CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 86470 of 2025
In
Service Tax Appeal No. 88048 of 2018

(Arising out of Order-in-Appeal No. PK/169/MC/2018 dated 04.04.2018 passed by the Commissioner (Appeals-II) CGST & Central Excise, Mumbai)

M/s. Siemens Technology & Services Pvt Ltd. .... Appellant
130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018.
(Communication Address: Sector-2, Near Kharghar Railway Station,
Kharghar Node, Navi Mumbai – 410 210.)

Versus

Commissioner of CGST & .... Respondent
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road, Churchgate
Mumbai 400 020.

With

Service Tax Miscellaneous Application No. 86467 of 2025
In
Service Tax Appeal No. 85275 of 2021

(Arising out of Order-in-Appeal No. SM/164/Appeals-II/MC/2020 dated 21.08.2018 passed by the Commissioner of (Appeals-II) CGST & Central Excise, Mumbai)

M/s. Siemens Technology & Services Pvt Ltd. .... Appellant
Sector-2, Near Kharghar Railway Station,
Kharghar Node, Navi Mumbai – 410 210.
(Earlier Address: 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018)

Versus

Commissioner of CGST & .... Respondent
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road, Churchgate
Mumbai 400 020.

With

Service Tax Miscellaneous Application No. 86468 of 2025
In
Service Tax Appeal No. 85952 of 2021

(Arising out of Order-in-Appeal No. SM/22/Appeals-II/MC/2020 dated 02.03.2020 passed by the Commissioner of (Appeals-II) CGST & Central Excise, Mumbai)

M/s. Siemens Technology & Services Pvt Ltd. .... Appellant
Sector-2, Near Kharghar Railway Station,
Kharghar Node, Navi Mumbai – 410 210.
(Earlier Address: 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018)

Versus

Commissioner of CGST & .... Respondent
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road, Churchgate
Mumbai 400 020.

With

Service Tax Miscellaneous Application No. 86469 of 2025
In
Service Tax Appeal No. 86946 of 2021

(Arising out of Order-in-Appeal No. SM/304/Appeals-II/MC/2019 dated 24.12.2019 passed by the Commissioner of (Appeals-II) CGST & Central Excise, Mumbai)

M/s. Siemens Technology & Services Pvt Ltd. .... Appellant
Sector-2, Near Kharghar Railway Station,
Kharghar Node, Navi Mumbai – 410 210.
(Earlier Address: 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018)

Versus

Commissioner of CGST & .... Respondent
Central Excise, Mumbai Central
4th Floor, GST Bhawan, 115, M K Road, Churchgate
Mumbai 400 020.

Appearance:
Shri Aditya Jain, Chartered Accountant a/w Shri Aniket Barve, Advocate for the Appellant
Shri Dhananjay Dahiwale, 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/85985-85988/2025

Date of Hearing: 18.06.2025

Date of Decision: 18.06.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. Revenue has filed these miscellaneous applications, praying for change of name of the respondent in the cause title to the appeals filed by the

appellants. The applications were filed for incorporating the change in the name of the respondent from "Commissioner (Appeals-II), Service Tax, Mumbai" to "Commissioner of CGST and Central Excise, Mumbai Central". The prayer made by the applicant/Revenue is considered and accordingly, Registry is directed to incorporate the changed name of the respondent in the appeal records. Miscellaneous applications stand disposed of.

3. Brief facts of the case are that the appellants are engaged *inter alia,* in the business of providing "Information and Technology Software Services", defined under the Finance Act, 1994. The appellants avail CENVAT Credit of service tax paid on the input services. During the disputed period, the appellants had exported such taxable services to their clients located outside India. Since the output services were exported by them, the appellants were not in a position to utilize the CENVAT Credit available in the Books of Accounts. Therefore, in terms of Rule 5 of the CENVAT Credit Rules, 2004, they had filed the refund applications before the jurisdictional Service Tax authorities, claiming refund of service tax paid on the input services, which were used for exportation of the output service. The refund applications filed by the appellants were adjudicated by the department in sanctioning refund benefit in some cases and denied the benefit in respect of some of the services, holding that there are no nexus between the disputed services and the output service exported by them; that the service tax credit was taken in the Books of Accounts before making payment to the service provider and as such, the provisions of Rule 4(7) *ibid* has been violated; and there is mis-match of figure reported in the ST-3 returns vis-à-vis the refund applications. The adjudication orders passed by the original authority were appealed against by the appellants before the learned Commissioner (Appeals), which were disposed of vide the impugned orders, in upholding the said stand taken earlier by the original authority. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

4. It is an admitted fact on record that exportation of output service by the appellants had not been disputed by the department. The refund claim applications were denied by the department, on the ground that there were no nexus between the disputed service and the output service exported by the appellants. Further, refund applications have also been rejected on the ground that the condition of Rule 4(7) *ibid* had been contravened. The

provisions for recovery of wrongly availed CENVAT credit are contained in Rule 14 *ibid*. It has been mandated that where the CENVAT credit has been taken or utilized wrongly by the assessee, then the same shall be recovered from it and for effecting such recovery, the provisions of Section 73 (1) of the Finance Act, 1994 shall apply mutatis mutandis. In the case in hand, taking of Cenvat Credit by the appellants on the disputed services was never objected to by the department inasmuch as no proceedings were initiated under Rule 14 *ibid* read with Section 73 ibid, in denying the CENVAT credit irregularly availed by them. Since, the credit has been correctly availed by the appellants and in absence of any proper substantiation that the CENVAT credit availed input services were not used/ utilized by the appellants for exportation of output services, in our considered view, denial of the benefit of refund by the authorities below is not proper and justified. We find that in the case of the appellants themselves, this Tribunal vide Final Order No. A/87465-87468/2019 dated 30.08.2019, has allowed the refund benefit, holding as under:

> *"6. In the case in hand, the department has not disputed the fact regarding exportation of the output service by the appellant. Since, the input services were used in or in relation to provision of output service exported by the appellant, the benefit of refund provided under Rule 5 ibid should be available to it. It is not the case of Revenue that the appellant did not follow the procedures laid down under Rule 5 read with the notification issued there under. The said Rule does not provide any stipulation or embargo that one-to-one co-relation or nexus has to be established between the input and exported output services. Considering the statutory provisions, the CBEC vide circular dated 16.03.2012, has also endorsed the above views. Further, the Tribunal in the relied upon cases has also extended the refund benefit, holding that there is no requirement for an assessee to prove a directed, nexus between the input and output services for the purpose of claiming the benefit of refund under Rule 5 ibid."*

5. With regard to the grounds urged in the show cause notice, seeking for denial of the refund benefit to the appellants were that there is mis-match between the figures reflected in the ST-3 Return vis-à-vis those reflected in the refund applications, we find that the learned Commissioner (Appeals) has not addressed such issue in the impugned orders passed by him. Since, this is entirely a fact-based case, we are of the view that the matter should go back to the learned Commissioner (Appeals) for deciding the issue,

whether is there any mis-match reported in the ST-3 return vis-à-vis the refund applications filed by the appellants.

6.1 In view of the foregoing discussions, the impugned orders upholding rejection of the refund applications on the ground of establishment of nexus and contravention of the provisions of Rule 4(7) *ibid* are set aside and the appeals to such extent, are allowed in favour of the appellants.

6.2 With regard to mis-match of figures between the ST-3 Return and the refund applications, the matter is remanded back to the learned Commissioner (Appeals) for passing of fresh orders, after analyzing of the factual aspects involved in the cases. The appellants are directed to submit the evidence(s) to establish that the refund claim applications filed on this count are in conformity with the CENVAT statute. Before passing of the *de novo* orders, the learned Commissioner (Appeals) should afford reasonable opportunity of personal hearing to the appellants for defending their cases.

7. All the appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM