CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 86261 of 2020

(Arising out of Order-in-Appeal No. PK/323 to 326/ME/2017-18 dated 10.04.2018 passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai Zone, Mumbai)

Syntel Private Limited **.... Appellants**
(Formerly known as Syntel Limited)
Unit No.112, SDF IV, SEEPZ
Andheri (East), Mumbai – 400 096.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Mumbai East Commissionerate
9th Floor, Lotus Info centre, Parel East
Mumbai – 400012.

APPEARANCE:

Shri Mahesh Raichandani, Advocate for the Appellants

Shri Adeep Pathan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85190/2025

Date of Hearing: 17.10.2024
Date of Decision: 17.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Syntel Private Limited [earlier Known as Syntel Limited], Mumbai (herein after, for short, referred to as 'the appellants') assailing the Order-in-Appeal No. PK/323 to 326/ME/ 2017-18 dated 10.04.2018 DL/110/APPEALS THANE/ MC/2020-21 dated 18.11.2020 (referred to, as 'the impugned order') passed by the Commissioner (Appeals-II), CGST & Central Excise, Mumbai Zone, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The appellants herein, *inter alia*, are engaged in the business of export of services such as Information Technology Services, Business

Auxiliary services, Manpower recruitment/supply Agency service, Commercial Training and Coaching services etc., and also were providing such services to DTA units as well. For the purpose of payment of service tax and for compliance with the statute, the appellants were registered with jurisdictional authorities holding Service Tax Registration No. AAACS8305DST001. The appellants avail CENVAT credit of duty/tax on inputs and input services used in provision of output services. Since the entire output services were exported, the appellants have filed periodical refund applications in prescribed Form-A under Notification No.27/2012-C.E.(N.T.) dated 18.06.2022in terms of Rule 5 of the Central Excise Rules, 2004 for claiming refund of CENVAT credit involved in such exports.

2.3 The jurisdictional Assistant/Deputy Commissioners have examined each of such refund applications filed by the appellants for the various quarters viz., April-June, 2015; July-September, 2015; October-December, 2015 and allowed eligible refunds and dis-allowed certain ineligible claims of refunds. In appeals filed against these original orders, the learned Commissioner (Appeals-II) had further examined the issues and allowed refunds on some more input services and disallowed refunds in certain cases. The details of such disallowed refund claims for different input services are (i) Hotel & Short term accommodation service; (ii) Outdoor services;(iii) Event management service; (iv) Management Business consultancy service; (v) Catering service; and (vi) Health Check-up service, for a total amount of Rs. 4,08,347/- for the various quarters. Feeling aggrieved with the common Order-in-Appeal dated 10.04.2018, which is impugned herein, in which the learned Commissioner (Appeals-II) had disallowed refunds, the appellants have filed the present appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted at the outset that the refunds have been disallowed in respect of input services on the ground of non-establishment of any nexus between input service and output services, which were exported. On this issue, he pointed out that the departmental authorities have not questioned the availing of CENVAT credit for denying the refund of CENVAT and have also not invoked Rule 14 of CCR, 2004, and thus the impugned order rejecting the refund at a later stage is not sustainable. In this regard, he relied upon the decision of the Tribunal in the case of their own sister concern *State Street Syntel*

Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Navi Mumbai in Final Order No. A/872226/2023 dated 13.12.2023.

3.2 In support of their various claims of input services having a nexus on the provision of output service, the learned Advocate submitted the following:

(i) Short term accommodation is with respect to short stay of employees on duty in relation to company's software projects and is solely used for project work; further, such input service was allowed as eligible refund by the Commissioner (Appeals-II) in Order-in-Appeal No. SM/231/Appeals-II-ME-2020 dated 11.09.2020 on the ground that such input service is having direct nexus with the output service;

(ii) Outdoor caterers have been engaged for providing food and snacks to the employees doing official duties during business hours;

(iii) Event management and Management/Business consultancy services were engaged for skill enhancement across the organization and process improvement and translate into ideas as the same is a pre-requisite for the functioning of the business;

(iv) Health checkup and treatment service is by deployment of doctors at the office premises for emergency medication required to employees.

3.3 Further, the learned Advocate in support their stand had relied upon the following decisions:

(i) *Microsoft India (R&D) Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Bangalore* – 2022 (56) G.S.T.L. 29 (Tri.-Bang.)

(ii) *BNP Paribas India Solution Pvt. Ltd. Vs. Commissioner of CGST, Mumbai East* - 2022 (58) G.S.T.L. 539 (Tri.-Mumbai)

(iii) KKR India Advisors India Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai Central – Final Order No.A/86106-86107/2022 dated25.11.2022

(iv) *Blackstone Advisors India Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai South* – Final Order No. A/85995/2022 dated 21.10.2022

(v) *Sundaram Fasteners Ltd. Vs. Commissioner of Central Excise, Chennai-I* - 2016 (43) S.T.R. 454 (Tri.-Mad)

4. Learned Authorized Representative (AR) appearing for Revenue, reiterated the findings made by the Commissioner (Appeals-II) in the impugned order. He further submitted that in view of the specific findings for denial of refund of CENVAT credit recorded by the Commissioner (Appeals-II), it is not permissible to entertain the appeal filed by the

appellants. Accordingly, he submitted that the impugned order is sustainable in law.

5. Heard both sides and perused the case records. The additional submissions made in the form written paper book in this case was also perused carefully.

6. The short issue for determination before the Tribunal is whether denial of refund of CENVAT credit on the aforesaid disputed services by holding the same as ineligible 'input service' in terms of Rule 2(l) of the CENVAT Credit Rules, 2004 is legally sustainable or not?

7. In order to appreciate the issues under dispute, the specific legal provisions of the CENVAT Credit Rules, 2004 (CCR) relevant to the dispute are extracted and herein given below for ease of reference:

CENVAT CREDIT RULES, 2004

Definitions.

"Rule2. *In these rules, unless the context otherwise requires,—*

….

(l) "input service" means,—

(i) services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods arehis inputs or capital goods; or

(ii)any service used by a provider of output service for providing an output service; or

(iii)any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to *such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;*

but excludes—

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for—

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or….

(B) ….(BA)…

(C)such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.….”

8.1 Plain reading of the above definition of 'input service' indicate that there are three categories of input services viz., the first category services given under the 'means' part; second category, under the 'inclusion' part and the third category of services which are given under the 'exclusion' part. Therefore, in order to ensure that a particular input service is eligible for availing CENVAT credit, it should be covered either under first or second category and should not be covered under the third category of excluded items.

8.2 I also find that the decisions relied upon by the appellants relate to refund/CENVAT credit benefits extended in specific cases, and therefore the facts of each case has to be examined first and then to the extent those decision cover the similar set of facts, these could be relied upon for arriving at a proper decision, in decided the disputed issues herein. Therefore, firstly I examine the disputed issues on the facts that are specific to the present case before me.

8.3 In respect of Hotel & Short term accommodation service, it has been submitted by the appellants that it has been used exclusively for the project work and it not intended or related with the personal use of the employee. In this regard, I also find that the learned Commissioner (Appeals-II) had *inter alia* recorded in his order dated 24.10.2019 covering the disputed input service Hotel & Short term accommodation service in the case of self-same appellants, as follows:

*"I find that the nature of services is stationing the Appellant's employees at various places to complete the project delivery. Applying the principle of **ejusdem generis** on the inclusive definition these activities are similar to the examples listed in the inclusive part of the definition. In my view, these services do have direct nexus with the 'output services' exported by the Appellant and hence the refund to the extent is allowable…"*

Therefore, I find that the above services are to be considered as eligible for refund as the learned Commissioner (Appeals-II) himself had held so, and that different stand cannot be taken on the admissibility of input services for allowing refund, and that too for the same assessee-appellants again during the same period, in the absence of any substantial changes in the statute.

8.4 As regards, Event management service and Management Business consultancy service, since these have been used for enhancing the skills of the employees on duty involved in the company's projects in order to provide desired results in respect of output services, these fall under the category of "means part" as eligible services under the definition of Rule 2(i) ibid. Therefore, I allow the refund of CENVAT benefit on the above services.

9. As regards the issue of refund of service tax paid on 'outdoor catering services'/ 'outdoor services' and 'Health Check-up service' claimed during the period of April, 2015 to December, 2015, I find that the issue is no more *res integra* in view of the decision of the Larger Bench of the Tribunal in the case of *Wipro Ltd.* (*supra*), wherein it has been held that the definition of 'input service' has been amended w.e.f. 01.04.2011 providing the exclusion clause, wherein the definition of input service under Rule 2(*l*) *ibid*, specifically excludes 'outdoor catering services' and 'health services'. It has been concluded in the said order that the outdoor catering service is not eligible for input service credit post amendment dated 01.04.2011 *vide* Notification No. 3/2011-CE (NT) dated 01.03.2011. I find that the total demand of inadmissible CENVAT Credit on account of 'outdoor catering services' and 'health check-up services' has been arrived at Rs. 79,924/- and Rs.4,490/-, respectively, in the impugned order. Thus, I am of the considered opinion that denial of refund of CENVAT credit in respect of 'outdoor catering services'/ 'outdoor services' and 'Health Check-up service' is proper and justified, being not in conformity with the statutory provisions. Therefore, I find that to the above extent, the appellants are not eligible to refund of CENVAT credit on such input services.

10. On careful examination of the decisions in case laws cited by the learned Advocate to state that the settled position is that denial of CENVAT credit can be done by issuing notice under Rule 14 of CENVAT Credit Rules, 2004 and it cannot be rejected solely in terms of Rule 5 ibid, I find that in the present case the refunds of inadmissible CENVAT credit have been undertaken by the original authority after issue of Deficiency Memo/show

cause notice. Further, Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 have been invoked in rejection of refunds after providing sufficient opportunity for the appellants to demonstrate that the availment of CENVAT credit is in compliance with the CENVAT Credit Rules, 2004. In such circumstances, it cannot be said that what is clearly excluded from the scope of eligible 'input service' in terms of Rule 2(l) ibid, can be treated as eligible, since the appellants have already taken CENVAT credit on the same, on the sole ground that it was not objected to earlier by the department. Therefore, sufficient compliance of requirement of Rule 14 of Cenvat Credit Rules,2004 has been adhered to in this case.

11. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals-II) to the extent it has rejected the refund of CENVAT credit, which is contrary to the legal provisions of Rule 2(l) of the CENVAT Credit Rules, 2004 for an amount of Rs.3,23,933/- in respect of admissible input services, as discussed in paragraphs 8.1 to 8.4 above. However, in respect of inadmissible input services for which the learned Commissioner (Appeals-II) had rightly rejected the refunds for an amount of Rs.84,414/- as discussed in paragraph 9 above, the impugned order is sustained.

12. In the result, the appeal filed by the appellants is partly allowed to the extent of permitting refund of Rs.3,23,933/-, as per law, and by upholding the impugned order dated 18.11.2020 to the extent of rejection of the refund for an amount of Rs.84,414/- on account of inadmissible input services.

(Order pronounced in the open court on 17.02.2025)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha