CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 87746 of 2018

(on behalf of Appellant)

(Arising out of Order-in-Appeal No.PK/62 to 70/ME/2018 dated 14.02.2018 passed by Commissioner (Appeals-II) of CGST & Central Excise, Mumbai)

JFE Engineering India Pvt. Ltd. **.....Appellant**
ICC Devi Gaurav Tech Park, Unit 01, A S No. 191-195, North Block Ground Floor, Old Mumbai Pune Road, Pimpri Sector-II, Aundh, Pune-411007.

VERSUS

Commissioner of Central Goods And Service Tax, Mumbai East **..Respondent**
9th Floor, Lotus Infocentre, Near Parel Station, Parel (E), Mumbai-400012.

Appearance:

Shri Jay Chedha, Advocate for the Appellant
Shri Vinod Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85258/2023

Date of Hearing: 08.02.2023
Date of Decision: 08.02.2023

PER : S. K. MOHANTY

Heard both sides and examined the case records.

2. The appellant herein is engaged in providing taxable services namely Business Support Service, Designed Engineering Support Service etc. and for that purpose, got itself registered with the service tax department. The appellant is also engaged in the manufacture of excisable goods namely 'Industrial Machinery System'. During the disputed period, the appellant had filed the refund application, claiming refund of accumulated Cenvat Credit available in the Books of Account in terms of Rule 5 of the Cenvat

Credit Rules, 2004. The benefit of refund was denied to the appellant on the ground that the input services on which credit was availed by the appellant did not have any nexus with the output services, provided by them. The Adjudication order dated 23.08.2016 passed in this regard was appealed against by the appellant before the Commissioner (Appeals), which was disposed off vide the impugned order dated 15.02.2018. In the impugned order, the Learned Commissioner (Appeals) has upheld the views expressed by the Original authority and further held that the appellant has not submitted proper documentary evidences to demonstrate that the Cenvat Credit availed on the input and the input services were not only used for the provision of output service exported by them, but also for the manufacture of the excisable goods in the factory. Feeling aggrieved with the impugned order, the appellant has preferred this present appeal before the Tribunal.

3. Rule 5 *ibid* deals with the provisions for grant of refund of the accumulated Cenvat Credit availed on input and input services, which are used for exportation of the goods and services. The said rule has prescribed the manner of claiming the benefit of refund. In the case in hand, the department had alleged that there is no nexus between the input services used/utilised for exportation of the output service by the appellant. Establishment of nexus is not the requirement under the provisions of the Rule 5 *ibid*, inasmuch as separate provisions exist in the cenvat statute for dealing with such situation. In this regard, Rule 14 *ibid* has been designed in the way to recover the irregularly availed Cenvat Credit from the assessee. It is an undisputed fact on record that the department had not initiated any proceedings against the appellant, seeking for recovery of the alleged irregularly availed Cenvat Credit in terms of Rule 14 *ibid* read with Section 11A of Central Excise Act, 1944 and Section 73 of the Finance Act, 1994, as the case may be. Thus, in the absence of any specific allegation and adjudication of the issue regarding irregular availment of Cenvat Credit, in our considered view, the department cannot proceed against the appellant for denying the benefit of refund by referring to Rule 5 *ibid.* With regard to the issue of non-establishment of nexus between the input service and output service, the law is well settled in the following cases that denial of refund benefit will not stand judicial scrutiny :-

(i) *BNP Paribas India Solution Pvt. Ltd V/s CCE Mumbai 2022 (58) G.S.T.L. 539 (Tri.- Mumbai)*

(ii) *Cross Tab Marketing Services Pvt. Ltd. V/s CCE Mumbai 2021 (55) G.S.T.L.*

(iii) *Qualcomm India Pvt Ltd V/s CCE Hyderabad 2020 (43) GSTL 402 (Tri Hyd)*

(iv) *Virtusa India Pvt Ltd V/s CCE Hyderabad 2020 (41) GSTL 516 (Tri Hyd)*

(v) *Maersk Global Services Centres (India) Pvt. Ltd. V/s CCE Navi Mumbai 2019 (10) TMI 959 – CESTAT Mumbai*

(vi) *MSCI Services Pvt. Ltd. V/s Commissioner of CGST 2018-VIL-576-CESTAT-MUM-ST*

4. In view of the above settled position of law, we are of the considered opinion that denial of the benefit of refund on the alleged ground of non-establishment of nexus between the input/input service and exportation of output service cannot be a defenceable ground for the Revenue. Thus, under such circumstances, the appeal filed by the appellant deserves to be allowed on merits.

5. However, we find that the Commissioner (Appeals) in the impugned order has also recorded that the particulars of availment of Cenvat Credit on the input and input services for manufacture of the excisable goods have not been discussed in the original order and no documentary evidences to such effect were submitted by the appellant before him. Thus, under such circumstances, we are of the view that ends of justice would be met, if the matter is remanded to the original authority for the limited purpose of ascertaining the fact regarding usage of input and input services for manufacture of the excisable goods and to determine the actual benefit of refund accrued to the appellant in terms of the formula prescribed under Rule 5 *ibid.*

6. In view of the forgoing discussions, the impugned order is set aside and the appeal is allowed by way of remand to the Original Authority for the limited purpose of examination of the records for

ascertaining the quantum of credit used for the manufacturing activity, and for exportation of service. While undertaking the adjudication proceedings, the Original Authority should also look into the matter of compliance of the formula prescribed under Rule 5 *ibid.* Needless to say, that reasonable opportunity of personal hearing should be granted to the appellant before deciding the issue afresh. It is made clear that as per our above discussions, the original authority should not insist for establishment of nexus, while passing the *denovo* adjudication order.

7. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

Sm/yr