CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

COURT NO.1

Service Tax Appeal No. 87235 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

WITH

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BSNL Administrative Building, 6th Floor, D wing,
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WITH

Service Tax Appeal No. 87238 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

WITH

Service Tax Appeal No. 87239 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

WITH

Service Tax Appeal No. 87240 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

WITH

Service Tax Appeal No. 87241 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

WITH

Service Tax Appeal No. 87242 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

AND

Service Tax Appeal No. 87243 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-APP-125 to 133-17-18 dated 19.06.2017 passed by the Commissioner (Appeals), Service Tax-II, Mumbai]

Tech Mahindra Ltd. **Appellant**
Sharda Centre, Karve Road,
Erandwane, Pune 411 004.

Versus

Commissioner of CGST & Central Excise, Mumbai West **Respondent**
BSNL Administrative Building, 6th Floor, D wing,
Juru Tara Road, Santacruz West, Mumbai 400 054.

Appearance:

Ms. Puloma Dalal with Ms. Smita Thakkar, Chartered Accountants, for the Appellant

Ms. S. Varalakshmi, Authorised Representative, for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 19.02.2026

Date of Decision: 19.02.2026

FINAL ORDER No. 85335-85343/2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the provision of Business Process Outsourcing (BPO services) and for that purpose, got themselves registered with the jurisdictional Service Tax Department. The appellants avail CENVAT credit of service tax paid on various input services, used/utilized in the provision of such output services. The appellants export their entire output services to the overseas entity and, therefore, there was no scope or occasion to utilize the CENVAT credit available in the books of accounts for payment of service tax on the output services. During the disputed period from January 2010 to March 2012, the appellants had filed refund applications under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006-C.E. (N.T.) dated 14.03.2006, claiming refund of service tax paid on the input services, which were used/utilized in the provision of output services, which were exported. The refund applications filed by the appellants were partly allowed by the original authority and on appeal against the adjudication orders, the learned Commissioner (Appeals) has allowed the refund benefit in respect of some of the services and denied the benefit of refund in respect of other services. The CENVAT credit disallowed by the learned Commissioner (Appeals) was mainly on the ground that there is no nexus between the disputed services and output services exported by the appellants. Thus, the learned Commissioner (Appeals) has denied the benefit of refund filed by the appellants under Rule 5 of the Rules of 2004. The other grounds assigned in the impugned order for denial of the benefit of refund were that the CENVAT credit particulars were not reflected in the ST-3 returns submitted by the appellants; copy of FIRC not submitted before the department; incorrect availment of the benefit provided under the notification dated 14.03.2006 (supra). Feeling aggrieved with the impugned order dated 19.06.2017, passed by the learned Commissioner (Appeals), Mumbai, the appellants have preferred these nine appeals before the Tribunal.

3. Learned Consultant appearing for the appellants submitted a list of services, on which CENVAT benefit was denied by the learned Commissioner (Appeals). The chart submitted by the learned Consultant, in the form of a table, is extracted herein below:-

Sr. no.	***Grounds of disallowance***	***Amount***
2	Various input service disallowed on the ground of not having nexus/not associated with quality and efficiency of output service/not for business purpose –bifurcation provided in Table - 2	98,76,039
5	Absence of documentary evidence	4,70,740
	5.1. Not allowed under rule 9 of CCR as invoice /challan/debit notes not submitted	*4,70,740*
	5.2. Media disposal relation and CA service to output service cannot be determined in absence of documents (invoices)	*Nil*
	5.3. Shorter amount refunded than claimed – not verified – no documents provided	*Nil*
6	FIRC not provided	21,25,762
7	Denied refund on account of incorrect Notification	3,16,575
13	No findings	5,39,444
	Total	**1,33,28,560**

4. With regard to denial of the refund benefit on the ground of non-establishment of nexus between the disputed services and the output services exported by the appellants, learned Consultant submitted that nexus aspect between the disputed services and the output services cannot be questioned at the time of filing of the refund application under Rule 5 of the Rules of 2004. She submitted that such aspect can only be objected to by the department at the time of taking of initial CENVAT credit under Rule 14 of the Rules of 2004 read with Section 73 of the Finance Act, 1994. Thus, she submitted that since taking of CENVAT credit was not alleged to be irregular, the refund claim benefit owing to the reason of exportation of output services, should not be denied to the appellants. In this context, she has also placed reliance on the Circular No. 334/1/2012-TRU dated 16.03.2012, issued by the Tax Research Unit (TRU), in the Department of Revenue, Ministry of Finance, to substantiate the claim of the appellants that the nexus aspect cannot be questioned at the time of considering the refund application filed under Rule 5 of the Rules of 2004. With regard to the other aspects itemized at serial Nos.5, 6, 7 and 13, the learned Consultant submitted that the relevant documents were available with the appellants and the same were also submitted before the authorities below, at the time of adjudication/appeal proceedings. She further submitted that though the documentary evidences were submitted before the lower authorities, no findings were recorded in the respective orders, stating the reason, as to why those documents should not be considered as proper and valid for the purpose of grant of the benefit of refund in favour of the appellants.

5. On the other hand, learned AR appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that since the appellants did not submit the requisite documents/evidences before the authorities below, denial of the benefit of refund is in conformity with the statutory provisions.

6. Sub-rule (1) of Rule 3 of the Rules of 2004 is the enabling provision, which entitles a service provider to take CENVAT credit of service tax paid on the input services. The CENVAT credit so taken is permitted to be utilized in the manner prescribed in sub-rule (4) of Rule 3 *ibid*. Wherever the credit taken or utilized wrongly, the proper officer under the statute is empowered to initiate proceedings under Rule 14 of the Rules of 2004 read with Section 73 of the Act of 1994 for effecting recovery of the irregularly availed/utilized CENVAT credit. In the case in hand, when the appellants had availed the CENVAT credit, the nexus aspect between the input services and the exported output services were not questioned by the department by taking recourse to Rule 14 of the Rules of 2004. Such aspect was dealt with for the first time by the department at the time of consideration of the refund application filed under Rule 5 of the Rules of 2004 read with the notification issued thereunder. Since Rule 5 provides for grant of refund of service tax paid on the input services on the ground of exportation of the output services, the only requirement to be complied under such statute, by the assessee is that it had complied with the formula prescribed under the said Rule 5. It is not the case of Revenue that the appellants did not comply with the formula laid down in Rule 5 of the Rules of 2004, claiming the disputed amount as refund. Since the nexus aspect cannot be raised for the first time, while entertaining the refund application, we are of the view that denial of the benefit of refund on such ground would not stand the judicial scrutiny. In this context, we find that the TRU vide circular dated 16.03.2012 has clarified as under:-

> *"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.*
>
> *2. The notification prescribing the detailed manner and safeguards will be issued by the Policy wing shortly."*

7.1 In view of the relevant statutory provisions read with the circular dated 16.03.2012 issued by the TRU, we are of the considered opinion that denial of the refund benefit by the Commissioner (Appeals) on the ground of non-establishment of nexus between the disputed input services and the output services exported by the appellant is not sustainable. Therefore, the impugned order, denying the benefit of refund amounting to Rs.98,76,039/- (as at sl. no. 2 in the above table), is set aside and the appeal to such extent is allowed in favour of the appellants.

7.2 With regard to the grounds urged in the impugned order in respect of rejection of the refund benefit (as at sl. nos. 5, 6, 7 and 13 in the above table), we find that the learned Commissioner (Appeals) has not recorded any specific findings in the impugned order, as to why the refund benefit should be denied to the appellants. Since the factual aspects are required to be discussed by the authorities below in their respective orders, which admittedly has not been done in these cases, we are of the view that only for the limited purpose of verification of the records maintained by the appellants, the matter is required to be remanded back to the original authority. Therefore, with regard to the grounds of appeal mentioned in serial Nos.5, 6, 7 and 13 in the chart submitted by the appellants, the matter is remanded to the original authority for passing of the *de novo* adjudication order. The appellants are directed to submit the required documents before the original authority to prove their entitlement to the benefit of refund. Since the matter pertains to the period 2010 to 2012, we direct the original authority to complete the *de novo* adjudication proceedings, preferably within a period of three months from the date of receipt of this order.

8. The appeals are disposed of in above terms.

(Order dictated in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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