# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 87754 of 2019**

(Arising out of Order-in-Original No. PUN-CT-APPII-000-192 TO 193-18-19 dated 22.02.2019 passed by the Commissioner (Appeals), Central Tax, Pune-II)

**Icertis Solutions Pvt. Ltd.** **.... Appellant**
ICC Tech Park, Tower A, 5th Floor,
S. No. 985, S.B. Road, Pune- 41 016.

Versus

**Commissioner of (Appeals-II), Central Tax** **.... Respondent**
ICE House, 2nd Floor, 41A, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

**With**

**Service Tax Appeal No. 86282 of 2021**

(Arising out of Order-in-Original No. PUN-CT-APPII-000-192 TO 193-18-19 dated 22.02.2019 passed by the Commissioner (Appeals), Central Tax, Pune-II)

**Icertis Solutions Pvt. Ltd.** **.... Appellant**
ICC Tech Park, Tower A, 5th Floor,
S. No. 985, S.B. Road, Pune- 41 016.

Versus

**Commissioner of (Appeals-II), Central Tax** **.... Respondent**
ICE House, 2nd Floor, 41A, Sassoon Road,
Opp. Wadia College, Pune- 411 001.

**APPEARANCE:**

Shri Mahesh Raichandani, Advocate for the Appellants

Shri Onil Shivadikar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/86331-86332/2022**

Date of Hearing: 10.06.2022

Date of Decision: 10.06.2022

***Per: S.K. MOHANTY***

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellants are engaged in providing the taxable services, under the category of Business Support Service, Business Auxiliary Service etc., and for that purpose, were registered with the service tax department under the provisions of Chapter-V of 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 the said output services and since, there was no scope or occasion for utilization of Cenvat Credit availed on the input services, owing to the reason of exportation of the services, they had filed refund claim under Rule 5 of the Cenvat Credit Rules, 2004 read with Notification issued thereunder, claiming refund of accumulated Cenvat balance available in their books of accounts. The refund applications filed by the appellants were favourably considered by the department and accordingly, the refund claimed amount were sanctioned in their favour. Subsequent to sanction of the refund amount of service tax paid on the input services, the appellants had realized that due to inadvertence, they failed to claim the refund of Swatch Bharat Cess (SBC) paid on the input services, on which the refund had already been granted by the department. Accordingly, the appellants had filed the supplementary refund applications before the jurisdictional service tax authorities, claiming refund of SBC paid on the input services. The supplementary refund applications (2 in numbers) filed by the appellants were rejected by the original authority vide order dated 22.08.2018 on the ground that the appellants had failed to submit the declaration prior to export of the services, in terms of Notification No. 39/2012 dated 20.06.2012. On appeal against the said adjudication orders, the learned Commissioner (Appeals) vide the impugned orders dated 22.02.2019, though has set aside the said adjudication orders, but has rejected the supplementary refund applications, holding that the claimant cannot filed a second claim application for the same period, for which the refund had already been sanctioned during the course of adjudication of the first refund application. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3. It is an admitted fact on record that the appellants had exported the output services and that the accumulated Cenvat Credit balance on account of service tax paid on the input services, available in their

books of accounts were sanctioned by the department. Since, the SBC amount paid on the input services was forming a part of such input services, the benefit of refund cannot be denied on the ground that the appellants were not permitted to file two refund applications within the same quarter. Rule 5 of the Rules of 2004, dealing with provisions of grant of refund of Cenvat Credit, nowhere specifies that more than one refund application cannot be considered by the department. The conditions to be fulfilled under the said rule read with the notification issued thereunder are to the effect that the output services were exported and the prescribed formula has been complied with. Since, exportation of the output service and compliance with the statutory provisions have not been questioned in this case by the lower authorities, in my considered view, rejection of the refund applications cannot be considered as proper and justified.

4. In view of the foregoing discussions, I do not find any merits in the impugned orders, insofar as the refund applications filed by the appellants were rejected therein. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Operative part of the order pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

SM