

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86954 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/228 To 232/17-18 dated 28.02.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai)

Blackstone Advisors India P. Ltd. **Appellant**
5th Floor, Express Towers, Nariman Point,
Mumbai - 400 021.

Versus

Commissioner of Central Goods and Service Tax, Mumbai South **Respondent**
13th Floor, Air India Building, Nariman Point,
Mumbai- 400 021.

WITH

Service Tax Appeal No. 86960 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/228 To 232/17-18 dated 28.02.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai)

Blackstone Advisors India P. Ltd. **Appellant**
5th Floor, Express Towers, Nariman Point,
Mumbai - 400 021.

Versus

Commissioner of Central Goods and Service Tax, Mumbai South **Respondent**
13th Floor, Air India Building, Nariman Point,
Mumbai- 400 021.

WITH

Service Tax Appeal No. 86962 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/228 To 232/17-18 dated 28.02.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai)

Blackstone Advisors India P. Ltd. **Appellant**
5th Floor, Express Towers, Nariman Point,
Mumbai - 400 021.

Versus

Commissioner of Central Goods and Service Tax, Mumbai South **Respondent**
13th Floor, Air India Building, Nariman Point,
Mumbai- 400 021.

WITH

Service Tax Appeal No. 86963 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/228 To 232/17-18 dated 28.02.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai)

Blackstone Advisors India P. Ltd.5th Floor, Express Towers, Nariman Point,
Mumbai - 400 021.**.... Appellant**

Versus

**Commissioner of Central Goods and
Service Tax, Mumbai South**13th Floor, Air India Building, Nariman Point,
Mumbai- 400 021.**.... Respondent****AND****Service Tax Appeal No. 86966 of 2018**(Arising out of Order-in-Appeal No. IM/CGST/A-I/MUM/228 To 232/17-18 dated
28.02.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai)**Blackstone Advisors India P. Ltd.**5th Floor, Express Towers, Nariman Point,
Mumbai - 400 021.**.... Appellant**

Versus

**Commissioner of Central Goods and
Service Tax, Mumbai South**13th Floor, Air India Building, Nariman Point,
Mumbai- 400 021.**.... Respondent****Appearance:**

Ms Disha Gursahaney, Advocate for the Appellant

Shri Dhananjay Dahiwal, 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/85982-85986/2024**

Date of Hearing: 24.09.2024

Date of Decision: 24.09.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants herein are engaged in the business of providing investment advisory services, comprising of advice and recommendation to their parent companies M/s. Blackstone Real Estate Advisors LLP and M/s. Blackstone Management Partners LLC located in U.S.A. For provision of such services, the appellants got themselves registered with the Service Tax Department under the taxable category of "Banking and other Financial Services". During the disputed period, the appellants

had exported the entire output services to the overseas entities located abroad. Since, the activities of export do not attract payment of Service Tax, the appellants were not in a position to utilize the Cenvat Credit available in the books of accounts. Therefore, the appellants had filed the refund application under Rule 5 of the Cenvat Credit Rules, 2004 claiming refund of accumulated Cenvat balance available in the books of accounts. The refund applications filed by the appellants were rejected by the original authority vide orders dated 14.08.2015, 11.03.2016, 28.09.2016, 27.11.2015 and 30.12.2016 on various grounds. Appeal filed against such original orders were disposed of by learned Commissioner (Appeals), vide impugned order dated 28.02.2018, in upholding the said orders and rejecting the appeals filed by the appellants. Feeling aggrieved with the impugned order dated 28.02.2018, appellants have preferred these appeals before the Tribunal.

3. We find that in support of rejection of the refund benefit in favour of the appellants, learned Commissioner (Appeals) at paragraph 11 has recorded the following observations:

"11. In gist, the appellants M/s. Blackstone Advisors India Pvt. Ltd. is the branch office and managing the related activities of Blackstone Real Estate Advisors LP and Blackstone Management Partners, LLC in US. From the above findings and the kind of transactions mentioned in the invoice as monthly fixed reimbursable amounts are nothing but towards the fixed monthly salaries and other overheads of the office maintained in India. Therefore, the remittances so received are nothing but the reimbursable expenses of the Blackstone India. Further, the invoices and the terms of agreement reveals that the said amounts are towards reimbursable expenses. Therefore, it cannot be held to be the proceeds of exports. Further, the Blackstone India cannot be regarded as an independent entity as it has to stand on its own. The existence of Blackstone is at the mercy of Blackstone US. Therefore, effectively it can be construed that Blackstone India is a mere establishment of Blackstone US and the kind of transactions is at arms length. It is also alleged that the remittances are received as investment in India and not an export proceeds. Whether the said amounts are investments in India or not but definitely not relatable to the exports in as much as the information exchanged between the inter-branches cannot be regarded as export of service. Further, since the investments in relation to real estate i.e. immovable property in India, the benefit of service are accrued to India and since the services not used outside India as discussed in preceding paras, it cannot be regarded as export of service outside India in terms of CBEC Circular No. 141/10/2011-TRU dated 13.05.2011. Further, the adjudicating authority observed

that the said impugned exports are made to one party but the proceeds are received from a different party. Therefore, the adjudicating authority have rightly held that the impugned remittances are not relatable to the export and also correctly held that there is no export as such in terms of agreement vis-à-vis. the transactions between the Blackstone India and Blackstone US. Therefore, I do not find any impropriety in rejecting the refund claim vide Order-in-Original and accordingly, sustained."

4. We find that the appellants herein are duly incorporated under the Companies Act, 1956 as M/s. Blackstone India Pvt. Ltd. and had provided the services to entirely different entities namely M/s. Blackstone Real Estate Advisor LLP and M/s. Blackstone Management Partners LLC, both located in USA. Thus, it cannot be said that Indian entity i.e. the appellants are mere establishment of the overseas entities and thus, there cannot be any provision of service, in order to consider the same as export. Further, we also find that the appellants had not only got the re-imbursement from the overseas entities but also the mark up towards the services provided to such overseas entities. It is an admitted fact on record that for provision of the output service, the appellants had got the value of the taxable service in convertible foreign exchange. Thus, the services provided by the appellants can be considered as 'export' and as such, the benefit provided under Rule 5 of the Rules, 1994 should be available to them for grant of refund of the accumulated Cenvat credit balance available in the books of accounts. We find that in the case of the appellants themselves, this Tribunal vide Final Order No. A/87482-87483/2019 dated 22.11.2019 has allowed refund benefit in respect of self-same services provided by the appellants to the overseas entities. The relevant paragraphs in the said order are extracted herein below:

"6. It is an admitted fact on record that the appellant had provided the services to the overseas entities as per the contractual norms and consideration for such services was received in convertible foreign exchange. However, upon receipt of such services from the appellant, the service recipient located abroad had provided such services and issued the invoices to its clients located within the country. The dispute with regard to the issue of applicability of the provisions of the export of services, under such circumstances was dealt with by the CBEC vide Circular dated 24.02.2009, wherein with regard to category -III service under Rule 3(1)(iii) ibid, it has been clarified that banking and other financial services should be classified under

the said rule for the purpose of consideration as export. The CBEC in the said Circular has clarified as under:

"For the services that fall under Category III [Rule 3(1)(iii)], the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase 'used outside India' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India."

7. Further, I also find that identical case has also been decided by the Tribunal in the cases (supra) relied upon by the learned Advocate for the appellant. In those cases, it has been held that even if the services are provided with the country under the instruction of the services recipient located abroad, still the services will be considered as export under the Export of Services Rules, 2005. The reliance place by the authorities below on the Circular dated 13.05.2011 is not applicable to the case in hand inasmuch as the period in dispute is prior to March 2010 and the Circular was issued much after the date of performance of actual service by the appellant."

5. In view of the foregoing discussions, we do not find any merits in the impugned order dated 28.02.2018, wherein the learned Commissioner (Appeals) has upheld the adjudication order and rejected the refund benefit in favour of the appellants. Therefore, the impugned order is set aside and the appeals are allowed in the favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)