

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

REGIONAL BENCH - COURT NO. I

SERVICE TAX MISC. APPLICATION No. 85618 of 2024

with

SERVICE TAX APPEAL No. 86763 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. LimitedAppellants

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai - 400063.

VERSUS

Commissioner of Central Tax, Mumbai EastRespondent

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85619 of 2024

with

SERVICE TAX APPEAL No. 86764 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. LimitedAppellants

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai - 400063.

VERSUS

Commissioner of Central Tax, Mumbai EastRespondent

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85620 of 2024

with

SERVICE TAX APPEAL No. 86765 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

ST/86763/2019
to ST/86777/2019

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants

VERSUS

Commissioner of Central Tax, Mumbai East

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85621 of 2024

with

SERVICE TAX APPEAL No. 86766 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants

VERSUS

Commissioner of Central Tax, Mumbai East

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85622 of 2024

with

SERVICE TAX APPEAL No. 86767 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants

VERSUS

Commissioner of Central Tax, Mumbai East

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85623 of 2024

with

SERVICE TAX APPEAL No. 86768 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85624 of 2024

with

SERVICE TAX APPEAL No. 86769 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85625 of 2024

with

SERVICE TAX APPEAL No. 86770 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants*VERSUS***Commissioner of Central Tax, Mumbai East**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85626 of 2024

with

SERVICE TAX APPEAL No. 86771 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019
passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants*VERSUS***Commissioner of Central Tax, Mumbai East**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85627 of 2024

with

SERVICE TAX APPEAL No. 86772 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019
passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

.....Appellants*VERSUS***Commissioner of Central Tax, Mumbai East**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

.....Respondent

and

SERVICE TAX MISC. APPLICATION No. 85628 of 2024

with

SERVICE TAX APPEAL No. 86773 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85629 of 2024

with

SERVICE TAX APPEAL No. 86774 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
NESCO IT Park, NESCO Complex,
Western Express Highway, Goregaon (East)
Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
9th Floor, Lotus Info Centre,
Parel (East)
Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85630 of 2024

with

SERVICE TAX APPEAL No. 86775 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
 NESCO IT Park, NESCO Complex,
 Western Express Highway, Goregaon (East)
 Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
 9th Floor, Lotus Info Centre,
 Parel (East)
 Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85631 of 2024

with

SERVICE TAX APPEAL No. 86776 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019
 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
 NESCO IT Park, NESCO Complex,
 Western Express Highway, Goregaon (East)
 Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
 9th Floor, Lotus Info Centre,
 Parel (East)
 Mumbai - 400 012.

and

SERVICE TAX MISC. APPLICATION No. 85632 of 2024

with

SERVICE TAX APPEAL No. 86777 of 2019

(Arising out of Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019
 passed by Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

Integreon Managed Solutions Pvt. Limited**.....Appellants**

602, 6th Floor, IT Building 3
 NESCO IT Park, NESCO Complex,
 Western Express Highway, Goregaon (East)
 Mumbai – 400063.

*VERSUS***Commissioner of Central Tax, Mumbai East****.....Respondent**

CGST & Central Excise - Mumbai East Commissionerate
 9th Floor, Lotus Info Centre,
 Parel (East)
 Mumbai - 400 012.

APPEARANCE:

Shri Mayur Jain a/w Ms. Rinky Arora, Advocates for the Appellants
Shri Dhananjay Dahiwal, Authorised Representative for the Respondents

CORAM:**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/86637-86651/2024**

Date of Hearing: 18.10.2024
Date of Decision: 23.10.2024

These Miscellaneous applications have been filed by the applicants seeking for change of the name in the cause title, in order to properly reflect the jurisdictional departmental authorities being arrayed as respondent. The grounds urged in support of such miscellaneous applications seem reasonable. Accordingly, Registry is directed to note the changed name of the respondent as duly incorporated in this order for record purpose.

2. These appeals have been filed by M/s Integreon Managed Solutions Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing the common Order-in-Appeal No. PVNS/22-36/Appeals-II/ME/2019 dated 25.02.2019 (herein after, referred to as 'the impugned order') passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai, in respect of fifteen appeals preferred by the appellants before him.

3.1 Brief facts of the case, leading to these appeals, are summarised herein below:

3.2 The appellants herein, is a business entity incorporated under the Companies Act, 1956 and *inter alia*, is engaged in providing services relating to knowledge services, business administration services, software and legal & discovery support services to their clients located in India as well as situated outside India. These services are covered under the category of 'Business Support Services (BSS)' and 'renting of immovable property' for the purpose of payment of service tax under the Finance Act, 1994. For such purposes, the appellants have registered with jurisdictional authorities and had obtained service tax registration.

3.3 The appellants being a registered person for providing output service had also availed CENVAT credit of service tax paid on various input services as per Rule 3, 4(7) read with Rule 2(I) of Cenvat Credit Rules, 2004 (CCR). However, being an exporter of services, they could not utilise the credit that was accumulated in their CENVAT credit account. Therefore, the appellants had filed with the jurisdictional authorities refund applications, on a quarterly basis, for refund of unutilized Cenvat credit lying in balance under the provisions of Rule 5 of CCR read with Notification No.27/2012 dated 18.06.2012. Thus, the appellants had filed various refund claims for the disputed period from July, 2012 to June, 2016 for total CENVAT credit of Rs.6,59,19,278/- of service tax paid on input services. On adjudication of these refund claims, the original authority i.e., the Deputy Commissioner had sanctioned the refund claim of Rs. 5,19,40,518/- and rejected the refund claim of Rs. 1,39,78,760/-. Being aggrieved with the above order, the appellants have preferred an appeal before the Commissioner (Appeals), who had decided the issue vide Order-in-Appeal No. PK/45-60/ME/2018 dated 02.02.2018, by partly allowing the refund claim of Rs. 1,04,75,264/- by way of remand to the original authority and rejecting the refund of balance of Rs.35,03,496/-. Being aggrieved against the said Order-in-Appeal dated 02.02.2018, the appellants had preferred an appeal before this Tribunal. The said issue was disposed of by the Tribunal in passing the Final Order No. A/87717-87731/2018 dated 08.10.2018 for *de-novo* adjudication of the case by the learned Commissioner (Appeals). The extract of the said order of the Tribunal, in the first round of litigation is as given below:

"5. I have heard learned Chartered Accountant for the appellant and Learned Authorised Representative for the Revenue and perused the records. It is clear from the Order-in-Original that no reasons have been given by the Adjudicating authority while rejecting the claim and it only stated that the input services have not been actually gone into consumption for provision of output services. The Learned Commissioner (Appeals) although have taken the items one by one while rejecting or allowing the claim of the Appellant, but he has not given any cogent reason as to how the services in question have not gone into consumption for providing output services. But without going into the merits of the matter, since legal issues have been raised by the Appellant for the first time before this Tribunal, which were not raised earlier before any of the authorities below, I am remanding the matter to the Appellate Authority i.e. Commissioner (Appeals-II) to decide the Appeals afresh after giving the opportunity of hearing to the Appellant. The Appellant is directed to file all the relevant documents/evidences before the learned Commissioner (Appeals-II) in support of its submissions. I may clarify that I have not expressed any opinion on the merits of the matter or on

the procedure that the Learned Commissioner (Appeals-II) should adopt. The appeals are therefore allowed by way of remand."

3.4 In terms of the aforesaid directions of the Tribunal, learned Commissioner (Appeals) vide impugned order dated 25.02.2019 had allowed partial refund of Rs.8,23,621/- on merits and rejected the balance amount of refund claim for Rs. 26,79,421/- broadly on the grounds that there exists no direct nexus of the input services used for provision of output services, and that the input services have not actually gone into consumption for provision of output services. Being aggrieved against the impugned order, the appellants have preferred these appeals before the Tribunal, in the second round of litigation. The details of each of such refund claims under dispute in respect of 15 appeals, have been detail as follows:

S. No.	Appeal No.	Amount of refund in Rs.	Period involved
1.	ST/68763/2019	348244	October, 2012 to December, 2012
2.	ST/68764/2019	42721	January, 2013 to March, 2013
3.	ST/68765/2019	90511	April, 2013 to June, 2013
4.	ST/68766/2019	180259	July, 2013 to September, 2013
5.	ST/68767/2019	331775	October, 2013 to December, 2013
6.	ST/68768/2019	217565	January, 2014 to March, 2014
7.	ST/68769/2019	75645	April, 2014 to June, 2014
8.	ST/68770/2019	74529	July, 2014 to September, 2014
9.	ST/68771/2019	328984	October, 2014 to December, 2014
10.	ST/68772/2019	166558	January, 2015 to March, 2015
11.	ST/68773/2019	116932	April, 2015 to June, 2015
12.	ST/68774/2019	160008	July, 2015 to September, 2015
13.	ST/68775/2019	269516	October, 2015 to December, 2015
14.	ST/68776/2019	132243	January, 2016 to March, 2016
15.	ST/68777/2019	143931	April, 2016 to June, 2016
	Total amount	2679421	

3.5 In the meantime, in respect of refund claim for Rs. 1,04,75,264/- allowed by the Commissioner (Appeals) by way of remand to the original authority, the matter was adjudicated in Order-in-Original No. CGST/ME/Dn-VII/Integreon/Refund/379/18-19/412 by sanctioning an amount of Rs.88,92,424/- as refunds eligible to the appellants, and had rejected the balance amount of Rs.15,82,840/-. Feeling aggrieved against the above order, the appellants had preferred an appeal before the Commissioner (Appeals), who had decided the matter by allowing refund of Rs.2,76,802/- by rejecting the refund for an amount of Rs.13,05,921/-. Being aggrieved against the said order of Commissioner (Appeals), the appellants had preferred an appeal before the Tribunal. In the Final Order No. 86186/2023 dated 16.08.2023 passed by the Tribunal, the appeal was allowed in favour

of the appellants on the ground that no show cause proceedings was initiated for rejection of refund claims of CENVAT credit under Rule 14 of CCR.

4.1 Learned Advocate for the appellants submitted that the rejection of refund claim in the impugned order is not legally sustainable, as in a number of judicial forums it has been held by the Courts that when no show cause notice has been issued under Rule 14 of CCR, 2004, the refund of CENVAT credit cannot be denied. In support of this, he submitted that the Tax Research Unit of the Ministry of Finance vide Circular No. 334/1/2012-TRU dated 16.03.2012 had clarified that there is no requirement of correlation between the input services used in provision of output services, in order to claim refund under Rule 5 of CCR.

4.2 He further submitted that in the appellants own case, for the earlier period, the Tribunal had decided in the similar set of facts vide Final Order No. 86186/2023 dated 16.08.2023, by allowing the appeal in their favour on the ground that no SCN was issued for rejection of refund claims of CENVAT credit under Rule 14 of CCR. Therefore, he requested that the present appeal may be allowed in their favour on the basis of above decision of the Tribunal.

4.3 Learned Advocate further submitted that for each of the input service on which the Commissioner (Appeals) had disallowed the refund, the appellants had listed out the reasons for considering such a refund being eligible to them and have also explained the direct nexus of each of such input service with the output services provided by them, as a part of the appeal papers submitted in these appeals before the Tribunal. Further, he also stated that for each of such input services on which the refund was disallowed in the impugned order, they are provided the judgements delivered by various judicial forums, which allow refund of CENVAT credit. Thus, he prayed that the appeals may be allowed in their favour.

4.4 In support of their stand, the appellants had relied upon the following judicial pronouncements:

(i) *Union of India Vs. Kamlakshi Finance Corporation Ltd.* – 1991 (55) E.L.T. 433 (S.C.)

(ii) *Qualcomm India Pvt. Ltd. Vs. Commissioner of Customs, Central Excise, Hyderabad-IV-* 2020 (43) G.S.T.L. 402 (Tri. - Hyd.) affirmed by Hon'ble High Court of Telangana – 2021 (11) TMI 72

(iii) *Integra Software Services Pvt. Ltd., Vs. Commissioner of Central Excise, Puducherry*– 2017 (48) S.T.R. 137 (Tri. – Chennai)

(iv) *Symantec Software India Pvt. Ltd., Vs. Commissioner of Service Tax-I, Pune*– 2023 (12) TMI 179 – CESTAT MUMBAI

5. On the other hand, learned Authorised Representative for Revenue reiterated the findings of the Commissioner (Appeals) in the impugned order, and submitted that as the appellants did not submit supporting documents for the eligibility of CENVAT credit in a few cases, and the input services being used for output services have not been explained properly, the refund claims have been rejected in the impugned order. Therefore, he prayed that the impugned order is sustainable and the appeals preferred by the appellants are liable to be set aside.

6. Heard both sides and perused the records of the case.

7. The short issue for consideration before the Tribunal in this case is,-

(i) whether the refund of accumulated credit lying in the CENVAT credit account of the appellants on account of their export of output services as claimed under Rule 5 of the CENVAT Credit Rules, 2004, can be denied or not?

(ii) whether the denial of refund claims of CENVAT Credit filed under Rule 5 *ibid* in the impugned order, is legally sustainable or not, in the context of such action taken without issue of show cause proceedings for recovery of CENVAT credit under Rule 14 of CCR?

8.1 On perusal of the records of the case, where the appellants have claimed refund of CENVAT credit periodically, for each quarter, on account of output services being exported out of India, and that CENVAT credit was unable to be utilised for discharge of duty/tax liability on clearance of final products or provision of output services, it transpires that the original authority had allowed major part of the refund sought for by the appellants. Therefore, the dispute is limited to the extent of that part of the refund which was rejected, and for which appellants had preferred an appeal before Commissioner (Appeals). In the impugned order, learned Commissioner (Appeals) has rejected refund of Rs.26,79,421/- to the appellants on the ground that the said CENVAT credit was on account of certain input services such as air travel agent service; salary & payroll

processing services; short-term accommodation service; banking and other financial services; management, maintenance or repair service; consulting engineering service; out of pocket expenses; photograph services; installation & commissioning, testing services; event management service; works contract service; business auxiliary service; business support services etc. which had no nexus with the said input services. Thus, in the impugned order, learned Commissioner (Appeals) have held that the aforesaid said input services were not utilized for providing output service. In this regard, it is also seen that the CENVAT Credit Rules, 2004 was revised by issue of CENVAT Credit (Third Amendment) Rules, 2012 brought into effect from 01.04.2012, by issue of Notification No. 18/2012 – Central Excise (N.T.) dated 17.02.2012. In explaining the changes brought out in such amendment to the field formations, the Tax Research Unit of the Ministry of Finance, Department of Revenue, Government of India vide D. O. F. No 334/1/2012-TRU dated 16.02.2012, had clarified about the scope of changes in Rule 5 of CCR, 2004 as follows:

"F.1. Simplified scheme for refunds:

*1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The **new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports.** Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover...."*

(Emphasis supplied)

From the above clarification issued by the Ministry of Finance, it is clearly evident that the refund of CENVAT credit under Rule 5 of CCR, does not require the departmental authorities to examine the correlation of input services (on which CENVAT Credit was taken) with the output services (which are exported). Further, all the 15 refund claims pertain to the period subsequent to the above changes brought into Rule 5 *ibid*, and therefore a different view, which is contrary to the clarificatory instructions issued by the Ministry of Finance cannot be taken to sustain the rejection of refund claims. Therefore, I am of the considered view that on the above ground alone, the rejection of refund claim in the impugned order is liable to be set aside, as it does not conform to the legal requirements of Rule 5 of CCR as explained above.

8.2 I find that in the appellants own case having similar set of facts, for the earlier period, the refund claim rejected by the Commissioner (Appeals) was dealt by the Tribunal, and it was held that refund claim of CENVAT

credit is eligible to the appellants. The relevant paragraph of the Final Order No. 86186/2023 dated 16.08.2023, in the said case is extracted and given below:

"5. I have carefully gone through the record of the case and submissions made. This Tribunal has repeatedly held that without invoking the provisions of Rule 14 of Cenvat Credit Rules, 2004, Cenvat credit available in the balance of the Cenvat account of the appellant cannot be refused by Revenue. It has also been repeatedly held that the available balance of Cenvat credit which could not be utilized due to export, has to be refunded to the appellant in accordance with the provisions of Rule 5 of Cenvat Credit Rules and the notifications issued thereunder. I, therefore, hold that in absence of any proceedings for recovery of Cenvat credit of Rs.13,05,921/- from the appellant, the said amount has to be refunded to the appellant. I, therefore, hold that the impugned order-in-appeal to that extent is erroneous and the same is set aside to that extent with a direction to Revenue to grant refund of Rs.13,05,921/- to the appellant."

8.3 In this regard, I also find that on a similar set of facts, in the case of *Qualcomm India Pvt. Ltd. Vs.(supra)*, the Co-ordinate Bench of the Tribunal has dealt with the similar issue of refund of CENVAT credit of service tax paid on input services and have held that when the taking of credit has not been disputed by the department, then in refund of such credit under Rule 5 there is no requirement of nexus between input services and output services. The relevant paragraphs of the said order is extracted and given below:

"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 avilment 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 avilment 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.

7. *In view of above discussions, by setting aside the impugned order, the appeal is allowed in favour of the assessee-appellant. The appeal filed by Revenue is dismissed."*

The department had appealed against the above order of this Tribunal before the Hon'ble High Court of Telengana, who had decided the issue in C.E.A. No. 7 and 8 of 2021, in favour of the appellants by upholding the order of the Tribunal. The relevant paragraphs of the said judgement is extracted and given below:

"12. As seen from the order of the Tribunal as well as Order-in-Appeal and the Order-in-Original, the issue involved therein relates to the refund of accumulated CENVAT credit under Rule 5 of the Rules.

13. Rule 5 of the Rules provides for refund of CENVAT credit to a service provider, who provides an output service, which is exported without payment of service tax, subject to compliances of the procedures/guidelines laid down under the notifications issues thereunder.

14. On the basis of the factual findings recorded by the original authority as well as the first appellate authority and the Tribunal, it is seen that the refund benefit was denied to the respondent/assessee on the sole ground that there was no nexus between the input services and the output services exported by the appellant/revenue.

15. It is not in dispute that Rule 14 of the Rules provides that in case of irregular availment of CENVAT credit or its utilization, the authorities under the Finance Act are empowered to recover the same from the assessee. It is also an admitted fact that the said provisions have not been invoked by the appellant/revenue against the respondent/ assessee.

16. As the availment of CENVAT credit by the appellant under Rule 3 of the Rules is not called in question, the denial to grant refund under Rule 5 of the Rules without there being any proceedings initiated under Rule 14 of the Rules by seeking to deny the refund on the ground of the respondent/assessee availed CENVAT credit on input services, which according to the appellant/revenue have no nexus with the output service, in our considered view, cannot be held to be justified. 17. Further, it is to be noted that these appeals relate to period prior to

amendment made to Rule 5 of Rules w.e.f 01.04.2012 and also thereafter. In so far the claim for refund of CENVAT credit for the period prior to 01.04.2012 is concerned, as Rule at the relevant point of time did not contain any prescription as to the nexus between input services and output service, the denial of refund on the said ground cannot be held to be valid. For the period subsequent to the introduction of substituted Rule 5 of Rules, the only prescription for grant of refund in respect of export of output service is by applying the formula specified.

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21. Thus, this Court is of the view that in the given facts and circumstances, the reasons assigned by the Tribunal for holding that the respondent/assessee is entitled for grant of refund of unutilized CENVAT credit under Rule 5 of the Finance Act, does not call for any interference."

8.4 I further find that the issue involving disallowance of CENVAT refund in respect of various input services, was dealt in detail by the Co-ordinate Bench of the Tribunal, in similar case of *Integra Software Services Pvt. Ltd., (supra)* and the refund of credit was allowed in favour of the appellants. The relevant paragraphs of the said order are given below:

"38. *I find that the learned appellate authority had disallowed the aforementioned credits on the grounds that the said input services did not add any value towards the activity of manufacture or running of business of the appellant and such input services were not specified in the inclusive part of "input service" definition. The Commissioner (Appeals) had placed heavy reliance on the tests laid down in Maruti Suzuki case by the Hon'ble Apex Court and on Sundaram Brake Linings Tribunal ruling.*

39. *I observe that the reliance placed on the decision of the Apex Court in Maruti Suzuki case law and the Sundaram Brake Linings case law is inapplicable since the decision in Maruti Suzuki is no longer a good law in view of the decision of the Larger Bench of the Hon'ble Supreme Court in the case of RamalaSahkari Chini Mills Ltd. v. CCEX, Meerut-I reported in [2016 \(334\) E.L.T. 3 \(S.C.\)](#) and also the decision of this Tribunal in Sundaram Brake Linings is reversed by the Hon'ble High Court of Madras in CMA No. 314/2011, dated 13-2-2015.*

40. *Accordingly, the appellant shall be entitled for Cenvat credit and consequent credit in accordance with the principles laid down by the Supreme Court in the case of Ramala Sahkari Chini Mills Ltd.*

41. *In view of the foregoing, I find that the appellant are eligible for the refund (except for meal voucher) and the impugned order holding the contrary is set aside. All the appeals are allowed in the above terms."*

8.5 I also find that in a similar set of facts arising in the case of Symantec Software India Pvt. Ltd., (supra), this Tribunal had allowed the refund of CENVAT credit in favour of the appellants. The relevant paragraphs of the said Order is extracted and given below:

"Briefly stated, the facts of the case are that the appellant herein M/s. Symantec Software India Pvt. Ltd. is engaged inter alia in providing taxable services under the category of "Information Technology Software Services" and "Business Auxiliary Services" to its group entities located outside the country. The appellant avails CENVAT Credit of service tax paid on various taxable services. Since, the output services were entirely exported by the appellant during the disputed period, there was no scope or occasion on the part of the appellant to utilize the CENVAT credit for payment of service tax. Therefore, in terms of Rule 5 of CENVAT Credit Rules, 2004, the appellant had filed various refund applications before the original authority, claiming refund of service tax paid on the input services for different periods. The refund applications filed by the appellants were adjudicated by the original authority. In the orders, the original authority had partly allowed the benefit of refund and in few cases, had denied the refund benefit, holding that the disputed service namely 'works contract service' were not used in provision of the output service; and thus, Cenvat credit so availed by the appellant is not in conformity with the provisions of Rule 2 (l) ibid. On appeal against the said adjudication order, learned Commissioner (Appeals) has allowed the benefit of refund in two cases and denied such benefit in respect of other four adjudication orders, holding that the appellant did not produce the copies of invoices on which the CENVAT credit was availed by them....

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5. Rule 3 ibid is the enabling provision, which entitles a manufacturer or a service provider to avail CENVAT credit of Central Excise duty paid on the inputs and service tax paid on the input services. The manner of availment and utilization of CENVAT credit is contained in the CENVAT statute. If availment or utilization of the credit is not in conformity with the CENVAT statute, then Rule 14 ibid provides that such irregularly availed or utilized CENVAT credit can be recovered from the assessee and for effecting such recovery, the provisions of Section 11A of the Central Excise Act, 1944 or Section 73 of the Finance Act, 1994 shall apply mutatis mutandis. It is not the case of Revenue that the CENVAT Credit availed on the input services by the appellant is not in conformity in the CENVAT statute, as this fact is evident from the records that at the time of taking CENVAT credit on the disputed services, no proceedings were initiated by the department, seeking recovery of the alleged irregular credit. Since, Rule 5 ibid is a self-contained rule, which provides for grant of refund of accumulated CENVAT credit in case of exportation of the services, while dealing with such provision, the department cannot take recourse to the other provisions in the statute to say that availment of credit or utilization of credit is not in conformity with the statutory provisions. Insofar as claim of refund under Rule 5 ibid is concerned, the department has to only verify whether the requirement of the said rule read with the notification issued thereunder have been fulfilled or not. Rule 5 refund is permissible in case of observance of the formula laid down therein, which the appellant in this case has complied with. Since, the output services were exported by the appellant, the un-utilized CENVAT credit availed on the input services, in our considered opinion, should be available to the appellant. We find that the issue arising out of the present dispute is no more open for any debate in view of the orders passed by the 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
(Tri.- Hyd.).....*

9. In view of the foregoing discussions and analysis, and on the basis of the judgements delivered by the various judicial forum referred above, I find that there are no merits in the impugned order, insofar as it has denied the refund benefit to the appellants. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

10. In the result, the impugned order dated 25.02.2019 is set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in the Open Court on 23.10.2024)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha