. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since upon proper analysis of the statutory provisions vis-a-vis the documentary evidences, learned Commissioner (Appeals) has rejected the appeals

filed by the appellant in denying the refund benefit, the same cannot be questioned at this stage for a decision contrary to the observations made in the impugned order.

5. Heard both sides and perused the records.

6. In response to the observations made in the impugned order, as itemized in the above noted table, the findings of the Bench are recorded herein below:

6.1. The learned Commissioner (Appeals) has upheld the findings of the original authority, holding that for a limited ground, the appeals were remanded by his predecessor vide order dated 30.12.2016. However, on examination of such order, I find that the matter arising out of the adjudication order and as indicated in the appeals filed by the appellant were remanded in totality for a fresh finding in the remand proceedings. Thus, it cannot be said that the learned Commissioner (Appeals) has recorded specific finding vide order dated 30.12.2016 with regard to consideration of the limited issued as pointed out by the authorities below in this case. Since, in the remand proceedings, the original authority has not dealt with all the issues arising out of the subject refund applications, I am of the view that the matter should go back to the original authority for a fresh fact finding on all the issues involved in the appeal concerning grant of refund benefit to the appellants. In other words, the original authority should look into all the aspects dealt with by the learned Commissioner (Appeals) vide order dated 30.12.2016, while remanding the matter to him.

6.2. Both authorities below in these cases have held that the relevant date for filing of the refund application is the date of payment of service tax on input services and accordingly, rejected the refund applications on the ground of limitation. I find that the issue arising out of the present dispute is no more *res integra* in view of the decisions rendered by the Tribunal in the case of Sitel India Ltd. (supra) and Merrill Technology Services India Pvt. Ltd. (supra). The ratio laid down under the said decided cases is that the relevant date for filing of the refund application should be construed as the date of filing of the refund application at the end of the quarter for which such benefit is claimed. In the present case, since the appellant has filed the refund application within one year from the end of the relevant quarters, the stand taken by the department in rejecting the refund application on the ground of time barred is not sustainable and the appeals deserve to be allowed in favour of the appellants.

6.3. With regard to the observation in the impugned order that the invoices were not addressed in the registered premises of the appellant, I find that such findings are factually erroneous inasmuch as the disputed invoices submitted by the appellant demonstrates that the name of the appellants have been mentioned in those invoices. Even assuming that such allegation of department is correct, but the mandatory requirement of claim of refund benefit cannot be whittled down for the procedural lapses. In this context, Rule 9 *ibid* is aptly clear that if the other requirements provided under the statute are contained in the invoice, the benefit of refund should be allowed by the original authority. Therefore, rejection of the refund benefit on such ground, in my considered opinion, cannot also stand judicial scrutiny. However, since all the disputed invoices were not examined at this stage, I am of the view that ends of justice would be met, if the matter is remanded to the original authority for verification of the invoices for ascertaining whether, the name of the appellants is appearing in all the disputed invoices and thereafter to consider the grant of refund in their favour.

6.4. As regards denial of the refund benefit on the ground of ineligible input services and absence of nexus, I find that both the authorities below have not dealt with the issue of denial of Cenvat Credit in terms of Rule 14 of the Cenvat Credit Rules read with Section 73 of the finance Act, 1994. Since, availment of credit at the material time was not disputed by the department, claiming of refund of the accumulated Cenvat Credit on account of exportation of service at a later stage cannot be denied by the department. It is not the case of the department that the appellants had not complied with the requirements of Rule 5 *ibid* read with the notification issued thereunder for claiming the benefit of refund. Thus, in my considered view, rejection of refund benefit on the ground of non-establishment of nexus between the output service and the input services cannot be sustained. In this regard, I find that this Tribunal in the case of M/s. Sequoia Capital India Advisors Pvt. Ltd. (Final Order No. A/86138/2022 dated 01.12.2022), BNP Paribas India Solution Pvt. Ltd. Vs. Commr. of CGST, Mumbai East – 2022 (58) G.S.T.L. 539 (Tri.-Mumbai), M/s. KKR India Advisors Pvt. Ltd. (Final Order No. A/86106-86107/2022 dated 25.11.2022), Cross Tab Marketing Services Pvt. Ltd. Vs. Commr. Of CGST, Mumbai East – 2021 (55) G.S.T.L. 29 (Tri.-Mumbai) and Acceleya Kale Solutions Ltd. Vs. Commissioner of CGST, Thane 2019 (369) E.L.T. 803 (Tri.-Mumbai) has allowed the refund benefit claimed under Rule 5 *ibid*, holding that nexus aspect cannot be questioned, while considering the refund application filed under Rule 5 *ibid*. In all these cases, Revenue has not specifically objected to the fact that the appellants had not complied to the requirements provided under Rule 5 *ibid*, and the notifications issued thereunder, while claiming the benefit of refund, as a result of the exportation of the output services. Thus, such allegations cannot also stand for judicial scrutiny.

6.5. With regard to the particulars itemized in serial No.7,8,9 & 12 in the above chart, both sides agree that the factual aspects involved in those cases should be examined at the original stage. Accordingly, I am of the view that the issues arising out of the such list at serial Nos. 7,8,9 & 12 should be remanded to the original authority for proper verification of the documentary evidences for ascertaining the fact regarding eligibility of the refund benefit to the appellants.

6.6. As regards rejection of refund benefit as mentioned at serial Nos.10 & 11 in the above chart, learned Consultant appearing for the appellants fairly concedes that the appellants are not challenging the stand taken by Revenue and as such, do not press for the benefit of refund claimed by them. The submissions made by the appellants are considered and accordingly, the appeal to such extent is dismissed and the impugned order sustains.

7. In view of the forgoing discussions, the appeals filed by the appellants are disposed of in the following terms:

Sr. No.	**Particulars**	**Amount involved**	**Findings of the Bench**
A	Attained Finality	64,77,972	Para 6.1- Remanded to original authority for consideration of all the aspects involved in the appeals, for which the matter was remanded by the learned Commissioner (Appeals) vide order dated 30.12.2016.
B	Refund claim time barred	53,05,593	Para 6.2 – Appeals allowed, as the refund claim applications were filed within the stipulated time frame.
C	Not addressed to the registered premises	9,25,505	Para 6.3 – Matter remanded for verification of documents at the original stage.
D	Invoice not in the name of the assesse	12,40,276	Para 6.3– Matter remanded for verification of documents at the original stage.
E	Ineligible input services	46,44,603	Para 6.4 – Appeals allowed, as nexus and eligibility of credit cannot be questioned subsequently, at the time of consideration of the refund applications under Rule 5 *ibid*.
F	Absence of Nexus	19,15,619	Para 6.4 – Appeals allowed, as nexus and eligibility of credit cannot be questioned subsequently, at the time of consideration of the refund applications under Rule 5 *ibid*.
G	Reduction in proportionate refund	18,20,195	Para 6.5- Matter remanded to the original authority for

H	CA Certificate not produced	10,00,085	verification of the factual aspects involved in the appeals.
I	Not an export service	5,74,045	
J	Relevant documents not produced	13,27,927	Para 6.6 – Appeals dismissed and impugned orders sustained.
K	Mismatch of export proceeds	1,85,068	
L	Others	1,95,503	Para 6.5- Matter remanded to the original authority for verification of the factual aspects involved in the appeals.
	Total	**2,56,12,391**	

9. In respect of the remand matters, the original authority should adjudicate the matter afresh and should follow the principles of natural justice in granting reasonable opportunity of personal hearing to the appellants.

10. The appeals are disposed off in above terms.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

Sm/ys