CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86216 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86217 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86218 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....**Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86219 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... **Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....**Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86220 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... **Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....**Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86221 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... **Appellant**

8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86222 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86223 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86224 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... Appellant
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....Respondent
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86225 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... Appellant
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....Respondent
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86226 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. .... Appellant
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East ....Respondent
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86227 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86228 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

WITH

Service Tax Appeal No. 86229 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and **....Respondent**

Service Tax, Mumbai-East
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

AND

Service Tax Appeal No. 86236 of 2018

(Arising out of Order-in-Appeal No. PK/ 294 to 308/ME/2017 dated 06.12.2017 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai)

Citicorp Services India Private Ltd. **.... Appellant**
8th Floor, First International Financial Centre (FIFC)
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 098.

Versus

Commissioner of Central Goods and Service Tax, Mumbai-East **....Respondent**
GST & Central Excise, Mumbai Zone,
3rd Floor, Utpad Shulk Bhavan, Plot No. 24,
Sector E, Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051.

APPEARANCE:

Shri Prasad Paranjape, Advocate for the Appellant
Ms S. Varalakshmi, 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/85988-86002/2024

Date of Hearing: 20.09.2024
Date of Decision: 20.09.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged in providing Banking and Other Financial Services (BOFS) to their domestic as well as overseas customers. During the course of business, the appellants also provide services in the nature of BOFS, which qualify as export in terms of Rule 6A of the Service Tax Rules, 1994**.** During the disputed period, the appellants had exported such output service to their parent company M/s. Citibank Overseas Investment Corporation, USA. Since, the output services were exported by the appellants, without payment of service tax, there was no scope for utilization of the Cenvat Credit available in their Books of Accounts. Therefore, the appellants during the period July 2012 to March 2016, had filed 15 quarterly refund claims under Rule 5 of the Cenvat Credit Rules, 2004 (CCR) claiming refund of service tax paid on the input services. The refund applications filed by the appellants were favorably considered in part by the original authority and the impugned order has also considered certain input services for the purpose grant of the refund benefit. However, with regard to certain services, he has denied the refund benefit on ground of non-establishment of nexus between the input/output services. The impugned order, insofar as it has denied the refund benefit, holding that there is no nexus between the input services and the output service exported by the appellants, the appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that taking of Cenvat credit by them in terms of Rule 3 of the Rules of 2004, was not objected to the department, which is evident from the fact that Rule 14 of the said Rules was not invoked for effecting recovery of the alleged irregular availed Cenvat Credit. Thus, he submitted that since taking of Cenvat credit was not specifically objected to by the department, claiming of refund under altogether a different provision i.e. Rule 5 of the Rules, 2004 cannot be a defensible ground for curtailing the benefit of refund provided under the said Rules. The learned Advocate has relied upon the decision of this Tribunal in the case of Qualcomm India Pvt. Ltd. Vs. Commr. Of Cus., C. Ex. & S.T., Hyderabad-IV – 2020 (43) G.S.T.L. 402 (Tribunal-Hyderabad), to state that under the identical set of facts, the co-ordinate bench of the Tribunal has allowed the refund benefit to the appellants involved therein. Further, he has also stated that the said order passed by the Tribunal was upheld by the Hon'ble Telangana High Court, reported in 2021-TIOL-2305-HC-TELANGANA-ST.

3. On the other hand, learned Authorized Representative appearing for the respondent submitted that since there is no nexus between the input services and the output services exported by the appellants, denial of the refund benefit by the authorities below is in conformity with the statutory provisions. In this context, she has

relied upon the judgment delivered by the Hon'ble Gujarat High Court in the case of Commissioner of C.EX., Ahmedabad-II Vs. Cadila Healthcare Ltd. - 2013(30) STR 3 (Guj.).

4. Heard both sides and examined the case records.

5. It is an admitted fact on record that the Cenvat credit availed on the input services by the appellants were not disputed by the department inasmuch as no show cause notice was issued under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994, calling upon the appellants to revere the Cenvat Credit irregularly availed by them. Since such provisions were not invoked by the department, it has to be construed that the Cenvat credit has been correctly availed by the appellants in terms of the provisions contained in the Cenvat statute. Rule 5 of the Cenvat Credit Rules, 2004 deals with the situation of grant of refund of service tax paid on input services, owing to the reason of exportation of the output service. Since, the department had not specifically objected to exportation of the services by the appellants and compliance of the requirement provided under Rule 5 of said of Rule, denial of the refund benefit solely on the ground of non-establishment of nexus between the input services and the output service cannot be considered as proper and justified. We find that this Tribunal in the case of Qualcomm India Pvt. Ltd. (supra) has dealt with an identical situation and vide para 6 in the said order has held as under :

> ***"6.*** *Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer of excisable goods and the provider of output service to take Cenvat credit of the duties and taxes paid on the inputs and the input services, with the objective of utilisation of the same for payment of Excise duty on the products and service tax on the output services. In case of exportation of output service, there is no question of utilisation of Cenvat credit available in the books of accounts. Thus, Rule 5 ibid provides for refund of accumulated Cenvat credit,*

subject to compliance of the procedures/guidelines laid down under the notifications issued thereunder. We find that the refund benefit was denied to the assessee-appellant on the sole ground that there was no nexus between the input services and the output service exported by the appellant. Further, in Revenue's appeal, it has been contended that certain disputed services are not conforming to the definition of input service provided under Rule 2(l) ibid. Insofar as taking of irregular Cenvat credit is concerned, Rule 14 ibid clearly mandates that in case of irregular availment of credit or its utilisation, such credit can be recovered from the assessee and for effecting the recoveries, the provisions of Section 11A of the Central Excise Act, 1944/Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is an admitted fact on record that the department has not invoked the provisions of Rule 14 ibid for effecting recovery of the alleged irregular Cenvat credit availed by the assessee-appellant. Thus, under such circumstances, it can be said that taking of Cenvat credit on the disputed services by the appellant is in conformity with the Cenvat statute. Rule 5 ibid nowhere specifies that Cenvat credit can be denied on the ground of irregular availment or utilisation of the same. Thus, in absence of specific provisions contained in the statute, denial of the refund benefit provided under Rule 5 ibid, in our considered opinion, cannot stand for judicial scrutiny. Since the department has not specifically alleged regarding actual exportation of services by the assessee-appellant and use/utilization of disputed services for such activities, benefit of refund should be available in terms of the unambiguous provisions contained in Rule 5 ibid, subject only to adherence of the formula laid down thereunder. The Learned Advocate appearing for the assessee-appellant submitted that it should be entitled for the benefit of interest for non-consideration of the refund application within the *stipulated time-frame prescribed under the statute. However, on perusal of the case records, more specifically the grounds of appeal annexed to the appeal memorandum, we find that the assessee-appellant has not raised any plea on the issue of payment of interest therein. Since such issue is not arising out of the appeal proceedings before the Tribunal, it will not be appropriate to consider such plea at this juncture for a decision as emphasized by the Learned Advocate for the appellant."*

6. The order passed by the Tribunal in the case of Qualcomm India Pvt. Ltd. (supra) was appealed against by Revenue before the Hon'ble Telengana High Court, which was dismissed vide judgment dated 28.09.2021, reported in 2021-TIOL2305-HC-TELENGANA-ST. In view of the settled position of law, we are not in agreement with the observations made by the learned Commissioner (Appeals) that the appellants have to comply with the requirement of establishment of nexus between the input services and output service exported by them. The judgment of Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd. (supra), relied upon by the learned Authorized Representative for the Revenue is distinguishable from the facts of the present case inasmuch as the question for consideration before the Hon'ble High Court was in context with the definition of input and more particularly the phrase "activities relating to business". Since, the issue of Rule 5 of the refund was not subject matter of dispute before the Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd., ratio of the said judgment cannot be applied to the case in hand for deciding the appeal differently.

7. Further, we find that in respect of three show cause notices, being numbers SCN Sr.No.ST-IV/Div-II/Supdt/SCN/28/2017-18 dated 19.06.2017 (Appeal No. ST/86219/2018), SCN Sr. No. 20/Dn.II/AC/17-18 dated 15.06.2017 (Appeal No. ST/86224/2018) and SCN Sr.No.ST-IV/Div-II/Supdt/SCN/28/2017-18 SCN Sr. No. ST-IV/Div-II/Supdt/SCN/27/2017-18 dated 19.06.2017 (Appeal No. 86128/2018), though the department had proposed for reversal of Cenvat Credit on the ground of non-establishment of nexus, but in

the adjudication orders, the learned adjudicating authority had dropped the show cause notices, holding that the nexus aspect cannot be questioned at the time of consideration of the refund applications filed under Rule 5 of the Rules, 1994.

8. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has denied the refund benefit to the appellants. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants, with consequential benefit of refund, as per law.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM