CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 88055 of 2019

[Arising out of Order-in-Appeal No. NA/GST A-III/MUM/61/2019-20 dated 29.05.2019 passed by the Commissioner of GST & CX (Appeals-III), Mumbai.]

M/s Syntel Private Limited ....Appellant
Unit No. 112, SDF IV, Seepz,
Andheri (East), Mumbai – 400 096

VERSUS

Commissioner of Central GST & ....Respondent
Central Excise, Mumbai East
9th Floor, Lotus, Parel, Lotus
Infocentre, Near Parel Station,
Parel East, Mumbai

<u>APPERANCE:</u>

Shri Mahesh Raichandani, Advocate for the Appellant
Shri Ajay Kumar Shrivastava, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85428/2024

Date of Hearing: 18.03.2024
Date of Decision: 23.04.2024

Denial of refund of CENVAT Credit to the Appellant for an amount of ₹8,75,340/- by the Commissioner of GST & CX (Appeals-III), Mumbai on the ground that improper description of the input services noted in the invoices of the Appellant/exporter of services, is assailed in this appeal by the Appellant.

2. Facts of the case, in a nutshell, is that Appellant is engaged in providing 'Business Auxiliary Services' and 'Manpower Requirement and Supply Agency Services' to its customers located outside India and is receiving convertible foreign currency that qualified Appellant as export of service under Rule 6A of the Service Tax Rules, 1994. Appellant had used certain input services and availed benefit of Notification No. 27/2012-CE(NT) dated 17.03.2012 and sought for refund of ₹3,83,03,400/- under Rule 5 of the CENVAT Credit Rules, 2004 for the quarter from January, 2016 to March, 2016. The refund sanctioning Authority allowed refund of ₹3,73,48,820/- *vide* Order-in-Original dated 26.03.2018 and denied refund of ₹9,47,018/- including the above referred amount of ₹8,75,340/- on which denial was made as payment proof of Service Tax paid on 'legal services' was not substantiated with documents. Legality of this denial is assailed by Appellant before this Forum while it has not challenged the remaining denial amount of ₹71,678/- that was made on account of unavailability of invoices.

3. During the course of hearing of the appeal learned Counsel for the Appellant Mr. Mahesh Raichandani in submitting case laws nomenclature of *Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. (S.C.), Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) (S.C.)* and *BT (India) Pvt. Ltd. Vs. Union of India (Delhi H.C.)* without giving publication reference, has submitted that the issue has attained finality that unless the order of assessment is reviewed/modified in an appeal, refund cannot be

rejected since the order stands as a valid order. Further, in submitting copy of a recently decided judgment of the Hon'ble Delhi High Court pronounced on 06.11.2023, learned Counsel for the Appellant further submitted that the said judgement took note of all the previous findings including *Flock (India) Pvt. Ltd., Priya Blue Industries Ltd.* judgements and arrived at the conclusion that without re-assessment, refund cannot be rejected. Solely on the ground that invoice doesn't contain description of 'legal service' and contains description of service availed as 'Business Auxiliary Services', which Appellant had already brought to the knowledge of the refund sanctioning Authority that under that category some excess payment was made for which adjustment was done by the Appellant on Service Tax paid under 'Business Auxiliary Services', refund was refused and, therefore, he pleaded for setting aside of the order of Commissioner to the extent of rejection of refund against credit accumulated from services availed on 'legal service'.

4. *Per contra*, learned Authorised Representative for the Respondent-Department supported the reasoning and rationality of the order passed by the Commissioner and took us to page no. 69 of the appeal memo to justify that adjustment of excess amount paid earlier as Service Tax was shown as 'nil' for the relevant period in the Service Tax Returns filed by the Appellant and, therefore, he sought no interference by this Tribunal in the order passed by the Commissioner in rejecting the refund.

5. I have gone through the case record and noticed that learned Commissioner had given his detail analysis on rejection of refund on legal services under para 9 sub-Clause (ii) of his order, it reads:

> *"Further, in respect of Sr. No. 278 to 308 of their partly consumed services CENVAT Credit statement, this office has called for copy of challan evidencing payment of Service Tax and Swachcha Bharat Cess (SBC). All these invoices are raised by various vendors/service providers i.e. M/s. Aditya & Associates, M/s. Amar Raut, M/s. Sundeep Puri Associates & Advocates M/s. Fredun E. Devitre, M/s. DPS Law Associates, M/s. Dipesh Vyas M/s. Pratyush Chaube, M/s. Bhalerao & Bhalerao and M/s. Khaitan & Co. etc., all of them are providing Legal Consultancy Service and have been categorised under Legal Services in this partly consumed services CENVAT Credit statement. In reply they have submitted copy of G.A.R.-7 Challan No. 01951 dated 06.02.2016, involving Service Tax payment of ₹55,30,288/- for Business Auxiliary Services, ₹1,19,712/- for Cab Operators, ₹3,50,000/- and ₹5,351/- for Sponsorship Services, ₹2,99,679/- for Accounting Code (00441493) and ₹665/- for Accounting Code (00441494) totally amounting to ₹63,05,695/-. On going through the said challan and their partly consumed CENVAT Credit statement, <u>I find that they have taken credit for Legal Services, whereas given G.A.R.-7 Challan pertains Business Auxiliary Services,</u> Cab Operators Services and Sponsorship Services. Thus, I find that refund of CENVAT Credit pertains to Sr. No. 278 to 308 of their partly consumed services CENVAT Credit statement amounting to ₹8,75,,340/- are not admissible to them and same is liable for rejection.*
>
> *(Underlined to emphasise)*
>
> *From the above I find that total refund of ₹9,47,018/- (i.e. ₹71,678/- plus ₹8,75,340/-) in respect of their partly consumed services are inadmissible to them and liable for rejection."*

On going through the above findings it is very clear that on account of legal services availed as input services, no invoices were raised showing the services as legal services and on the other hand copy of G.A.R.-7 Challan evidencing payment of Service Tax clearly indicates that the said payments were made under 'Business Auxiliary Services', 'Cab Operators Services', 'Sponsorship Services', etc. This being the ground for refusal, it is not to understood us to why the question of re-assessment is to come into play when such refusal is permissible well under Rule, 9 of the CENVAT Credit Rules, 2004 concerning description contained in the duty paying document proviso to Rule 9(2) reads as follows:

> *"Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit."*
>
> *(Underlined again to emphasise)*

6. In view of clear provision as enumerated above, if particulars of description of goods or taxable service is not properly reflected in the duty paying document and that to the satisfaction of the Dy. Commissioner/Assistant Commissioner of Central Excise about its receipt and accounting for, then the discretion lies with the refund

sanctioning Authority namely the Deputy Commissioner or Assistant Commissioner of Central Excise to allow the CENVAT Credit or not and such discretion having been exercised judicially, as could be noticed from the paragraph extracted above, I find no irregularity on the part of Assistant Commissioner (Refunds-II) CGST, Mumbai East in not allowing the same refund that got confirmed by the order of the Commissioner (Appeals). Hence the order.

THE ORDER

7. The appeal is dismissed and the order passed by the Commissioner of GST & CX (Appeals-III), Mumbai *vide* Order-in-Appeal No. NA/GST A-III/MUM/61/2019-20 dated 29.05.2019 in rejecting grant of refund to the Appellant on legal expenses is hereby confirmed.

(Order pronounced in the open court on 23.04.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad