CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 88086 of 2019

(Arising out of Order-in-Appeal No. MKK/175-176/RGD APP/2018 dated 25.07.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad)

M/s M & G Global Services Pvt. Ltd. .... Appellant
Central Avenue, Hiranandani Business Park,
Powai, Mumbai – 400076.

Versus

Commissioner of CGST & Central Excise, ... Respondent
Navi Mumbai
5th Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400614.

WITH

Service Tax Appeal No. 88114 of 2019

(Arising out of Order-in-Appeal No. MKK/175-176/RGD APP/2018 dated 25.07.2019 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad)

M/s M & G Global Services Pvt. Ltd. .... Appellant
Central Avenue, Hiranandani Business Park,
Powai, Mumbai – 400076.

Versus

Commissioner of CGST & Central Excise, ... Respondent
Navi Mumbai
5th Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400614

Appearance:

ShriPrasadParanjape, Advocate for the Appellant

ShriS.B.P. Sinha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85143-85144/2023

Date of Hearing: 06.02.2023

Date of Decision: 06.02.2023

Per: Anil G. Shakkarwar

The present two appeals are taken together for decision since they arise out of common Order-in-Appeal.

2. The brief fats of the case are that the appellants are exporters of services and are entitled under law to claim the refund of service tax paid on input services. The said entitlement has been provided through notification issued under Rule 5 of CENVAT Credit Rules, 2004. For the period April 2016 to September 2016 and October 2016 to March 2017, appellants submitted their claim for refund of service tax paid on input services which were consumed in the services exported. The original authority passed two separate Orders-in-Original through which part of the amounts claimed were rejected. Aggrieved by the said rejection of refund, appellants preferred appeal before Learned Commissioner (Appeals). Learned Commissioner (Appeals) passed a common Order-in-Appeal against such two appeals through his Order-in-Appeal dated 25.07.2019 which resulted in rejection of total amount of Rs.23,73,694 claimed as refund under said Rule 5. Aggrieved by the said order, the appellants are before this Tribunal.

3. Heard the Learned Counsel for the appellants. He has submitted that for rejection of the said refund, a notice under Rule 5 of CENVAT Credit Rules, 2004 was issued to them but no notice, for recovery of said CENVAT Credit availed by them required to be issued under Rule 14 of CENVAT Credit Rules, 2004 was issued to them. He further submitted that when the CENVAT Credit is

available on the Books of Accounts and the fact cannot be denied that said services were utilized for services exported, then refund cannot be rejected. He further submitted that this issue has been settled through a final order of this Tribunal in the case of *Indo Solar Ltd. Vs. Commissioner of Customs, CE & ST, Noida reported at - 2017 (357) ELT 915 (Tri- All.).* He further submitted that Hon'ble High Court of Hyderabad through their order reported at *2021-TIOL-2305-HC-TELANGANA-ST*dated 28.09.2021 affirmed the above said stand taken by co-ordinate Bench of this Tribunal at Hyderabad.

4. Learned AR for the Revenue has agreed that there was no demand under Rule 14 of the CENVAT Credit Rules, 2004 issued to the appellants.

5. I have carefully gone through the records of the case and submissions made. I find that this issue is no more *res integra* and the issue is already settled through the above said Final order and the stand taken by the Tribunal was affirmed by the Hon'ble High Court of Hyderabad. When the CENVAT Credit is availed by the assessee so long as the same has not been recovered by proceedings initiated by invocation of Rule 14 of CENVAT Credit Rules 2004, such credit remains on the books of accounts of the assessee and he can utilize the same in the manner provided by law. In the present case, the appellants had exported the services and, therefore, were eligible for refund of unutilized CENVAT Credit. I therefore, hold that the appellants were entitled for refund of Rs.23,73,694 claimed by them for the period from April 2016 to March 2017. I, therefore, set aside the impugned order and allow

both the appeals. The appellants shall be entitled for the consequential relief, as per law.

(Order pronounced and dictated in open court)

(Anil G. Shakkarwar)
Member (Technical)

Sinha