CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 85761 of 2020

(Arising out of Order-in-Appeal No. SM/07 TO 09/APPEALS-II/ME/2020 dated 24.01.2020 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai

PMI Organisation Centre Pvt. Ltd. .....Appellant
Unit no. 302 to 305, 3rd Floor,
BKC, Plot no. C-3, E Block,
Bandra (East), Mumbai

VERSUS

Commissioner of CGST & Central Tax, Mumbai East .....Respondent
9th Floor, Lotus Parel, Infocentre,
Parel East, Mumbai

WITH

Service Tax Appeal No. 85763 of 2020

(Arising out of Order-in-Appeal No. SM/07 TO 09/APPEALS-II/ME/2020 dated 24.01.2020 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai

PMI Organisation Centre Pvt. Ltd. .....Appellant
Unit no. 302 to 305, 3rd Floor,
BKC, Plot no. C-3, E Block,
Bandra (East), Mumbai

VERSUS

Commissioner of CGST & Central Tax, Mumbai East .....Respondent
9th Floor, Lotus Parel, Infocentre,
Parel East, Mumbai

AND

Service Tax Appeal No. 85767 of 2020

(Arising out of Order-in-Appeal No. SM/07 TO 09/APPEALS-II/ME/2020 dated 24.01.2020 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai

PMI Organisation Centre Pvt. Ltd. .....Appellant
Unit no. 302 to 305, 3rd Floor,
BKC, Plot no. C-3, E Block,
Bandra (East), Mumbai

VERSUS

Commissioner of CGST & Central Tax, Mumbai East .....Respondent
9th Floor, Lotus Parel, Infocentre,
Parel East, Mumbai

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant for the appellant
Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/85969-85971/2023

DATE OF HEARING : 02.01.2023
DATE OF DECISION : 19.06.2023

Per: AJAY SHARMA

These appeals have been filed from the impugned Order-in-Appeal dated 24.1.2020 passed by Commissioner (Appeals II) GST & Central Excise, Mumbai by which the appeal filed by the appellant was partly rejected.

2. The issue involved herein is about the denial of refund of Cenvat Credit on various services under Rule 5, Cenvat Credit

Rules, 2004 against export of service and the period in dispute is from October, 2016 to June, 2017. The appellants are engaged in providing services namely Business Auxiliary Service and majority of their customers situated abroad for which they receive remuneration in foreign currency and the services rendered by them qualify as *'export of service'*.

3. During the period in dispute the appellants filed three refund applications and the adjudicating authority vide three separate Orders-in-Original dated 6.6.2019 sanctioned part refund and rejected the refund claim of Rs.19,64,416/- on various grounds including 'no nexus'. On appeal filed by the appellant, the learned Commissioner (Appeals) vide impugned order dated 24.1.2020 out of the rejected refund sanctioned the refund of Rs.77,186/- and rejected the appeal pertaining to the refund of Rs.18,87,230/-.

4. Learned Chartered Accountant appearing for the appellants raised a preliminary submission that Rule 14 of Cenvat Credit Rules, 2004 has not been followed while rejecting the refund claim and therefore the authorities below have erred in rejecting the refund claim. He further submits that on the very same ground this Tribunal in appellant's own case for the period October, 2013 to September 2016 i.e. immediately preceding the period herein, granted relief to the appellant by allowing their appeals vide Final Orders Nos.A/85105/2022 dtd. 7.2.2022 and A/85955-85963/2022 dtd.17.10.2022 respectively. Per

contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

5. I have heard learned Chartered Accountant for the appellant and learned Authorised Representative for the revenue and perused the case records including the written submissions and case laws placed on record. The issue raised by learned Chartered Accountant during the course of arguments is no more *res integra* in view of the decisions cited by learned Chartered Accountant in appellant's own case. Apart from that there are few more case laws on the same line which are as under:-

(i) *Qualcomm India Pvt. Ltd. vs. CC,CE&ST,; 2020(43)GSTL 402 (Tri.-Hyd.)*

(ii) *BNP Paribas India Solution Pvt. Ltd. vs. Commr. CGST, Mumbai East; 2022 (58) G.S.T.L. 539 (Tri.- Mumbai)*,

