CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88427, 88432, 88433, 88438, 88439, 88441, 88442, 88443 & 88444 OF 2018

[Arising out of Order-in-Appeal No: PK/340 to 348/ME/2018 dated 24th April 2018 passed by the Commissioner of CGST & Central Excise (Appeals – II), Mumbai.]

PMI Organisation Centre Private Limited
Unit No. 302-305, Bandra-Kurla Complex, Plot No. C-3
E Block, Bandra East, Mumbai – 400 051 … ***Appellant***

Versus

Commissioner of CGST & Central Tax
3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E,
Bandra-Kurla Complex, Bandra East, Mumbai–400051 ***…Respondent***

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant, for the appellant

Shri Nitin Ranjan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85955-85963/2022

DATE OF HEARING: 18/04/2022
DATE OF DECISION: 17/10/2022

These appeals have been filed by M/s PMI Organisation Centre Private Limited against order-in-appeal no. PK/340 to 348/ME/2018

dated 24th April 2018 of Commissioner of CGST & Central Excise (Appeals – II), Mumbai in which denial of refund of ` 35,71,865/- by the original authority was upheld to the extent of ` 35,34,735/- leading to this dispute before the Tribunal.

2. The challenge has been mounted on two grounds, *viz.*, that the denial of credit on alleged lack of nexus of 'taxable service' procured by them and the 'output service' travels beyond the limited disposal envisaged in rule 5 of CENVAT Credit Rules, 2004 and that, by ascertaining eligibility for refund against the touchstone of rule 2(l) of CENVAT Credit Rules, 2004 as amended with effect from 1st March 2011, the first appellate authority has travelled beyond the scope of the show cause notice.

3. M/s PMI Organisation Centre Private Limited, a subsidiary of M/s Project Management Institute, USA, which is an association of members concerned with development of standards for project management, undertakes promotion and marketing of such standards, conducts conferences and conventions aimed at canvassing membership of the parent entity and campaigns among educational institutions to introduce courses on project management for all of which the overseas entity was invoiced at cost incurred therein with the addition of another 15%. According to them, this constitute the value of services that are exported from the country and that the

income earned as delegate fee has been offered up for levy under Finance Act, 1994. They had, in exercise of the privilege of monetization extended by rule 5 of CENVAT Credit Rules, 2004 supplemented by notification no. 27/2012-CE(NT) dated 18th June 2012, sought refund of accumulated CENVAT credit of ` 1,71,30,345/- for the two 'half' years of October 2013 to September 2014 and for every quarter thereafter till June 2016. The original authority denied them eligibility for credit to the extent of ` 35,71,865/- for alleged lack of nexus and, consequently, access to the credit already taken under rule 3 of CENVAT Credit Rules, 2004. In the impugned order disposing off challenge to the denial in the nine refund applications, the first appellate authority restricted the denial to ` 35,34,735/- and, in doing so, not only upheld the ground relied upon in the order of the original authority but, in relation to some of the impugned services, also held these to be non-compliant with the definition in rule 2(l) of CENVAT Credit Rules, 2004 as it stood after the deletion of 'activities related to business' from 1st April 2011 besides observing that, in certain instances, the appellant had failed to produce evidence of the said services having been consumed towards 'output service' having been rendered.

4. According to Learned Chartered Accountant appearing for the appellant, the Tribunal has consistently taken a stand that proceedings in which claims for refund are disposed off are no surrogate for denial

of credit which must necessarily pass through the process prescribed in rule 14 CENVAT Credit Rules, 2004. It was specifically pointed out by him that, in a dispute relating to another period, the Tribunal, set aside the denial of refund based on ineligibility to CENVAT credit and placed particular reliance on

> *'5. Sub-rule(1) of Rule 3 of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer or service provider to take cenvat credit of various duties and taxes itemized therein. Similarly, sub-rule (4) of Rule 3 ibid permits a manufacturer or service provider to utilize the cenvat credit so availed, for payment towards various activities including payment of duty on excisable final product and service tax on the output service. Where the credit availed or utilized in a wrongful manner, it has been mandated in Rule 14 ibid for recovery of the credit so availed/utilized from the manufacturer or service provider as the case may be. It has further been mandated that for effecting recovery of irregularly availed or utilized cenvat credit, the provisions of Section11A of the Central Excise Act, 1994 or Section 73 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis. The provisions for grant of refund of cenvat credit in case of exportation of goods or services are d of cenvat credit in case of exportation of goods or services are Service Tax Appeal No. 85958 of 2019 4 contained in Rule 5 ibid. Sanction of refund under the said statutory provision is subject to adherence of the procedures, conditions and limitations as may be specified by the CBEC by way of notification in the Official Gazette. The said rule nowhere specified that while adjudicating the refund application, the department should examine the nexus theory as provided under Rule 3 read with Rule 14 ibid. In other*

words, since Rule 5 ibid itself is a self contained provision, designed with the sole objective of consideration of the refund application for the limited purpose of exportation of goods/services, the department is only confined to look into the aspect, whether the formula prescribed there under has been duly complied with by the claimant or not.

6. On careful examination of the above statutory provisions, it transpires that the reasons assigned by the authorities below in this case for denial of the refund benefit to the applicant shall not stand for judicial scrutiny inasmuch as other than the allegation of nonestablishment of nexus, the department had never questioned nor pointed out any discrepancy, alleging that the ingredients mentioned in Rule 5 ibid have not been complied with by the appellant. Hence, I am of the considered view that refund benefit shall not be denied to the appellant. I find that entirely on the identical set of facts, this Tribunal in the case of Warburg Pincus India Pvt. Ltd.(Supra) has allowed the refund benefit to the exporter of service. The relevant paragraph in the said order is extracted herein below:

> *"4. On careful consideration of the submissions made by both the sides and on perusal of records, I find that firstly, the adjudicating authority in the refund application filed by the appellant, rejected part of the refund on the ground that certain services in respect of which the refund claim was sought for are not admissible services. The act of the adjudicating authority is totally illegal and arbitrary for the reason that the appellant has availed the Cenvat credit and in respect of which they filed the refund claim. If at all the adjudicating authority is of the view that certain input service is not admissible for the purpose of Cenvat credit, he should have issued a separate show cause notice and after carrying out the process of adjudication, order should have been passed holding that whether the said input services are admissible input services or not. Thereafter a decision on refund should have been taken. However, without carrying out the process of adjudication, he straightaway rejected the refund claim, which is not legal and proper. Further, on going through the nature of the service, I find that all these services in question are directly used by the service provider*

> *i.e. the appellant. In various judgments cited by the Learned Counsel, this Tribunal and various High Courts consistently held that all these services are input service for providing the output service. Hence the Cenvat credit is admissible."*

in *PMI Organisation Centre Pvt Ltd v. Commissioner of Central Goods and Service Tax, Mumbai East [final order no. A/85105/2022 dated 7th February 2022 disposing off appeal no. ST/85958/2019 against order-in-appeal no. PK/1008/ME/2018 dated 03rd January 2019 of Commissioner (Appeals-II) Central Tax, CGST, Mumbai*]. It was also pointed out by him that an identical view had been taken in *Responsibility India Business Advisors Pvt Ltd v. Commissioner of GST & Central Excise, Mumbai West [2021 (12) TMI 1015 –CESTAT MUMBAI]* and in *Accelya Kale Solutions Ltd v. Commissioner of CGST & Central Excise, Mumbai [2018 (8) TMI 19 CESTAT MUMBAI]* holding that

> *'3. Rule 5 of Cenvat Credit Rules, 2004, was substituted vide Notification No. 18/2012-CE (NT) dated 17.03.2012, with effect from 01.04.2012. The said substituted rule has prescribed the formula for claiming refund of service tax by the service provider. Under such amended rule in vogue, there is no requirement of satisfying the nexus between the input services and the output service provided by the service provider. Consequent upon substitution of the said Rule in the Union Budget – 2012, the Tax Research Unit (TRU) of CBEC vide letter dated 16.03.2012 has clarified as under:-*
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> > *"F.1. Simplified scheme for refunds: 1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of Cenvat Credit Rules, 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……..…”

3. On perusal of the statutory provisions read with the clarifications furnished by the TRU, it transpires that under the substituted Rule 5 of the rules, there is no requirement of showing the nexus between the input service and the output service provided by the assessee. Since the refund under the said amended rule is governed on the basis of receipt of export turnover to the total turnover, the establishing the nexus between the input and output service cannot be insisted upon for consideration of the refund application.’

5. Learned Authorised Representative contends that the notification effecting changes in rule 2(l) CENVAT Credit Rules, 2004 deprives the impugned services from being considered as eligible for availment for credit. It is also his contention that, in the absence of nexus, the eligibility for refund under rule 5 of CENVAT Credit Rules, 2004 becomes questionable as that would be tantamount to giving a undue benefit which is not in accord with the principles governing the refund of taxes/duties that have gone into the value of exported services.

6. It is seen from the impugned order that the first appellate authority has traversed beyond the issues raised in the show cause notice by insisting upon filtration through the mesh of the amended definition of ‘input service’ in rule 2(l) of CENVAT Credit Rules, 2004. Furthermore, it is also seen that the first appellate authority

appears to have placed undue premium on the necessity of furnishing evidence of 'input services' having been directly consumed in rendering eligible output that are exported.

7. It is beyond conception to even conjuncture the consumption of service; implicit in consumption is tangible and transferability both of which are absent insofar as services are concerned. The first appellate authority appears to have insinuated aspects into rendering of services that neither enumerated nor even intended by Finance Act, 1994. It would, therefore, be appropriate to ignore the finding of the first appellate authority except to the extent of upholding of the order of the original authority on ground of lack of nexus which too has found place in his discussion in relation to each of the service that was sought to be barred from eligibility to avail credit.

8. Rule 5 of CENVAT Credit Rules, 2004 is a mechanism specifically designed and comprehensively formulated for reimbursement of tax/duties paid on procurement of inputs/input service to the extent of these are attributable to service that are exported by the appellant. The consequences of denial of refund is not erasure from the CENVAT credit account but restoration therein for utilization in discharge of taxes/duties of services/goods cleared domestically.

9. The procedure for claiming such refund, enshrined in

notification no. 27/2012-Central Excise Act, 1944 (NT) dated 18th June 2012, must necessarily be in conformity with the boundaries within which the claim of refund is initiated as per rule 5 of CENVAT Credit Rules, 2004. Neither of these provide for any option other than sanction of refund, subject of course, to eligibility of amount in accordance with the formula prescribed therein, and denial of the refund.

10. The order of the original authority, goes a step further and, after questioning the eligibility for inclusion of the tax paid on the impugned services, has set aside the availment of CENVAT credit to that extent. The specific authority for doing so arises only from rule 14 of CENVAT Credit Rules, 2004 which has not been invoked in these proceedings. By denial of refund as a consequence of denial of eligibility for CENVAT credit, the final outcome has traversed beyond the scope of rule 5 of CENVAT Credit Rules, 2004 and which, but for the finding on nexus, was to be attributed to the tax on the 'input services' used for rendering 'output service', and therefore the order itself is not in accordance with law.

11. This is in line with the decisions of the Tribunal in *re PMI Organisation Centre Pvt Ltd*, in *re K Line Ship Management India Pvt Ltd* and in *re Responsibility India Business Advisors Pvt Ltd.*

12. Accordingly, the impugned order is set aside and appeals

allowed with consequential relief.

(Order pronounced in the open court on 17/10/2022)

(C J MATHEW)
Member (Technical)

**/as*