

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 87287 of 2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/127/17-18 dated 09.06.2017 passed by the Commissioner of Service Tax (Appeals)-I, Mumbai.)

M/s. Siemens Technology & Services Pvt. Ltd.Appellant
130, Pandurang Budhkar Marg,
Worli, Mumbai – 400 030

VERSUS

Commissioner of Service Tax-III, MumbaiRespondent
9th Floor, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai – 400 020

WITH

Service Tax Appeal No. 87299 of 2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/128/17-18 dated 09.06.2017 passed by the Commissioner of Service Tax (Appeals)-I, Mumbai.)

M/s. Siemens Technology & Services Pvt. Ltd.Appellant
130, Pandurang Budhkar Marg,
Worli, Mumbai – 400 030

VERSUS

Commissioner of Service Tax-III, MumbaiRespondent
9th Floor, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai – 400 020

AND

Service Tax Appeal No. 87300 of 2017

(Arising out of Order-in-Appeal No. PK/ST-I/MUM/126/17-18 dated 09.06.2017 passed by the Commissioner of Service Tax (Appeals)-I, Mumbai.)

M/s. Siemens Technology & Services Pvt. Ltd.Appellant
130, Pandurang Budhkar Marg,
Worli, Mumbai – 400 030

VERSUS

Commissioner of Service Tax-III, MumbaiRespondent
9th Floor, Lotus Infocentre,
Near Parel Station, Parel (E),
Mumbai – 400 020

AND

Service Tax Appeal No. 86257 of 2020

(Arising out of Order-in-Appeal No. SM/23/Appeals-II/MC/2020 dated 02.03.2020 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

M/s. Siemens Technology & Services Pvt. Ltd.Appellant
**Sector-2, Near Kharghar Railway
Station, Kharghar Node,
Navi Mumbai – 410 210**

VERSUS

Commissioner of CGST & Central Excise-Respondent
Mumbai Central
**4th Floor, GST Bhawan,
115, M K Road, Churchgate,
Mumbai – 400 020**

APPEARANCE:

Shri Jay Chheda, Advocate with
Ms. Shambhavi Dewalkar, Advocate for the Appellant

Shri Ajay Kumar Shrivastava, Assistant Commissioner, Authorised
Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 87121-87124/2023

Date of Hearing: 22.09.2023
Date of Decision: 09.11.2023

PER: DR. SUVENDU KUMAR PATI

Denial of CENVAT credit of Rs.1,22,29,342/- to the Appellant
for the period from April, 2012 to March, 2016 through four Orders-
in-Original that got confirmed by the Commissioner (Appeals) in his

above two referred orders passed on date 09.06.2017 and 02.03.2020 to the disadvantage of the Appellant who claimed refund of unutilised credit accrued from export of services. Appellant has assailed the same in these appeals.

2. Facts of the case, in a nutshell, is that Appellant is an exporter of Information Technology Software Services to overseas clients and the said exports were undertaken without payment of Service Tax. In the process it had accumulated CENVAT Credit on Service Tax liability discharged under reverse charge mechanism on the services procured from outside India and under normal procedure for the services availed within India. Against the accumulated CENVAT Credits, it had filed refund applications for the period from April 2012 to December 2012, January 2014 to March 2014, April 2014 to June 2014 and January 2016 to March 2016. Vide Order-in-Originals dated 29.09.2017, 21.09.2015, 28.10.2015 and 15.01.2018, those refund claims were rejected on the ground that input services had no nexus with output services, registered office address not appearing in ST-2, storage was beyond the place of removal, invoices of certain services availed were not submitted and in certain invoices Service Tax was either not paid or Service Tax number was not available. Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum.

3. During course of hearing of the appeal, learned Counsel for the Appellant Mr. Jay Chheda submitted that the issue is no more *res integra* in view of the fact that in Appellant's own case for the period between October 2014 and September 2015, *vide* Final Order No. A/87465-87468/2019 dated 30.08.2019, this Tribunal has given a clear finding that Rule 5 of CENVAT Credit Rules, 2004 does not stipulate any condition that one-to-one correlation or nexus has to be established between the inputs received and output services exported for the purpose of claiming benefit of refund. He further submitted that Tax Research Unit of CBEC *vide* its letter dated 16.03.2012 has clarified that the new Rule introduced by substituting Rule, 5 does not require the kind of correlation between exports and imports services and the same Circular is binding on the Adjudicating Authority as well as Commissioner (Appeals) and, therefore, the order passed by Commissioner (Appeals) to the extent of rejection of credits is required to be set aside. His further submission is that there is plethora of decision pronounced by this Tribunal *viz. Siemens Technology & Services Pvt. Ltd. vide* Final order No. A/87465-87468/2019 dated 30.08.2019, *Siemens Healthcare Pvt. Ltd. Vs. CCGST & CE* reported in 2023 (5) TMI 865 – CESTAT MUMBAI, *M/s Keva Fragrances Pvt. Ltd. Vs. CCE* reported in 2022 (3) TMI 271 – CESTAT MUMBAI, *LRN Technology And Content Solutions India Pvt. Ltd. Vs. Commissioner (Appeals)*, *CGST & CE* reported in 2020 (1) TMI 1335 - CESTAT MUMBAI, *M/s. BNP Paribas India Solutions Pvt. Ltd. Vs. CCGST & CE* reported in 2023 (5) TMI 439 – CESTAT, *M/s.*

Capital India Pvt. Ltd. Vs. CCT reported in 2023 (4) TMI 712 – *CESTAT MUMBAI* and many others that CENVAT Credit cannot be held to be inadmissible in a refund proceeding in the absence of any proceeding initiated under Rule, 14 of the CENVAT Credit Rules, 2004 and as no recovery proceeding was initiated for the alleged erroneous taking of credit, denial of the said amount during a refund proceeding is not in conformity to the law, for which the order passed by the Commissioner (Appeals) is required to be set aside.

4. In response to such submission, Learned AR for the Respondent-Department Mr. Ajay Kumar Shrivastava argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and pointed out that apart from those grounds which were dealt by the CESTAT in favour of the Appellant for its earlier period, credit availed for unregistered premises was also one of the issues as the same was denied to the Appellant because certain invoices were raised in some other address and not in the registered address of the Appellant. Learned Counsel for the Appellant counters the same with reference to the decision of this Tribunal, *vis. a vis.* proviso to Rule 9(2) of CENVAT Credit Rules, 2004 that permits certain conditions as not crucial for availing CENVAT Credit and in the same conditions, name and address of the service provider is mentioned as a mandatory requirement but there is no stipulation that address must be the registered address of Appellant, for which credit cannot be denied on that ground.

5. We took note of submissions and gone through the written notes as well as relied upon case laws. Without going into further analysis of the fact, we would like to reiterate the relevant portion of the finding made by this Tribunal in respect of Appellant's own case for its earlier period. Para 6 and 7 of the said order are reproduced hereunder for better clarity:

*"6. In the case in hand, the department has not disputed the fact regarding exportation of the output service by the appellant. Since, the input services were used in or in relation to provision of output service exported by the appellant, the benefit of refund provided under Rule 5 ibid should be available to it. **It is not the case of Revenue that the appellant did not follow the procedures laid down under Rule 5 read with the notification issued there under. The said Rule does not provide any stipulation or embargo that one-to-one co-relation or nexus has to be established between the input and exported output services. Considering the statutory provisions, the CBEC vide circular dated 16.03.2012, has also endorsed the above views. Further, the Tribunal in the relied upon cases has also extended the refund benefit, holding that there is no requirement for an assessee to prove a directed nexus between the input and output services for the purpose of claiming the benefit of refund under Rule 5 ibid.***

*7. **In view of above, the impugned order is set aside and the appeals are allowed in favour of the appellant, insofar as it has denied the benefit of refund on the ground of non-establishment of nexus between the input and output services.** With regard to the refund claim in respect of the invoices issued*

beyond the prescribed period, the appeal is allowed by way of remand to the original authority for a decision on merit on the above lines.”

(Emphasis supplied)

Further in the point of refusal of refund without initiation of proceeding under Rule 14 of CENVAT Credit Rules, 2004, we are of the view that such a proceeding is a pre-requisite for denial of credit and we would prefer to reproduce the logic cited in the case of *M/s Keva Fragrances Pvt. Ltd. Vs. CCE* reported in 2022 (3) TMI 271 – CESTAT MUMBAI, to substantiate the views taken by CESTAT, the relevant para of which reads as hereunder:-

"4.7 From the reading of the provisions of Rule 14 it is quite evident that if for a moment it is accepted that certain credit were wrongly or erroneously taken by the appellant contrary to the provisions contained in Rule 3 and 4 of the said Rules, then the same could have been denied by following the procedure as laid down in Rule 14. The so availed erroneous credit cannot be the subject matter of proceedings of Refund in terms of Rule 5 of the CENVAT Credit Rules, 2004. In these cases even if the refund claim is denied on the ground as stated by the impugned order then the same will be credited back to the CENVAT Account of the appellants and if possible appellant can utilize the same for payment of goods/ services cleared by them subsequently. Admittedly and undisputedly no proceedings for denial of any CENVAT Credit as claimed by the appellants, for encashment of which they have filed these refund claims have been initiated by the revenue.

4.8 Without denying the CENVAT Credit taken/ availed by the appellant in their book of accounts during the relevant period (quarter) by way of initiating proceedings against the appellant in

terms of Rule 14, revenue could not have altered the quantum of "Net CENVAT Credit" availed during the said quarter, and deny the encashment of that amount of the CENVAT Credit which is due as per the Rule 5. It is now well settled principle of law that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner."

(Underlined to emphasize)

On the issue of invoices issued in the unregistered premises, we would like to reiterate para 5 of the order passed by this Tribunal in the case of *M/s. Capital India Pvt. Ltd. Vs. CCT* reported in 2023 (4) TMI 712 – CESTAT MUMBAI, which reads as hereunder:-

*"5. I have carefully gone through the records of the case and submissions made. **In respect of the objections raised where the invoice address does not match with the registered premises there are large number of decision of this Tribunal where it has been held that so long as it is not established that services are not utilized, CENVAT Credit cannot be denied.** In respect of services at Sr. N. 6 to 10 stated above, the finding of the appellate authority that there is no nexus with output services is not sustainable. I accept the contentions of Revenue that there has been a double credit of Rs. 1,353/-, I disallow the refund of Rs. 1,353/- and order for refund of unutilized CENVAT Credit of the balance amount involved in this appeal, except for Rs. 1,353/-."*

(Underlined to emphasize)

6. Having gone through the facts of the case and relevant portion of the above referred judgments, we have got no hesitation to hold that credit as sought by the Appellant is admissible to it except for an amount of Rs.23,418/- and Rs.38,604/- in respect of which

invoices were not submitted and/or Service Tax numbers were not available on the bills, in which respect also Appellant has abandoned its claim in writing through a memo filed before this Tribunal. Therefore, in carrying forward judicial precedent set by this Tribunal, the following order is passed.

THE ORDER

7. The appeals are allowed and the order passed by the Commissioner of Service Tax (Appeals)-I, Mumbai vide Order-in-Appeal Nos. PK/ST-I/MUM/126-128/17-18 dated 09.06.2017 and order passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai vide Order-in-Appeal No. SM/23/Appeals-II/MC/2020 dated 02.03.2020, to the extent of denial of CENVAT Credit except amounts of Rs.23,418/- and Rs.38,604/-, are hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 09.11.2023)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)