CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL NO. 85128 OF 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-502 & 503-16-17 dated 27.10.2016 passed by the Commissioner of Service Tax-II (Appeals), Mumbai)

M/s HERE Solutions India Pvt. Ltd. **.... Appellant**
Unit No. 305-308, 3rd Floor, Multistoried Building,
MIDC, SEEPZ, Andheri (East),
Mumbai – 400 096

Versus

Commissioner of Service Tax, Mumbai-II **.... Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai – 400 012.

WITH

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Appearance:

Ms. Disha Gursahney a/w Viraj Reshamwala, Advocates for the Appellants
Shri A.K. Shrivastava, Authorized Representative for the Respondents

CORAM:

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

FINAL ORDER NO. A/85935 – 85936/2024

Date of Hearing: 06.09.2024
Date of Decision: 06.09.2024

Per: S.K. Mohanty

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants herein are engaged in providing Information Technology Software Services, and for that purpose, are registered with the jurisdictional Service Tax authorities. The appellants avail CENVAT Credit of Service Tax paid on the input services used in or in relation to provision of such output services. During the disputed period, the appellants had filed two refund applications under Rule 5 of the CENVAT Credit Rules, 2004, claiming refund of Service Tax paid on the input services, which were used for export of the output services to the parent company located in Netherlands. The refund applications covering the period April, 2013 to June, 2013 and July, 2013 to September, 2013 was adjudicated by the learned Assistant Commissioner vide order dated 13.04.2016 and 07.04.2016, in partial sanctioning of the refund in favour of the appellants. However, Revenue has assailed the said original order by way of filing appeal before the learned Commissioner (Appeals). Appeal filed by Revenue was disposed of by the learned Commissioner (Appeals) vide the impugned order dated 27.10.2016, in allowing the appeal in favour of the Revenue. In support of allowing the appeal, the learned Commissioner (Appeals) has held that the case of the respondent (appellants herein) fall under the scope and purview of Rule 4(a) of the Place of Provisions of Service Rules, 2012 and since the services were provided within the territory of India, the same should not be considered as 'export of service'. Feeling aggrieved with the impugned order dated 27.10.2016, the appellants have preferred these appeals before the Tribunal.

3. Learned Advocate appearing for the appellants submitted that in order to fall under the purview of Rule 4(a) *ibid*, the basic condition to be fulfilled is that there should be involvement of goods. She submitted that since the services were provided in electronic mode for the benefit of the service

receiver located abroad, there is no involvement of any goods, in order to fall under the provisions of clause (a) of Rule 4 *ibid*. She further submitted that against the adjudication order dated 13.04.2016 passed by the learned Assistant Commissioner of Service Tax, in allowing the refund claim in favour of the appellants, Revenue has issued a protective demand for recovery of the refund already sanctioned. Adjudication order passed against such protective demand was appealed against before the learned Commissioner (Appeals) and the learned Commissioner (Appeals) vide order dated 05.03.2018 has set aside the adjudication order confirming the demands by the Assistant Commissioner in the order dated 30.12.2016. She further submitted that the orders dated 07.12.2017 and 14.08.2019 passed by the learned Commissioner (Appeals) in allowing the refund benefit in favour of the appellants in respect of refund claims filed for the period, both prior to and after the disputed period, in the case of the appellants were not appealed against by Revenue, and thus, had attained finality. Hence, she prayed for allowing the refund claim in respect of the applications filed by them under Rule 5 *ibid*.

4. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. We find that in support of rejection of the refund application filed by the appellants, the learned Commissioner (Appeals) has mainly relied upon the proviso clause appended to clause (a) of Rule 4 of the Place of Provision of Service Rules, 2012. On plain reading of the said proviso clause, it transpires that in order to fall within the purview of such clause, the basic requirement is that there should be involvement of the goods for consideration of the place of provision of service. Since the services were provided by the appellant in electronic mode and the server for receiving of

such output service was installed in Netherland, it cannot be said that the case of the appellants fall within the purview of Rule 4(a) *ibid*. Since the appellants had provided the services for the benefit of the recipient of the service located in Netherland, the transaction should appropriately be termed as 'export of service' and the unutilized CENVAT Credit available in the Books of Account of the appellants herein, should be considered for grant of the benefit of refund.

6. In view of the foregoing discussions, we do not find any merits in the impugned order, in so far as it has rejected the refund benefit claimed by the appellants. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha