CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85326 of 2019

(Arising out of Order-in-Appeal No. V2(A)STII/179/2016 dated 28.02.2018 passed by the Commissioner of CGST & Central Excise Belapur),

M/s Coface India Credit Management Services Private Limited .... Appellant
Silver Square, 6th Floor, Dattatrey Road,
Santacruz West, Mumbai – 400054.

Versus

Commissioner of CGST & C. Ex., Belapur .... Respondent
1st Floor, C.G.O. complex, CBD Belapur,
Navi Mumbai – 400614.

Appearance:

Shri Darshan Ranavat, Advocate for the Appellant
Shri Vinod Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85024 / 2023

Date of Hearing: 10.01.2023
Date of Decision: 10.01.2023

Per: S.K. Mohanty

Heard both sides and perused the records.

2. This appeal is directed against impugned order dated 28.02.2018 passed by the learned Commissioner (Appeals), CGST and Central Excise, Belapur. Vide the impugned order, the learned Commissioner (Appeals) has rejected the refund application filed by the appellant under Rule 5 of the CENVAT Credit Rules, 2004 on the ground that the opening balance in

the CENVAT register should not be taken into consideration for the purpose of grant of refund benefit and that certain input services were not considered for refund inasmuch as those services have no nexus with the output services provided by the appellant.

3. Insofar as consideration of the first issue regarding opening balance in the CENVAT register, the CBE&C vide Circular No. 120/01/2010 dated 19.01.2010 has clarified that the closing balance of the previous quarter can be considered for utilization towards export as opening balance for the subsequent quarter. The relevant paragraph of the said circular is extracted herein below:-

> *"As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an exporter may avail of Rs. 1 crore as input credit in the April-June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs. 50 lakh and domestic clearances of Rs. 25 lakh are made. The exporter should be permitted a refund of Rs. 66 lakh (as his export turnover is 66% of the total turnover in the quarter) from the Cenvat credit of Rs. 1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of Cenvat credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services, and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him."*

4. With regard to the establishment of nexus between the input services and the export of services, I find that the Department has not initiated any proceedings for recovery of the irregular credit of input services under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994. Since availment of CENVAT credit has not been questioned at the material time, subsequent claim of refund under Rule 5 on fulfillment of conditions laid down therein cannot be questioned by the Department at a later stage for denying the refund benefit. The issue arising out of the present dispute is no more *res integra* in view of the decisions of the Tribunal in the case of *Ness Technologies (I) Pvt. Ltd. Vs Commissioner of Service Tax Division-V, Mumbai - 2016 (41) S.T.R. 984 (Tri.-Mumbai), Acceleya Kale Solutions Ltd. Vs Commissioner of CGST, Thane – 2019 (369) E.L.T. 803 (Tri.-Mumbai), Final Order No. A/86651-86655/2019 dated 20.09.2019* passed in the case of *TPG Capital India Pvt. Ltd. Vs Commissioner of CGST Mumbai East* and *Final Order No. A/87029/2019 dated 01.10.2019* passed in the case of *M. Net Partner Technologies Pvt. Ltd. Vs Commissioner of CGST Mumbai East.* The ratio laid down in the said orders of the Tribunal is to the effect that while granting the refund benefit under Rule 5 ibid read with the notification issued thereunder, the Department cannot object to such claim of the assessee on the ground that there was no nexus between the input services and exportation of the output service.

5. In view of the foregoing discussions, I do not find any merits in the impugned order, insofar as the Commissioner

(Appeals) has denied the refund benefit to the appellant. Accordingly, by setting aside the impugned order, the appeal is allowed in favour of the appellant with consequential benefit, as per law.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

Sinha