
(2021) 08 CESTAT CK 0050

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 20265, 20266 Of 2021

**M/s. Microsoft Research Lab India Private Limited Vs Commissioner Of
Central Tax, Bangalore North?**

Date of Decision : 17-08-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(I), 3, 5
Central Excise Act, 1944 — Section 11B, 11BB
Finance Act, 1994 — Section 83

Citation : (2021) 08 CESTAT CK 0050

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Appellants have filed these two appeals against two impugned orders dated 25.08.2021 and 20.08.2021 vide which the Commissioner (A) has rejected the refund claims on various input services. Since the issue involved in both the appeals are identical, therefore, both the appeals are taken up together for disposal.

2. Briefly the facts of the present case are that the appellant is a company registered under the Companies Act and is a wholly owned subsidiary of Microsoft Corporation, USA. They have entered into an agreement with M/s. Microsoft Corporation, USA as per which the appellant is required to undertake Information Technology related research and development activities. Appellant is engaged in providing Information Technology Services and Information Technology Enabled Services (ITES). Undisputedly, the said services qualify as export of service. Appellant is also registered under the Service Tax for taxable Information Technology Software Services and Business Auxiliary Services as service provider and also registered as service recipient for taxable Manpower Recruitment Service, Sponsorship Service, Commercial Training and Coaching Service, Legal Consultancy, etc. Appellant procured various input services which were utilised in provision of output service and tax paid thereon was claimed as CENVAT credit in terms of Rule 2(I) read with Rule 3 of the CENVAT Credit Rules.

Since the services provided by the appellant qualify as an export of service, appellant filed periodical refund claims under Rule 5 of CENVAT Credit Rules read with Notification No.5/2006-CE (NT) and Notification No.27/2012-CE(NT) dated 18.6.2012 as applicable for seeking refund of accumulated CENVAT credit.

2.1 In the first round of litigation, the learned original authority partially sanctioned and rejected some amount of refund claims filed by the appellant. Being aggrieved by the rejection, appellant preferred appeals before the Commissioner (A), who disposed of the said appeals by remanding the issue back to the original authority for fresh adjudication. In the remand proceedings, the learned original authority once again rejected the entire amount of refund claim which was rejected earlier in the first round of litigation. Aggrieved by the said rejection of refund claims, appellant preferred appeals before the Commissioner (A) and the Commissioner (A) rejected the said appeals and upheld the orders of the original authority. Statement giving appeal-wise and service-wise details of amount of refund rejected is reproduced herein below:

Sl. No.

Particulars

ST/20265/ 2021

ST/20266/2021

Total

Post April 2011

Pre April 2011

Post April 2011

1

Sponsorship Service

-

7,77,639

29,10,003

36,87,642

2

Event Management Services

9,50,004

-

48,194

9,98,198

3

Outdoor Catering Services

-

63,290

-

63,290

4

Rent-a-Cab Services

-

63,241

-

63,241

5

Pandal and Shamiana / Mandap Keeper Services

49,258

6,906

-

56,164

6

Life Insurance Services

-

17,329

-

17,329

7

Insurance Auxiliary Services

6,243

1,524

-

7,767

Total

10,05,505

9,29,929

29,58,197

48,93,631

Hence, the present appeals.

3. Learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the same have been passed without properly appreciating the facts and the law and the definition of 'input service' as provided under Rule 2(I) of CENVAT Credit Rules, 2004. He further submitted that all the disputed input services in respect of which the refund has been denied are covered by the definition of 'input service' as provided in Rule 2(I) of CENVAT Credit Rules and have nexus with the output service. He also submitted that even for the period post April 2011 i.e., post the amendment to the definition of the term 'input service', none of the services in respect of which refund is denied is covered under the exclusion clause as stated in the definition of 'input service'. He also submitted that the inclusive part of the definition of the input services cover services that are used in relation to the activities like advertising, sales promotion, market research, storage, procurement of inputs, accounting, auditing, financing, recruitment, training, legal and security services. He further submitted that various judicial precedents have held that the definition of input service is of wide purport and includes services which are in connection with or have a nexus with the output services provided. Learned counsel has annexed a detailed statement substantiating the nexus of input services used in providing the output service along with the judicial precedent allowing the credit of said services which is reproduced herein below:

Sl. No.

Particulars

Amount (Pre April 2011)

Amount (Post April 2011)

Nexus

Judgments

1

Sponsorship Service

7,77,639

29,10,003

The Appellant has paid services tax on these services as a receiver of services i.e., under reverse charge mechanism. The Appellant being a global entity sponsors various projects, new IT research programs by various institutions etc., thereby increasing the Appellant's presence in the market. Thus, the said services received are very important from the Appellant's business growth perspective. Hence these services qualify as input services of the Appellant having direct nexus with the output services.

1. Arm Embedded Technologies Pvt. Ltd. vs C.C.E., Cus. & S.T., Bangalore, 2016 (45) STR 133

2. Xilinx India Tech. Services Pvt. Ltd. vs. CC.,CE & S.T., HyderabadIV, 2016 (44) STR 635 (Tri-Hyd)

2

Event Management Services

48,194

9,50,004

Services provided in relation to planning, promotion, organizing or presentation of business by a person / company who are well trained for rendering such services is an essential requirement while conducting business meetings/ events and is to benefit the employees or customers attending the business meet, annual day. Such services are accordingly treated as input service in relation to business activities and are necessary for provision of output services by the Appellant.

1. Toyota Kirloskar Motor Pvt. Ltd. Vs. C.C.E., L TU, Bangalore, 2011 (24) S.T.R. 645 (Kar.)

2. Manhattan Associates (I) Dev. Centre Pvt. Ltd. vs C.S.T., Bangalore, 2017 (5) GSTL 99 (TriBang.)

3. Fidelity Business Services India Pvt Ltd vs Commissioner of Central Tax, Bengaluru East, 2021 (4) TMI 863CESTAT Bengaluru

4. DBOI Global Services Pvt. Ltd. vs Commr. of Service Tax, Mumbai, 2017 (48) S.T.R. 157 (Tri. -- Mumbai)

5. Commissioner of Service Tax, Mumbai-II vs WNS Global Services, 2016 (44) S.T.R. 454 (Tri. - Mumbai)

3.

Outdoor Catering Services

63,290

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The said input services are availed to provide snack, refreshment and food for the employees at the premise from where the services are provided. These services are useful in increasing productivity of employees who need not go out to restaurants and can get healthy meal at a reasonable price within the Appellant's premises. These services are for employees who are important assets for Appellant's business and hence are essential part of Appellant's business.

1. Commr. of C. Ex., Bangalore-III vs Stanzen Toyotetsu India (P) Ltd, 2011 (23) S.T.R. 444 (Kar.)
2. Commissioner of C. Ex., Nagpur vs Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Born.)
3. DBOI Global Services Pvt. Ltd. vs Commr. of Service Tax, Mumbai, 2017 (48) ST.R. 157 (Tri. -- Mumbai)
4. Commissioner of Service Tax, Mumbai-II vs WNS Global Services, 2016 (44) S.T.R. 454 (Tri. -- Mumbai)

4

Rent-a-cab services

63,241

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The Appellant has availed said services to provide transport/ cab facilities to the employees to commute between their place of residence and the place of work which is located at a distance from the residential areas; to commute for business purposes like attending business meetings with client's, meeting with regulatory authorities, prospective customers meetings etc. Hence, the said services are important from the Appellant's business activities perspective since the employees need to reach the workplace and/or client place on given time which helps to provide output service within given time frame. Hence these services are essential for the provision of output service and have direct nexus with output service.

Commr. of C. Ex., Bangalore-III vs. Stanzen Toyotetsu India (P) Ltd, 2011 (23) S.T.R. 444 (Kar.)

5

Pandal and Shamiana/ Mandap Keeper Services

6,906

49,258

These services are availed to make necessary arrangements while organizing meeting, rendering training conducting business exhibitions to attract new customers. Hence the said services are directly related to the business activity of the Appellant and hence qualify as input services.

1. Manhattan Associates (I) Dev. Centre Pvt. Ltd. vs C.S.T., Bangalore, 2017 (5) GSTL 99 (Tri-Bang.)

2. DBOI Global Services Pvt. Ltd. vs Commr. of Service Tax, Mumbai, 2017 (48) S.T.R. 157 (Tri.- Mumbai)

3. Commissioner of Service Tax, Mumbai-II vs WNS Global Services, 2016 (44) S.T.R. 454 (Tri. -- Mumbai)

6

Life Insurance Services

17,329

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The Appellant has availed these services in relation to insurance for the employees who are an essential resource to the organization. In IT and ITES industry, employees are the primary assets or resources and hence the Appellant offers several benefits including insurance to attract new employees and retain existing employees in line with the industry practice. Such services are directly related business activities and hence qualify as input services.

1. DBOI Global Services Pvt. Ltd. vs Commr. of Service Tax, Mumbai, 2017 (48) S.T.R. 157 (Tri.- Mumbai)

2. Commissioner of Service Tax, Mumbai-II vs WNS Global Services, 2016 (44) S.T.R. 454 (Tri. -- Mumbai)

7

Insurance Auxiliary Services

1,524

6,243

The service vendor prepares actuarial based reports which are a statutory requirement as per the Accounting standards -15. These services are integral and critical to the business of the Appellant. Hence, they qualify as input services

1. DBOI Global Services Pvt. Ltd. vs Commr. of Service Tax, Mumbai, 2017 (48) S.T.R. 157 (Tri.- Mumbai)

2. Commissioner of Service Tax, Mumbai-II vs WNS Global Services, 2016 (44) S.T.R. 454 (Tri. -- Mumbai)

9,78,123

39, 15,508

3.1 Learned counsel further submitted that when the appellant availed the CENVAT credit, the same was accepted by the Revenue and once the CENVAT has accepted at the availment stage, the same cannot be challenged at the stage of refund proceedings. CBEC in its circular No.120/01/2010-ST dated 19.1.2010 has clarified that there cannot be a double yardstick i.e., one for allowing the credit when availed and the other for processing the refund of the same. This proposition has been approved by the Hon'ble Tribunal in several orders including the following:

? Commissioner of Central Excise, Delhi & Delhi-III vs. Convergys India Services Pvt. Ltd.: 2017 (48) STR 173 (Tri.-Chan.)

? Qualcomm India Pvt. Ltd. vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad-IV: 2002 (43) GSTL 402 (Tri.-Hyd.)

? K Line Ship Management India Pvt. Ltd. vs. CGST, Mumbai West: 2018 (12) TMI 1481 - CESTAT Mumbai

? 24/7 Customer Pvt. Ltd. vs. Commissioner of Central Tax, Bengaluru East: 2021 (3) TMI 414 - CESTAT Bangalore

? Goldman Sachs Services Pvt. Ltd. vs. Commissioner of Central Tax, Bengaluru East: 2021 (3) TMI 559 - CESTAT Bangalore.

3.2 He also submitted that neither Rule 5 of CENVAT Credit Rules, 2004 nor the Notification No.5/2006-CE and Notification No.27/2012-CE during the relevant time required the appellant to prove the nexus. Learned counsel also submitted that the appellant is entitled to interest on delayed sanction of refund as per Section 11BB of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 which prescribes that if any duty ordered to be refunded under Section 11B is not refunded within three months from the date of receipt of the application under sub-section (1) of that Section, the assessee shall be paid interest at the rate stipulated on such duty from the date immediately after the expiry of three months from the date of receipt of the application till the date of refund of such duty. In support of his claim for interest, the appellant relied upon the following decisions.

? Ranbaxy Laboratories Ltd. vs. Union of India: 2012 (27) STR 193 (SC)

? Commissioner of Central Tax, Bengaluru vs. Netapp India Pvt. Ltd.: 2020 (32) GSTL 176 (Kar.)

? Scribetech India Healthcare Pvt. Ltd. vs. Commissioner of Central Tax, Bengaluru: 2020 (43) GSTL 245 (Tri. - Bang.)

4. On the other hand, the learned AR reiterated the findings of the impugned orders and submitted that the refund claimed by the appellant was disputed by

the department as the appellant has not submitted certain documents which were asked by the original authority and therefore, demand of interest by the appellant is not sustainable. She also submitted that the impugned services availed by the appellant lack nexus with the output service and the refund has rightly been rejected.

5. After considering the submissions of both the parties and perusal of the material on record as well as various decisions relied upon by the appellant cited *supra*, I find that the appellant has given detailed justification for each of the impugned services involved in these two appeals with judicial precedents and the impugned services have been used by the appellant for rendering the output services. Further, I find that the reasoning given by the Commissioner(A) in the impugned orders is not correct in law and the correct position in law is that to test for eligibility is whether input services is used by the provider of taxable service for providing output service and the input services should not be covered by the exclusion clause. Further, I find that all these services on which refund has been rejected consistently held to be input services in various decision relied upon by the appellant cited *supra*. Moreover, the Department has not questioned the input service at the time when the CENVAT credit was taken and as per the decision of this Tribunal in the case of *K Line Ship Management Pvt. Ltd. vs. CGST* cited *supra* wherein it has been held that the department is not permitted to question the eligibility of CENVAT credit at the time of claiming refund. Further, in view of the clarification given by the tax research unit of CBEC vide their letter dated 16.3.2012, the amended Rule 5 of CENVAT Credit Rules, does not require correlation between the output service exported and the input service used in such output service exported. This has also been held in various decisions by the Tribunal cited *supra*. Therefore, by following the ratio of the various decisions cited *supra*, I allow both the appeals of the appellants and hold that the appellant is entitled to refund of CENVAT credit along with interest in view of the apex court decision in the case of *Ranbaxy Laboratories Ltd. vs. UOI* cited *supra* along with many other decisions rendered by the Tribunal.

6. Accordingly, both the appeals are allowed.

(Order was pronounced in Open Court on 17/08/2021.)