(iii)Sequoia Capital Advisors Pvt. Ltd. vs. Commr. CGST, Mumbai; Final Order No.A/86138/2022 dated 1.12.2022 in STA/87174/2019

(iv) KKR India Advisors Pvt. Ltd. vs. Commr. CGST, Mumbai Final Order No. A/86106-86107/2022 dated 25.11.2022

In the matter of *BNP Paribas India Solution Pvt. Ltd. (supra)* this Tribunal while allowing the appeal of the assessee therein allowed the refund claim u/s. 5 ibid by holding that since the provisions of Rule 14 ibid has not been invoked, the refund of Cenvat credit as claimed by the Appellant under Rule 5 ibid cannot be denied. The relevant paragraphs of the said order are reproduced hereunder:-

"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 case on an identical issue, for the period April, 2012 to March, 2013 and April, 2016 to September, 2016 in the matter of M/s. BNP Paribas India Solutions Pvt. Ltd. v. Commissioner of CGST, Mumbai East reported in 2020 (2) TMI 224-CESTAT Mumbai, set aside the denial of refund by the department to the Appellant on the ground of non-establishment of nexus between the input and output services, after discussing Rule 5 ibid in detail. The relevant extract of the said order is as under :

"xxxx xxxx xxxx

6. Rule 5 of the Cenvat Credit Rules was substituted by Notification No. 18/2012-C.E.(N.T.), dated 17.03.2012 (w.e.f.

01.04.2012). Under the said substituted rule, it has been provided that the manufacturer or the service provider has to claim the refund as per the formula prescribed therein. Considering such amendment of Rule 5, the Tax Research Unit of Department of Revenue vide circular dated 16/03/2012 has clarified that the new scheme under Rule 5 does not require the kind of correlation that is needed at present between exports and input services used in such exports. Since the amended rule w.e.f. 01.04.2012 does not provide for establishment of nexus between the input and the output services and the benefit of refund is to be extended only on compliance of the formula prescribed therein, I am of the view that denial of refund benefit on the ground of non-establishment of nexus cannot be sustained, I find that this Tribunal in the case of *Maersk Global Services Centres (I) Pvt. Ltd. (supra)* has extended the refund benefit on the ground that establishment of nexus between the input and the output services cannot be insisted upon. The relevant paragraphs in the said decision is extracted herein below:

> "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 establishing the nexus between input and the output service is concerned, I find that this Tribunal in the case of Accelya Kale Solutions Ltd (supra) by relying upon the letter dated 16.03.2012 of TRU has held that under Rule 5 ibid, refund of input service credit is permissible on compliance of the formula prescribed therein and not otherwise. The relevant paragraphs in the said order are extracted herein below:
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> 3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No., 18/2012-CE(NT) dated 17.03.2012, with effect from Appeal No. ST/88190, 88215, 88216 & 88217/2018 4 01.04.2012. 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 16.03.2012 has clarified as under:-
>
> "F.1. Simplified scheme for refunds:
>
> 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.
>
> 2. XX XX XX
>
> 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 assesee. 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."
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> 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. Vs. C.C.GST, Mumbai East; reported in 2021-VIL-466-CESTAT-MUM-ST vide order dated 17/09/2021 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.

6. In view of the discussions made hereinabove in the preceding paragraphs, in my opinion since the provisions of Rule 14 ibid have not been invoked, the refund of Cenvat Credit as claimed by the Appellant under Rule 5 ibid cannot be denied to them and the same is admissible. Therefore, the Appeals filed by the Appellant are allowed with consequential relief, if any."

Therefore it is settle legal position that in absence of any notice for recovery as provided by Rule 14 ibid the refund claimed by the assessee under Rule 5 cannot be denied. Nothing contrary has been produced on record. Rather the decision in the matter of *Qualcomm India Pvt. Ltd. (supra)* has been affirmed by the Hon'ble High Court of Hyderabad in *2021-TIOL-2305-HC-TELANGANA-ST* by dismissing the appeals filed by the revenue against the aforesaid decision of Tribunal.

6. In view the case laws cited above and more particularly the two decisions of this Tribunal in Appellant's own case on identical issue, I am of the considered view that the authorities below have erred in rejecting the refund claim of the appellant. Accordingly the impugned orders are set aside and the appeals filed by the appellant are allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 19.06.2023)

(Ajay Sharma)
Member (Judicial)

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