CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 87819 of 2022

[Arising out of Order-in-Appeal No. PK/784/ME/2018 dated 29.08.2018 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

M/s Carnival Support Services India Pvt. Ltd. ....Appellant
Unit No. 25B, Commercial Kohinoor City Tower,
2, Kirol Road, Off LBS Marg, Kurla West,
Mumbai – 400 070

VERSUS

Commissioner of CGST, Mumbai ....Respondent
16th Floor, Satra Plaza, Sector 19D,
Palm Beach Road, Vashi,
Navi Mumbai – 400 705

APPERANCE:

Shri Shrenik Shah, C.A. for the Appellant
Shri A.P.S. Parihar, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86408/2025

Date of Hearing: 06.08.2025
Date of Decision: 07.10.2025

Rejection of partial refund claim to the tune of ₹3,95,670/- by the Refund Sanctioning Authority that received approval of Commissioner (Appeals) vide his above referred order dated 29.08.2018, on the ground that no nexus exist between input service availed and output service exported, is assailed in this appeal by the Assessee-Appellant.

2. Fact of the case would go to reveal that Appellant exported crew-requirement services to overseas principals and in accordance with Rule, 6A of the Service Tax Rules read with Rule 3 of the Place of

Provision of Services Rules, 2012, it had claimed refund of unutilised CENVAT Credit under Rule,5 of the CENVAT Credit Rules, 2004 but that partial rejection of amount was made in respect of Service Tax paid on additional rent paid for two months for early termination of Leave & Licence agreement, which was held to be penal amount having no nexus to output service.

3. During course of argument learned Counsel for the Appellant Mr. Shrenik Shah argued that such payment of additional rent was made in accordance with Clause 12 of the Leave & Licence agreement executed between Assessee and lessor M/s. Maharashtra State Finance Corporation for early vacation of licenced premises as a compensation, on which Service Tax of ₹3,95,670/- being 15% of two months rental amount was discharged and credit thereon was availed as per Rule, 3 of CENVAT Credit Rule, 2004, which could be considered as an Act of forbearance or tolerance and the Adjudicating Authority namely the Refund Sanctioning Authority having considered and noted in its Order-in-Original that renting of immoveable property has nexus with output services rendered by the Appellant, it is entitled for such credit and consequential refund. He further submitted that Rule, 5 and Notification No. 27/2012-CE(NT) introduced a pro-export formula-based refund, for which co-relation between individual input services and exports was expressly dispensed with *vide* CBEC Circular bearing No. D.O.F. 334/1/2012-TRU dated 16.03.2012 and in the absence of any proceedings or show-cause notice being issued under Rule, 14 of the CENVAT Credit Rules, 2004 for recovery of allegedly inadmissible credit consistent jurisprudence of the CESTAT in his favour of grant of such refund as nexus theory is in-applicable to refund of credits accumulated on account of export. He also inferred reference to Advance Pricing Agreement (APA) availment under the provisions of Income Tax Act to justify that terminal rent forms part of cost-plus billing to overseas clients, reinforcing commercial linkage to exports service, for which tax paid on such amount being eligible credit is required to be refunded by modifying the order passed by the Commissioner (Appeals). He placed his reliance on the decision passed in the case of *PMI Organisation Centre Private Limited* by Mumbai Bench of this Tribunal on 03.09.2024 and another on

19.06.2023 as well as the decision of *General Motors Technical Centre India Pvt. Ltd.* passed by Bangalore Bench of this Tribunal on 01.04.2021 to support his stand.

4. In response to such submission, learned Authorised Representative for the Respondent-Department Mr. A.P.S. Parihar argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and has drawn attention of this Bench to the language of the rent agreement where this two months additional rent for pre-termination of contract for renting of property has been mentioned as 'penalty amount' which can't have any link to output service, for which he pleads that the order passed by the Commissioner (Appeals) is not required to be interfered with.

5. I have gone through the submissions made by the adversaries, order passed by the Commissioner (Appeals) and also the relied upon decisions. At the outset, it is to be placed on record that learned Adjudicating Authority had noted in his order that renting of immovable property services were availed by the Company for the office premises from where the company was carrying out the operations in relation to its output services only [Para 9A(3) of OIO]. This being his observation tax paid on the rental amount discharged to avail such service is to be treated as input service which can be said to be having direct nexus and apparently therefore he had allowed credit on renting of immovable property except on this amount which was paid as terminal rent/penalty. In its letter addressed to the Assistant Commissioner of Service Tax, Division–I, Mumbai-VII who was also the Refund Sanctioning Authority, that was received by them on 24.03.2017, Appellant had explained that as per Clause 12 of the Leave & Licence agreement, it had paid the amount as compensation for early vacation of the premises and Service Tax having been charged and deposited on the said amount, it is entitled to CENVAT Credit under Rule, 3 of CENVAT Credit Rules, 2004 and such penalty was paid to avoid any litigation as per contractual requirement that would have otherwise caused adverse consequences and consumed the time and efforts of its human resources to tackle such litigation, if arise hindering its ultimate output to be delivered on time but it was

not taken into consideration in the order passed by the Commissioner (Appeals). Be that as it may, when during presentation of Union Budget of 2012 a letter was issued by the Joint Secretary, Tax Research Unit, Government of India on 16.03.2012 wherein clear explanation was offered that the new regime does not required the kind of co-relation that is needed at present between exports and input services used in such export, that was followed by Notification No. 27/2012-CE (NT) dated 18.06.2012, there is nothing remained unsettled that would permit the Refund Sanctioning Authority to disallow or restrict the claim of CENVAT Credit on the ground of lack of nexus or co-relation with the output services. It has also become a settled principle of law developed through several decisions including the one passed in the case of *PMI Organisation Centre Private Limited cited supra* on 03.09.2024 and on other dates as well as in the *General Motors Technical Centre India Pvt. Ltd. cited supra* that without effecting recovery of irregular availment of CENVAT Credit by invoking provisions of Rule, 14 of CENVAT Credit Rules, 2004, credit can't be denied at the time of grant of refund. Hence in carrying forward the judicial precedent set by this Tribunal so as to maintain consistency and predictability of its order, the following order is passed.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai *vide* Order-in-Appeal No. PK/784/ME/2018 dated 29.08.2018 is hereby modified in allowing refund of ₹3,95,670/- also on account of Service Tax paid towards termination of lease rental agreement and the Respondent-Department is duty bound to pay the same with applicable interest, if any within two months of receipt of this order.

(Order pronounced in the open court on 07.10.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad