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

Service Tax Appeal No. 85028 of 2020

(Arising out of Order-in-Appeal No. PVNS/113-114/APPEALS THANE/TH/2019-20 dated 26.08.2019 passed by the Commissioner of GST & Central Excise (Appeals Thane), Mumbai)

M/s. Accelya Solutions India Ltd. **Appellant**
(Earlier known as Accelya Kale Solutions Ltd.)
Tower-A, 7th, 8th & 9th Floor, 247 Park,
LBS Marg, Vikhroli (W), Mumbai 400 083.

Vs.

Commissioner of CGST, Thane **Respondent**
12th Floor, Lotus Infocentre,
Parel (E), Mumbai 400 020.

AND

Service Tax Appeal No. 85030 of 2020

(Arising out of Order-in-Appeal No. PVNS/113-114/APPEALS THANE/TH/2019-20 dated 26.08.2019 passed by the Commissioner of GST & Central Excise (Appeals Thane), Mumbai)

M/s. Accelya Solutions India Ltd. **Appellant**
(Earlier known as Accelya Kale Solutions Ltd.)
Tower-A, 7th, 8th & 9th Floor, 247 Park,
LBS Marg, Vikhroli (W), Mumbai 400 083.

Vs.

Commissioner of CGST, Thane **Respondent**
12th Floor, Lotus Infocentre,
Parel (E), Mumbai 400 020.

Appearance:

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

CORAM:

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

Date of Hearing: 01.02.2023
Date of Decision: 01.02.2023

FINAL ORDER NO. A/85138-85139/2023

These appeals are directed against Order-in-Appeal No. PVNS/113-114/APPEALS THANE/TH/2019-20 dated 26.08.2019 passed by the Commissioner of GST & Central Excise (Appeals Thane), Mumbai. By the impugned order, Commissioner

(Appeals) has upheld the rejection of the refund claims filed by the appellant in terms of Rule 5 of Cenvat Credit Rules, 2004 on the basis of order-in-appeal No. PVNS/341-342/Appeals Thane/TH/2017-18/3054 dated 28.03.2018.

2.1 Appellant has preferred two refund claims under Rule 5 of Cenvat Credit Rules. The details of the refund claims and their disposal are as follows:-

Particulars	Refund claimed	Refund allowed	Refund disallowed	Order-in-Original No.	Order-in-Appeal No.
April 2012 to June 2012	8,18,218	-	8,18,218	R/138/PK/2018-19 dated 25.02.2019	PVNS/113-114/Appeals Thane/TH/2019-20 dated 17.09.2019
July 2012 to Sept. 2012	97,615	-	97,615	R/138/PK/2018-19 dated 25.02.2019	PVNS/113-114/Appeals Thane/TH/2019-20 dated 17.09.2019

2.2 The third refund claim has been rejected by the original authority against which the appellant preferred appeals to the Commissioner (Appeals). Appeals have been disposed of by the impugned order. Aggrieved appellant has filed these appeals.

3.1 I have heard Shri S. Thirumalai, Advocate, for the appellant and Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Revenue.

4.1 For rejecting the refund claims, adjudicating authority has observed as follows:-

"6. I have gone through the refund claim filed by the claimant on 8.8.2018; directions of the Commissioner (Appeals-Thane) in Order in Appeal No:PK/342/Appeal Thane/TH/2017-18 dated 28.3.2018; the decision of Deputy Commissioner, Service Tax, Division-VI, Mumbai Service Tax-11 Commissionerate in Order in Original No:173- R/(SPP)/2013-14 dated 25.11.2013 while rejecting the claimant's refund claim of Rs.42,74,284/- filed on 28.06.2013 and the written submission made by the claimant

vide letter dated 15.1.2019. It is seen that despite specific direction from the Commissioner (Appeals) vide Order in Appeal dated 28.3.2018; deficiency memorandums issued by the department and opportunity being given in the form of personal hearings fixed in the matter, the claimant has neither cared to attend the hearing on the fixed dates nor submitted the requisite documents/invoices for verification before this authority. As a matter of fact, this refund claim was liable to be rejected outright due to inherent deficiency in the form of non-submission of the documents and non-compliance of the directions of the Commissioner (Appeals) as contained in the Order in Appeal. However, in the interest of natural justice, opportunities were given to the claimant to make available the necessary documents required for processing this refund claim. As the matter cannot be kept pending indefinitely, I proceed to decide the eligibility of refund claim on the basis of available documents and the Instructions contained in the Order in Appeal of Commissioner (Appeals).

7. As regards the entitlement of refund amounting to Rs.97,615/- as per claimant's letter dated 15.01.2019, it is observed that the Commissioner(Appeals) have vide his Order in Appeal dated 28.3.2018 issued specific direction to this refund sanctioning authority to ascertain the reasons for the adjudicating authority rejecting a total refund of Rs.67,15,811/- when the refund claim filed by the claimant for the period July 2012 to September 2012 itself amounted to only Rs.42,74,284/-. Thus, the refund entitlement has to be ascertained from the invoices submitted along with the original claim. I find that the Commissioner (Appeals) has also specifically directed that the claimant will submit all the documents before the fresh refund sanctioning authority for verification. As the claimant has only submitted the copy of the Order in Appeal along with their fresh refund claim on 8.8.2018 and have failed to provide the requisite documents despite repeated reminders, I have no other option but to reject the claim for non- compliance on the part of the claimant."

4.2 For upholding the order of the adjudicating authority, Commissioner (Appeals) has observed as follows:-

"12. Regarding the first question – the contention of appellant is that the Order is not sustainable primarily on the grounds of natural justice since the order has been passed without issuance of Show Cause Notice. I find that the appellant had filed appeal with Commissioner (Appeals) against Order of Adjudicating Authority, Commissioner (Appeals) had given relief and partially modified the order. Then Adjudicating Authority had granted personal hearing to the appellant between 9m January 2019 to 11 January 2019, a reminder in the form of email intimation was, also sent at registered mail address, again personal hearing was granted between 29th and 30 January, 2019 so that natural justice has been extended to the appellant but he failed to grab this opportunity. I observe that the Show Cause Notice is a way of natural justice for the claimant to extend their say and the same has been sufficiently extended to them by way of personal hearings, as the matter was already under adjudication process. Therefore, I find no infirmity in the conclusion of Adjudicating Authority on this count.

12.1 Regarding the Second question the contention of appellant is that as per Commissioner (Appeals) order No.PVNS/341-342/Appeals Thane/TH/2017-18/3054 held that there is no procedural lapse in the refund application filed by Appellant and therefore refund claim shall be allowed.

In this connection. I find that in the Appeal order at para 12.2 the Commissioner (Appeals) has mentioned that "the category of service has not been mentioned in the impugned order against the invoices not produced by the appellant and they have also not given their contention on the services in their grounds of appeal while submitting the invoices. Hence, in the absence of said details, the nature of service against these invoices is not ascertainable to decide the eligibility of the Cenvat credit. Therefore, I hereby direct the appellant to submit all the invoices to the respondent. Accordingly the refund sanctioning authority is directed to verify the same and decide the eligibility of the Cenvat credit in respect of services already discussed in rest of the cases of services the eligibility of the Cenvat credit for refund to be decided in accordance with Rule 5 of CCR in this respect. Held Accordingly." & also mentioned in para 12.5 of Appeals *order "I find that the appellant has not taken precaution to submit the bill complete in all respect even after specific finding of the adjudicating authority. Hence, in the absence of proper invoice, it is not possible to ascertain the nature of service and its admissibility. Further, in terms of sub-rule (6) of Rule 9 of Cenvat Credit Rules, 2004, the burden of proof regarding admissibility of Cenvat Credit lies upon the appellant and the appellant had not provided any tangible documentary evidence in support of their contention. In the absence of which, I have no alternative but to uphold the order..." Therefore, I find that Commissioner (Appeals) allowed part refund, however, the same forms a part of the consolidated refund amount and to ascertain the same and to be completely satisfied with the submitted documents is obligatory for Adjudicating Authority. I find that the appellant failed to fulfill the obligation on their part and therefore, the part amount, even though found to be refundable in principle, cannot be sanctioned until other documentary evidences are supplied. So, I find no infirmity in the conclusion of Adjudicating Authority on this count."*

4.3 The basic issue is that Revenue seeks to modify the refund claims filed by the appellant without initiating any proceedings by way of issuance of show cause notice under Rule 14 of Cenvat Credit Rules, 2004. The issue is squarely covered by the following decisions:-

- Warburg Pincus India Pvt. Ltd. [2018 (4) TMI 482 – CESTAT Mumbai]
- PMI Organisation Centre Pvt. Ltd. [2022 (3) TMI 192 – CESTAT Mumbai]
- FDC Ltd. [2018 (10) TMI 1561 – CESTAT Mumbai]
- Qualcomm India Pvt. Ltd. [2019 (8) TMI 1645 – CESTAT Hyderabad]
- 3D PLM Software Solutions Ltd. [2017 (2) TMI 152 – CESTAT Mumbai].

4.4 In the case of appellant itself, the issue has been settled by the orders reported at [2018-TIOL-2451 & 2452-CESTAT-MUM], wherein the following has been held:-

"8. Since the department has not specifically objected to the fact of computation of export turnover to the total turnover by the appellant and denied the refund benefit solely on the ground that there is no nexus between the input service and the output service exported by the appellant, I am of the view that as per the statutory mandates read with clarification furnished by TRU, rejection of refund benefit by the authorities below cannot be sustained for judicial scrutiny."

"3. 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, the establishing the nexus between the input and output service cannot be insisted upon for consideration of the refund application."

5.1 In view of the above decisions, I do not find any merits in the impugned order.

5.2 Appeals are allowed in favour of the appellant.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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